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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0736; Airspace Docket No. 09–AGL–21]

Amendment of Class E Airspace; Huntingburg, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Huntingburg, IN, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Huntingburg Airport, Huntingburg, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 16, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Huntingburg Airport, Huntingburg, IN (74 FR 66592) Docket No. FAA–2009–0736. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Huntingburg Airport, Huntingburg, IN. Adjustment of the geographic coordinates will be made in accordance with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Huntingburg Airport, Huntingburg, IN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Huntingburg, IN [Amended]

Huntingburg Airport, IN
(Lat. 38°14′57″ N., long. 86°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Huntingburg Airport and within 2 miles either side of the 091° bearing from the airport extending from the 7-mile radius to 11.1 miles east of the airport.

Issued in Fort Worth, Texas, on March 11, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6155 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0916; Airspace Docket No. 09–ACE–12]

Amendment of Class E Airspace; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Cedar Rapids, IA, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at The Eastern Iowa Airport, Cedar Rapids, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for The Eastern Iowa Airport, Cedar Rapids, IA (74 FR 67141) Docket No. FAA–2009–0916. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated as surface areas to accommodate SIAPs at The Eastern Iowa Airport, Cedar Rapids, IA. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at The Eastern Iowa Airport, Cedar Rapids, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ACE IA E2 Cedar Rapids, IA [Amended]

Cedar Rapids, The Eastern Iowa Airport, IA (Lat. 41°53′05″ N., long. 91°42′39″ W.)

Within a 5 mile radius of The Eastern Iowa Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on March 11, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6157 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0934; Airspace Docket No. 09–ASW–29]

Amendment of Class E Airspace; Georgetown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Georgetown, TX, to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Georgetown Municipal Airport, Georgetown, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 18, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Georgetown Municipal Airport, Georgetown, TX (74

FR 67142) Docket No. FAA–2009–0934. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at Georgetown Municipal Airport, Georgetown, TX. Adjustment of the geographic coordinates will be made in accordance with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Georgetown Municipal Airport, Georgetown, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Georgetown, TX [Amended]

Georgetown Municipal Airport, TX
(Lat. 30°40′44″ N., long. 97°40′46″ W.)
Georgetown NDB
(Lat. 30°41′04″ N., long. 97°40′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Georgetown Municipal Airport, and within 2.5 miles each side of the 359° bearing from the Georgetown NDB extending from the 6.5-mile radius to 7.4 miles north of the airport, and within 2.2 miles each side of the 301° bearing from the airport extending from the 6.5-mile radius to 9.7 miles northwest of the airport, and within 2 miles each side of the 003° bearing from the airport extending from the 6.5-mile radius to 10.3 miles north of the airport.

Issued in Fort Worth, Texas, on March 11, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6160 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1151; Airspace Docket No. 09–ASW–30]

Amendment of Class E Airspace; Dumas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Dumas, TX, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Moore County Airport, Dumas, TX, and updates the airport's geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 29, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Dumas, TX, reconfiguring controlled airspace at Moore County Airport, Dumas, TX (74 FR 68747) Docket No. FAA–2009–1151. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by

amending Class E airspace for the Dumas, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Moore County Airport, Dumas, TX. This action also updates the geographic coordinates of Moore County Airport to coincide with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Moore County Airport, Dumas, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Dumas, TX [Amended]

Moore County Airport, TX
(Lat. 35°51′29″ N., long. 102°00′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Moore County Airport and within 1.9 miles each side of the 023° bearing from the airport extending from the 6.8-mile radius to 8.9 miles northeast of the airport, and within 4 miles each side of the 203° bearing from the airport extending from the 6.8-mile radius to 11.2 miles southwest of the airport.

Issued in Fort Worth, Texas, on March 11, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6162 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0955; Airspace Docket No. 09–ASO–28]

Amendment of Class E Airspace; Gadsden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** December 29, 2009 that amends Class E airspace at Northeast Alabama Regional, Gadsden, AL.

DATES: *Effective Date:* 0901 UTC, March 23, 2010.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 29, 2009 (74 FR 68667), Docket No. FAA–2009–0955; Airspace Docket No. 09–ASO–28. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 11, 2010. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on March 15, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6277 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0710; Airspace Docket No. 09–ASO–16]

Establishment of Class D and E Airspace; Panama City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E Airspace at Panama City, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) for the new Northwest Florida-Panama City International Airport. This action, taken in conjunction with the new airline operations that begin at the airport on May 22, 2010, will enhance the safety and management of Instrument Flight Rules (IFR) operations at the Northwest Florida-Panama City International Airport, Panama City, FL.

DATES: Effective 0901 UTC, May 22, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order

7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On February 1, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D and E airspace for the new Northwest Florida-Panama City International Airport, Panama City, FL (75 FR 5007) Docket No. FAA–2009–0710. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D and Class E airspace designations are published in paragraphs 5000 and 6005 respectively of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D airspace extending upward from the surface to 2,500 feet MSL within a 4.7-mile radius of the airport, and Class E airspace extending from 700 feet above the surface within a 7.2-mile radius of the airport to accommodate SIAPs at Northwest Florida-Panama City International Airport, Panama City, FL. This action is necessary for the safety and management of IFR operations at the airport.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Northwest Florida-Panama City International Airport, Panama City, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 20097, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Panama City, FL [NEW]

Northwest Florida-Panama City International Airport, FL
(Lat. 30°21′28″ N., long. 85°47′56″ W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.7-mile radius of the Northwest Florida-Panama City International Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Panama City, FL [NEW]

Northwest Florida-Panama City International Airport, FL
(Lat. 30°21′28″ N., long. 85°47′56″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 7.2-mile radius of the Northwest Florida-Panama City International Airport.

Issued in College Park, Georgia, on March 12, 2010.

Michael Vermuth,

Acting Manager, Oerations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6280 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1149; Airspace Docket No. 09–AGL–33]

Establishment of Class E Airspace; West Bend, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for West Bend, WI to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at West Bend Municipal Airport, West Bend, WI. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective Date:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On December 29, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for West Bend, WI,

creating additional controlled airspace at West Bend Municipal Airport (74 FR 68746) Docket No. FAA–2009–1149. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface to accommodate SIAPs at West Bend Municipal Airport, West Bend, WI. This action is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at West Bend Municipal Airport, West Bend, WI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

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

* * * * *

AGL WI E5 West Bend, WI [Amended]

West Bend Municipal Airport, WI
(Lat. 43°25′20″ N., long. 88°07′41″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of West Bend Municipal Airport, and within 2 miles each side of the 239° bearing from the airport extending from the 7.4-mile radius to 11.4 miles southwest of the airport, excluding that airspace within the Hartford, WI, Class E airspace area.

Issued in Fort Worth, Texas, on March 11, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6158 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 100119033–0042–01]

RIN 0694–AE85

Implementation of Both the Understandings Reached at the 2009 Australia Group (AG) Plenary Meeting and a Decision Adopted Under the AG Intersessional Silent Approval Procedures

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the September 2009 plenary meeting of the Australia Group (AG). This rule also amends the EAR to implement a decision recommended at the 2009 AG Plenary that was adopted under the AG intersessional silent approval procedures in October 2009.

Consistent with the understandings reached at the 2009 AG Plenary, this final rule amends the EAR to reflect the addition of technical notes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." The purpose of the new technical notes is to: clarify the term "alloys," as used in reference to the types of "materials" from which such equipment is made; and clarify the term "nominal size," as used in reference to the valves described on this AG control list.

This final rule also amends the EAR to reflect the AG decision (recommended at the 2009 AG Plenary and adopted under the AG intersessional silent approval procedures) to remove "white pox" virus from the AG "List of Biological Agents for Export Control."

DATES: This rule is effective March 23, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE85, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include "RIN 0694–AE85" in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

• *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, W., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE85.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE85)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dr. Betty Lee, Microbiologist, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, *Telephone:* (202) 482–5817.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris, France, on September 21–25, 2009, as well as a decision recommended at the 2009 AG Plenary that was adopted under the AG intersessional silent approval procedures in October 2009. The AG is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

Consistent with the understandings reached at the 2009 AG Plenary, this final rule amends the EAR to conform with certain changes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." Specifically, this rule amends Export Control Classification Number (ECCN) 2B350 (Chemical manufacturing facilities and equipment) on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) by adding a new technical note and amending an existing technical note to clarify the use of the terms "nominal size" and "alloy" in connection with items controlled under this ECCN.

First, this rule adds a new technical note immediately following 2B350.g to clarify that, for purposes of the valves described therein, the term "nominal size" is defined as the smaller of the inlet and outlet port diameters. Second, this rule amends Technical Note 2 at the end of ECCN 2B350 to clarify that, with respect to the "materials" from which the equipment is made, the term "alloy," when not accompanied by a specific elemental concentration, is understood as identifying those alloys where the identified metal is present in a higher percentage by weight than any other element.

Finally, this rule amends ECCN 1C351 on the CCL to reflect the AG decision (recommended at the 2009 AG Plenary and adopted under the AG intersessional silent approval procedures) to remove "white pox" virus from the AG "List of Biological Agents for Export Control." Consistent with this change, this rule renumbers and/or reorders certain viruses listed in ECCN 1C351.a to conform with the format in the AG List of Biological Agents. The AG decision to remove this virus from its list of biological agents is based on the fact that the International Committee on Taxonomy of Viruses does not recognize "white pox" virus as a separate entity, since the virus has been determined to be a laboratory artifact resulting from sample contamination with the variola virus.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.,* under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 22, 2010, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before May 7, 2010. Any such items not actually exported or reexported before midnight, on May 7, 2010, require a license in accordance with this regulation.

"Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before May 7, 2010. Beginning at midnight on May 7, 2010, such "technology" and "source code" may no longer be released, without a license, to a foreign national subject to the "deemed" export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United

States (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Supplement No. 1 to Part 774—[Amended]

■ 2. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1— Special Materials and Related Equipment, Chemicals, "Microorganisms" & "Toxins," ECCN 1C351 is amended by revising paragraph (a) under "*Items*" in the List of Items Controlled, to read as follows:

1C351 Human and zoonotic pathogens and "toxins", as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Viruses, as follows:
a.1. Chikungunya virus;
a.2. Congo-Crimean haemorrhagic fever virus (a.k.a. Crimean-Congo haemorrhagic fever virus);
a.3. Dengue fever virus;
a.4. Eastern equine encephalitis virus;
a.5. Ebola virus;
a.6. Hantaan virus;
a.7. Junin virus;
a.8. Lassa fever virus;
a.9. Lymphocytic choriomeningitis virus;
a.10. Machupo virus;
a.11. Marburg virus;
a.12. Monkey pox virus;
a.13. Rift Valley fever virus;
a.14. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.15. Variola virus;
a.16. Venezuelan equine encephalitis virus;
a.17. Western equine encephalitis virus;
a.18. Yellow fever virus;
a.19. Japanese encephalitis virus;
a.20. Kyasanur Forest virus;
a.21. Louping ill virus;
a.22. Murray Valley encephalitis virus;
a.23. Omsk haemorrhagic fever virus;
a.24. Oropouche virus;
a.25. Powassan virus;
a.26. Rocio virus;
a.27. St. Louis encephalitis virus;
a.28. Hendra virus (Equine morbillivirus);
a.29. South American haemorrhagic fever (Sabia, Flexal, Guanarito);
a.30. Pulmonary and renal syndrome-haemorrhagic fever viruses (Seoul, Dobrava, Puumala, Sin Nombre); or
a.31. Nipah virus.

* * * * *

■ 3. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by adding a Technical Note immediately following paragraph (g) under "*Items*" in the List of Items Controlled and by revising Technical Note 2 at the end of the entry to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (*see* List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

* * * * *

g. * * *

Technical Note to 2B350.g: The 'nominal size' is defined as the smaller of the inlet and outlet port diameters

* * * * *

j. * * *

Technical Note 1: * * *

Technical Note 2: For the items listed in 2B350, the term 'alloy,' when not accompanied by a specific elemental concentration, is understood as identifying those alloys where the identified metal is present in a higher percentage by weight than any other element.

Dated: March 17, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–6371 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 0908041218–91220–01]

RIN 0694–AE58

Wassenaar Arrangement 2008 Plenary Agreements Implementation: Categories 1, 2, 3, 4, 5 Parts I and II, 6, 7, 8 and 9 of the Commerce Control List, Definitions, Reports; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Friday, December 11, 2009, that revised the Export Administration Regulations (EAR) by amending entries for certain items that are controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, 7, 8, and 9; adding new entries to the Commerce Control List, revising reporting requirements, and adding and amending EAR Definitions. That final rule contained errors that affected Export Control Classification Numbers 1A004 and 5A001. This document corrects these errors.

DATES: *Effective Date:* This rule is effective March 23, 2010.

ADDRESSES: Written comments on this rule may be sent to the **Federal Register** eRulemaking Portal: *http://www.regulations.gov,* or by e-mail to *publiccomments@bis.doc.gov.* Include RIN 0694–AE58 in the subject line of the message. Comments may be submitted by mail or hand delivery to Sharron Cook, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St., & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230, ATTN: RIN AE58; or by fax to (202) 482–3355.

Send comments regarding the collection of information to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room H2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce; by telephone: (202) 482–2440; or by fax: 202–482–3355.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2009, the final rule, "Wassenaar Arrangement 2008 Plenary Agreements Implementation: Categories 1, 2, 3, 4, 5 Parts I and II, 6, 7, 8 and 9 of the Commerce Control List, Definitions, Reports" was published in the **Federal Register** (74 FR 66000). The December 11th rule inadvertently removed two technical notes after 1A004.d. This rule adds these technical notes back to 1A004.d. In addition, in the LVS paragraph of the License Requirement section of ECCN 5A001, this rule replaces the phrase "and .d through .h" with "and .d, .f, .g, .h." in order to make it clear that only the referenced paragraphs are eligible for license exception LVS. The phrase "and .d through .h" suggested that paragraph .e was eligible for LVS and it is not.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13. 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any 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 Office of Management and Budget Control Number. This final rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. This final rule is expected to have a minimal increase on the total number of license applications submitted to BIS. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although the formal comment period closed on June 17, 2008, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to one of the addresses listed in the **ADDRESSES** section of the preamble of this final rule.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is corrected by making the following correcting amendment:

PART 774—[CORRECTED]

■ 1. The authority citations for part 774 continue to read as follows:

Authority: Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Supplement No. 1 to Part 774—Commerce Control List [CORRECTED]

■ 2. Supplement No. 1 to Part 774 (the Commerce Control List), Category 1, Export Control Classification Number (ECCN) 1A004 is corrected by adding two new technical notes to the end of paragraph d in the items paragraph of the List of Items Controlled section, to read as follows:

1A004 Protective and detection equipment and components, not specially designed for military use, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. * * *

* * * * *

Technical Notes:

1. 1A004 includes equipment and components that have been identified, successfully tested to national standards or otherwise proven effective, for the detection of or defense against radioactive materials "adapted for use in war", biological agents "adapted for use in war", chemical warfare agents, 'simulants' or "riot control agents", even if such equipment or components are used in civil industries such as mining, quarrying, agriculture, pharmaceuticals, medical, veterinary, environmental, waste management, or the food industry.

2. 'Simulant': A substance or material that is used in place of toxic agent (chemical or biological) in training, research, testing or evaluation.

* * * * *

■ 3. Supplement No. 1 to Part 774 (the Commerce Control List), Category 5, Part I, ECCN 5A001 is corrected by removing the phrase "and .d through .h" and adding in its place "and .d, .f, .g, .h." in the LVS paragraph of the License Requirement section.

Dated: March 17, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–6381 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12 and 163

[USCBP–2008–0111; CBP Dec. 10–04]

RIN 1505–AC06

Prohibitions and Conditions for Importation of Burmese and Non-Burmese Covered Articles of Jadeite, Rubies, and Articles of Jewelry Containing Jadeite or Rubies

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, interim amendments to title 19 of the Code of Federal Regulations (“19 CFR”) which were published in the **Federal Register** on January 16, 2009, as CBP Dec. 09–01 to implement the prohibitions and conditions for importation of Burmese and non-Burmese covered articles of jadeite, rubies, and articles of jewelry containing jadeite or rubies.

DATES: Final rule effective April 22, 2010.

FOR FURTHER INFORMATION CONTACT: Cathy Sauceda, Director, Import Safety and Interagency requirements Division, Office of International Trade (202) 863–6556, or Brenda Brockman Smith, Executive Director, Trade Policy and Programs, Office of International Trade (202) 863–6406.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2008, the President signed into law the Tom Lantos Block Burmese JADE (Junta’s Anti-Democratic Efforts) Act of 2008 (Pub. L. 110–286) (the “JADE Act”). Section 6 of the JADE Act amends the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108–61) (as so amended, the “BFDA”) by adding a new section 3A that prohibits the importation of jadeite and rubies mined or extracted from Burma, and articles of jewelry containing jadeite or rubies mined or extracted from Burma (Burmese covered articles). Section 3A of the JADE Act also regulates the importation of jadeite and rubies mined or extracted from a country other than Burma, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma (non-Burmese covered articles). Presidential Proclamation 8294 of September 26, 2008, implements the prohibitions and conditions of the JADE Act. (*See* Annex of Presidential Proclamation 8294 for Additional U.S. Note 4 to Chapter 71, Harmonized Tariff Schedule of the United States (“HTSUS”)).

On January 16, 2009, U.S. Customs and Border Protection (“CBP”) published CBP Dec. 09–01 in the **Federal Register** (74 FR 2844), setting forth interim amendments to implement certain provisions of the JADE Act and Presidential Proclamation 8294 by prohibiting the importation of “Burmese covered articles” (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma), and by setting forth conditions for the importation of “non-Burmese covered articles” (jadeite, rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from a country other than Burma).

Although the interim regulations were promulgated without prior public notice and comment procedures and took effect on January 16, 2009, CBP Dec. 09–01 provided for the submission of public comments that would be considered before adopting the interim regulations as a final rule. The prescribed public comment period closed on March 17, 2009.

Discussion of Comment Received in Response to CBP Dec. 09–01

One commenter responded to the solicitation of comments on the interim regulations set forth in CBP Dec. 09–01. The commenter stated that the interim final rule provided “an excellent platform that offers both very workable and realistic means to uphold the law as written and to support the spirit of the law drafted by U.S. Congress.” The commenter offered a few suggestions. A description of the commenter’s suggestions and CBP’s analysis are set forth below.

Comment

The commenter recommended that in order to support the importer certification under Additional U.S. Note 4(a), Chapter 71, HTSUS, importers be required, at their sole expense, to confirm the veracity of their certification of non-Burmese covered articles by conducting random spot checks utilizing lab testing by an independent gemological laboratory accredited by CBP. The commenter also recommends requiring the importer to maintain records showing a history of the auditing process for a period of at least five years, and to make such records available to CBP upon request.

CBP’s Response

Requiring an importer to conduct lab testing on the merchandise to be imported goes beyond the explicit statutory requirements and the importer certification requirement of 19 CFR 12.151(d). Additional U.S. Note 4(a), Chapter 71, HTSUS, provides that the presentation of an entry for any good under heading 7103, 7113, or 7116 is deemed to be a certification by the importer that any jadeite or rubies contained in such good were not mined in or extracted from Burma. As such, the presentation of an entry serves as the importer certification. If an importer elects to test the imported gems to bolster the information provided by the exporter, the results of the testing will serve to reflect upon the importer’s level of reasonable care used and will be objective evidence that the goods were not mined in or extracted from Burma. CBP concurs with the commenter regarding retaining the 5-year record retention period in the final rule as set forth in § 12.151(e) as well as the requirement in § 12.151(f) that the importer must provide, upon CBP’s request, all documentation to support the importer and exporter certifications.

Comment

The commenter recommended that only government-validated certificates of origin from the country in which the jadeite or rubies are mined or extracted be accepted as verifiable evidence, and that protocols related to the issuance of the exporter’s government-validated certification guaranteeing non-Burmese origin should require random spot testing by an independent gemological laboratory accredited by CBP to verify non-Burmese origin.

CBP’s Response

The commenter’s recommendations with respect to foreign government certification and validation of exporter certificates cannot be enforced by CBP because no international arrangement, similar to the Kimberley Process Certification Scheme for conflict diamonds, currently exists for jadeite or rubies from Burma.

Comment

The commenter recommended that as a condition for export with the intent of re-importation into the United States, CBP should require that any Burmese covered article be detailed in such a way so as to ensure the same article is the one considered for re-importation to prevent circumvention of the JADE sanctions. Further, the commenter recommended that for the re-importation of non-Burmese covered

articles, the original country of origin certificate be required, including a statement detailing any transformation that may have occurred.

CBP's Response

On CBP Form 4457, Certificate of Registration for Personal Effects Taken Abroad, CBP collects information from the owner in advance of departure concerning articles that will be re-imported into the United States. In addition, on CBP Form 4455, Certificate of Registration, CBP collects information about articles that are exported from the United States via a carrier for alteration, repairs, use abroad, replacement, or processing that will be re-imported into the United States and that may be subject to duty for the cost or value of the alteration, repair, or processing. Completion of this form is mandatory. Although CBP cannot ensure that the item being re-imported is the actual item that was exported unless the article has permanent identifying information such as etched or engraved serial numbers, CBP will endeavor to use the information contained on these forms to prevent the circumvention of the JADE sanctions when a covered article is exported with the intention of re-importation. As is the case with all CBP forms, the importer is responsible for the truthfulness of the information submitted on the form.

Comment

The commenter asserts that there is a risk that the personal-use exemption will be used as a means to circumvent the prohibitions and conditions for the importation of non-Burmese covered articles. The commenter recommended increased scrutiny be placed on individuals claiming a personal-use exemption and that random spot-testing be conducted to verify the imported goods are in fact non-Burmese covered articles.

CBP's Response

CBP appreciates the commenter's concerns and the underlying rationale. Any Burmese covered articles or non-Burmese covered articles that are imported into the United States in violation of any prohibition of the JADE Act are subject to all applicable seizure and forfeiture laws to the same extent as any other violation of the customs laws.

Comment

The commenter stated that the reliance on a "paper-only" system of verifiable controls without built-in safeguards such as random spot lab testing to verify authenticity and accuracy of documentation is susceptible to the risk for fraud.

CBP's Response

CBP acknowledges that until there is an international certification scheme in place, the authenticity and accuracy of documentation in the required "system of verifiable controls" is susceptible to fraud. CBP will enforce the JADE Act through the use of an importer's and exporter's certification and the other applicable customs laws.

Comment

The commenter recommended that importers should be required to provide a written warranty to each buyer or ultimate consignee of non-Burmese covered articles, affirming that an established system of verified controls from the mine to the supplier is in place and that officially validated certification has accompanied the articles at all stages.

CBP's Response

The commenter's suggestion that the importer issue a written warranty to the ultimate consumer goes beyond what is required by the JADE Act. Accordingly, CBP cannot prescribe in this final rule such entry requirements that are not mandated by the Act.

Conclusion

As indicated in the above discussion, CBP is unable to adopt the commenter's suggestions given the current statutory scheme. Accordingly, the interim rule published as CBP Dec. 09–01 is being adopted as a final rule.

Executive Order 12866

CBP has determined that this document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993).

Regulatory Flexibility Act

CBP Dec. 09–01 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that, pursuant to the provisions of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, prior public notice and comment procedures on the interim regulations were impracticable and contrary to public interest, and that there was good cause for the rule to become effective immediately upon publication since the JADE Act is already in effect. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in this final rule have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0133.

The collections of information in these regulations are contained in § 12.151(d) (19 CFR 12.151(d)). This information is used by CBP to fulfill its information collection obligations under section 3A(c)(1) of the BFDA, as amended, and Additional U.S. Note 4, Chapter 71, HTSUS, required in connection with entry of non-Burmese covered articles. The likely respondents are business organizations, including importers and brokers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or record keeper. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Entry of merchandise, Foreign assets control, Imports, Licensing, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Sanctions.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ Accordingly, the interim rule amending parts 12 and 163 of the CBP regulations (19 CFR parts 12 and 163), which was published at 74 FR 2844 on January 16, 2009, is adopted as a final rule.

Approved: March 10, 2010.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2010–6387 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. FDA–2010–N–0010]

Product Jurisdiction; Change of Address and Telephone Number; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the address and telephone number for the Office of Combination Products (OCP). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: Effective Date: April 19, 2010.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5130, Silver Spring, MD 20993–0002, 301–796–8930. To confirm that this change of address and telephone number has occurred, please see our Web site at *www.fda.gov/CombinationProducts/default.htm*.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR part 3 to reflect a change in the address and telephone number for OCP. Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely updating nonsubstantive content.

List of Subjects in 21 CFR Part 3

Administrative practice and procedure, Biologics, Combination products, Drugs, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 3 is amended as follows:

PART 3—PRODUCT JURISDICTION

■ 1. The authority citation for 21 CFR part 3 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 353, 355, 360, 360c–360f, 360h–360j, 360gg–360ss, 360bbb–2, 371(a), 379e, 381, 394; 42 U.S.C. 216, 262, 264.

§ 3.6 [Amended]

■ 2. Section 3.6 is amended by removing "(HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–427–1934"and by adding in its place "Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5129, Silver Spring, MD 20993–0002, 301–796–8930,".

Dated: March 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6246 Filed 3–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–329F]

RIN 1117–AB23

Schedules of Controlled Substances; Table of Excluded Nonnarcotic Products: Nasal Decongestant Inhalers Manufactured by Classic Pharmaceuticals, LLC

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: Under this Final Rule, the Drug Enforcement Administration (DEA) is updating the Table of Excluded Nonnarcotic Products found in 21 CFR 1308.22 to include the Nasal Decongestant Inhaler/Vapor Inhaler (containing 50 mg Levmetamfetamine) manufactured by Classic Pharmaceuticals, LLC and marketed under various private labels (to include the "Premier Value" and "Kroger" labels). This nonnarcotic drug product, which may be lawfully sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act, is excluded from provisions of the Controlled Substances Act (CSA) pursuant to 21 U.S.C. 811(g)(1).

DATES: This rulemaking shall become effective on March 23, 2010.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On August 28, 2009, the DEA published an interim rule with request for comments [74 FR 44281]. This interim rule updated the Table of Excluded Nonnarcotic Products found in 21 CFR 1308.22 to include the Nasal Decongestant Inhaler/Vapor Inhaler (containing 50 mg Levmetamfetamine) manufactured by Classic Pharmaceuticals, LLC and marketed under various private labels (to include the "Premier Value" and "Kroger" labels). This nonnarcotic drug product, which may be lawfully sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), is excluded from provisions of the Controlled Substances Act (CSA) pursuant to 21 U.S.C. 811(g)(1).

Comments Received

DEA did not receive any comments to its interim rule published August 28, 2009, regarding this exemption. Therefore, DEA is issuing this rulemaking to finalize the interim rule without change.

Background

The CSA, specifically 21 U.S.C. 811(g)(1), states that the Attorney General shall by regulation exclude any nonnarcotic drug which contains a controlled substance from the application of the CSA, if such drug may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), be lawfully sold over the counter without a prescription. This authority has been delegated to the Administrator of DEA and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control pursuant to 28 CFR 0.100 and title 28, part 0, appendix to subpart R, 7(g), respectively.

Such exclusions apply only to nonnarcotic products and are only granted following suitable application to the DEA per the provisions of 21 CFR 1308.21. The current Table of Excluded Nonnarcotic Products found in 21 CFR 1308.22 lists those products that have been granted excluded status.

Pursuant to the application process of 21 CFR 1308.21, DEA received application for exclusion from Classic Pharmaceuticals, LLC, the manufacturer of a Nasal Decongestant Inhaler/Vapor Inhaler which contains the schedule II controlled substance Levmetamfetamine. This inhaler is sold over the counter under various private labels (such as the "Premier Value" label

of the Chain Drug Consortium, Boca Raton, Florida, and "The Kroger" label by The Kroger Company of Cincinnati, Ohio). Based on the application and other information received, including the quantitative composition of the substance and labeling and packaging information, DEA has determined that this product (sold under various private labels) may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription (21 U.S.C. 811(g)(1)).

The Deputy Assistant Administrator finds that this product meets the criteria for exclusion from the CSA in accordance with 21 U.S.C. 811(g)(1). Note that this exclusion only applies to the finished drug product in the form of an inhaler (in the exact formulation detailed in the application for exclusion), which is lawfully sold under the Federal Food, Drug, and Cosmetic Act. The extraction or removal of the active ingredient (Levmetamfetamine) from the inhaler shall negate this exclusion and, depending on the circumstances, result in the possession or manufacture of a schedule II controlled substance.

This rulemaking finalizes the addition of Classic Pharmaceuticals, LLC product containing 50 mg Levmetamfetamine in a Nasal Decongestant Inhaler/Vapor Inhaler and marketed under various private labels to the list of excluded nonnarcotic products contained in 21 CFR 1308.22. Therefore, this product is excluded from CSA regulatory provisions pursuant to 21 U.S.C. 811(g)(1).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will not have a significant economic impact on a substantial number of small entities. This rule adds a product to the list of products excluded from the requirements of the CSA.

Executive Order 12866

The Deputy Assistant Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is not "a significant regulatory action." As discussed previously, based on the information received by the manufacturer of the product in question, DEA has determined that this product may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act

The Administrative Procedure Act permits an agency to make a rule effective upon date of publication if it is "a substantive rule which grants or recognizes an exemption or relieves a restriction" (5 U.S.C. 553(d)(1)). Since this rule excludes a nonnarcotic drug product from the provisions of the CSA, and as this rule finalizes an interim rule already in effect excluding this product from CSA regulatory control, DEA finds that it meets the criteria set forth in 5 U.S.C. 553(d)(1) for an exception to the effective date requirement.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

■ The Interim Rule with Request for Comments amending part 1308 of title 21, Code of Federal Regulations, published in the **Federal Register** August 28, 2009, at 74 FR 44281, is hereby adopted as a final rule without change.

Dated: March 16, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–6176 Filed 3–22–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Determination of Interest Expense Deduction of Foreign Corporations

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.851 to 1.907), revised as of April 1, 2009, in § 1.882–5, move paragraph (d)(2)(ii)(B) introductory text from the second column on page 435 to the first column on page 436, following paragraph (*2*) through (*3*).

[FR Doc. 2010–6463 Filed 3–22–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Treatment of Overall Foreign and Domestic Losses

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.851 to 1.907), revised as of April 1, 2009, on page 808, in § 1.904(f)–2, in paragraph (c)(5) *Example 4*, following "§ 1.904(f)–2T(c)(5)", add "*Example 4*.".

[FR Doc. 2010–6462 Filed 3–22–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1154–I]

RIN 1120–AB54

Commutation of Sentence: Technical Change

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: This document makes a minor technical change to the Bureau of Prisons (Bureau) regulations on sentence commutation to clarify that the Bureau staff, who may not be institution-level staff, will recalculate the inmate's sentence in accordance with the terms of the commutation order if a petition for commutation of sentence is granted.

DATES: *Effective Date:* March 23, 2010. Comment Date: Written comments must be postmarked and electronic comments must be submitted on or before May 24, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Written comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this regulation at *http://www.regulations.gov.* You may also comment by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason that the Bureau is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is because the inter-agency Regulations.gov/Federal Docket Management System (FDMS) which receives electronic comments terminates the public's ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Commutation of Sentence: Technical Change

This document makes a minor technical change to the Bureau regulations on sentence commutation to clarify that Bureau staff other than institution-level staff will recalculate the inmate's sentence in accordance with the terms of the commutation order if a petition for commutation of sentence is granted. Specifically, that function is currently completed by the Bureau's Designation and Computation Center (DSCC), located in Grand Prairie, Texas.

Previously, the regulation stated that institution staff would be responsible for recalculating an inmate's sentence in accordance with the terms of a commutation order. However, in 2005, the Bureau centralized its designation and sentence computation functions in a new Bureau branch, the Designation and Sentence Computation Center, to streamline the Bureau's administrative functions and reduce operational costs. DSCC staff, not institution staff, make determinations on sentence computation issues. The change from "institution staff" to "Bureau of Prisons staff" is therefore necessary to accurately reflect current Bureau practice while allowing for the possibility that these functions may be accomplished by a different Bureau office in the future.

It is important to note that this change to the regulation changes none of the substantive requirements or obligations relating to petitions for commutation of sentence, nor does it alter the Bureau's responsibilities in this regard.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) allows exceptions to notice-and-comment rulemaking for "(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

This rulemaking is exempt from normal notice-and-comment procedures because it is a minor technical change. Because this change is a minor clarification of current agency procedure and practice, we find that normal notice-and-comment rulemaking is unnecessary. We are, however, allowing the public to comment on this rule change by publishing it as an interim final rule.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and

responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 571 in subchapter D of 28 CFR, chapter V as set forth below.

Subchapter D—Community Programs and Release

PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

§ 571.41 [Amended]

■ 2. In § 571.41, paragraph (c)(1), delete the word "institutional" and insert the phrase "Bureau of Prisons" in its place.

[FR Doc. 2010–6290 Filed 3–22–10; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–447; MB Docket No. 09–231; RM–11587]

Television Broadcasting Services; Atlantic City, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the allotment of channel 4 to Atlantic City, New Jersey. The Commission waived the freeze on the filing of new DTV allotments to initiate this proceeding and to advance the policy, as set forth in section 331(a) of the Communications Act of 1934, as amended, to allocate not less than one very high frequency commercial television channel to each State, if technically feasible.

DATES: This rule is effective April 22, 2010.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–231, adopted March 16, 2010, and released March 17, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcipweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Jersey, is amended by adding channel 4 at Atlantic City.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2010–6326 Filed 3–22–10; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 75, No. 55
Tuesday, March 23, 2010

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 652

RIN 3052–AC51

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Farm Credit Administration (FCA) Board reopens the comment period on the proposed rule that would revise risk-based capital requirements for the Federal Agricultural Mortgage Corporation (Farmer Mac or Corporation), so that interested parties will have additional time to provide comments.

DATES: Please send your comments to us on or before April 22, 2010.

ADDRESSES: We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or Laura McFarland, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On January 22, 2010, FCA published a proposed rule in the **Federal Register** to amend regulations in part 652 that establish a risk-based capital stress test for the Corporation as required by section 8.32 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2279bb–1). *See* 75 FR 3647, January 22, 2010. The comment period is scheduled to expire on March 8, 2010. Farmer Mac has requested us to provide more time for comments to be submitted and specifically asked for at least an additional 30 days. In response to this request, we are reopening the comment period for an additional 30 days. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on the proposed rule.

Dated: March 17, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–6292 Filed 3–22–10; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0273; Directorate Identifier 2009–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by May 7, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0273; Directorate Identifier 2009–NM–134–AD;" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–29, dated June 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.
> To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–32–65, Revision A, dated March 2, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 63 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $22,365, or $355 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–0273; Directorate Identifier 2009–NM–134–AD.

Comments Due Date

(a) We must receive comments by May 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes, certificated in any category; serial numbers 4001, 4003, 4004, 4006, and 4008 through 4238 inclusive.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Two in-service incidents have been reported on DHC–8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204–13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.

To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 2,000 flight hours after the effective date of this AD: Modify the NLG trailing arm by incorporating Bombardier Modification Summary 4–113599, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–65, Revision A, dated March 2, 2009.

(2) Incorporating Bombardier Modification Summary 4–113599 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–65, dated December 17, 2008, is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–553. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–29, dated June 29, 2009; and Bombardier Service Bulletin 84–32–65, Revision A, dated March 2, 2009; for related information.

Issued in Renton, Washington, on March 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6306 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1080; Directorate Identifier 2008–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above that would supersede an existing AD. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The earlier MCAI, Brazilian Airworthiness Directive 2007–08–01, effective September 27, 2007, describes the unsafe condition as:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88

(Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

The new MCAI, Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, describes the unsafe condition as:

> An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 19, 2010.

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

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

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos-SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–1080; Directorate Identifier 2008–NM–118–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on October 16, 2008 (73 FR 61375). That earlier NPRM proposed to supersede AD 2008–13–15, Amendment 39–15578 (73 FR 35908, June 25, 2008), to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Airworthiness Directive 2009–08–03, dated August 20, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.
> * * * * *

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Additional Actions Since NPRM Was Issued

Since we issued the earlier NPRM, which included a proposal to require incorporation of critical design configuration control limitations (CDCCLs), we have determined that it is necessary to clarify the proposed AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory procedures have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS of the ICA. But once the CDCCLs are incorporated into the ALS of the ICA, future maintenance actions on components must be done in accordance with those CDCCLs.

Comments

We have considered the following comment received on the earlier NPRM.

Request To Revise Actions Specified in Table 2 of the NPRM

Embraer requests that we revise the actions specified in Table 2 of the NPRM (functional checks of the fuel conditioning unit and the ventral fuel conditioning unit). Embraer states that a functional check of the fuel conditioning unit would not entirely address the unsafe condition and that a functional check of the safe-life features in connection with internal and external

inspections is necessary. Embraer notes that Parker revised Component Maintenance Manual (CMM) 28–41–36 on March 5, 2007, to include a functional check of the safe-life features for fuel conditioning unit part number (P/N) 367–934–001. Embraer recommends that a functional check of the safe-life features and inspections to ensure the safe-life features be included in Table 2 of the NPRM. Embraer also suggests that Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, be included as an optional method of compliance for doing the safe-life check.

We agree to revise Table 2 of the supplemental NPRM to include new actions to check and inspect safe-life features to adequately address the identified unsafe condition. However, we have not included fuel conditioning unit P/N 367–934–001, as the part is not installed on Model EMB–135BJ airplanes. We have revised Table 2 of this AD to include fuel conditioning unit P/Ns 367–934–002, 367–934–004, and 367–934–006. However, we have not included Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, as an optional method of compliance because that service bulletin does not refer to a specific component maintenance manual. Instead, we have included the Parker CMMs for these part numbers in Table 2 of this AD, as specified in the following table. We have coordinated this action with ANAC.

PARKER SERVICE INFORMATION

Document	Revision	Date
Parker Component Maintenance Manual 28–41–66 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–004.	1	March 13, 2009.
Parker Component Maintenance Manual 28–41–69 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–002.	2	March 13, 2009.
Parker Component Maintenance Manual 28–41–90 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–006.	Original	April 3, 2009.

We have also revised the "Grace Period" specified in Table 2 of the supplemental NPRM from "Within 90 days after December 16, 2008" to "Within 90 days after the effective date of this AD."

We have also revised paragraph (g)(1) of this AD to clarify that the new tasks are part of the ALS of the ICA and added a 30-day compliance time to revise the ALS of the ICA to incorporate the new tasks.

Clarification of Service Information

Paragraph (f)(1) of the original NPRM defines the term "MPG" as EMBRAER Legacy BJ–Maintenance Planning Guide (MPG) MPG–1483, Revision 5, dated March 22, 2007. However, instead of using the term "MPG" in this supplemental NPRM, we have used the full document citation throughout this supplemental NPRM, as appropriate. Therefore, we have removed paragraph (f)(1) of the NPRM from this supplemental NPRM and have revised the subsequent paragraph identifiers accordingly.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

FAA's Determination and Requirements of This Proposed AD

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

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 43 products of U.S. registry.

The actions that are required by AD 2008–13–15 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,655, or $85 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15578 (73 FR 35908, June 25, 2008) and adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–1080; Directorate Identifier 2008–NM–118–AD.

Comments Due Date

(a) We must receive comments by April 19, 2010.

Affected ADs

(b) This AD supersedes AD 2008–13–15, Amendment 39–15578.

Applicability

(c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI), Brazilian Airworthiness Directive 2007–08–01, effective September 27, 2007, states:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88 (Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

And the MCAI, Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, states:

An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

* * * * *

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems.

Restatement of Requirements of AD 2008–13–15

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before December 16, 2008, revise the ALS of the ICA to incorporate Section A2.5.2, Fuel System Limitation Items, of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, except as provided by paragraph (g) of this AD. Except as required by paragraph (g) of this AD, for all tasks identified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, the initial compliance times start from the applicable times specified in Table 1 of this AD; and the repetitive inspections must be accomplished thereafter at the interval specified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, except as provided by paragraphs (f)(3) and (h) of this AD.

TABLE 1—INITIAL INSPECTIONS

Reference No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–11–00–720–001–A00	Functionally Check critical bonding integrity of selected conduits inside the wing tank, Fuel Pump and FQIS connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–13–01–720–002–A00	Functionally Check Aft Fuel tank critical bonding integrity of Fuel Pump, FQGS and Low Level SW connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–15–04–720–001–A00	Functionally Check Fwd Fuel tank critical bonding integrity of Fuel Pump, FQGS and Low Level SW connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–21–01–220–001–A00	Inspect Wing Electric Fuel Pump Connector	Before the accumulation of 10,000 total flight hours.	Within 90 days after December 16, 2008.

TABLE 1—INITIAL INSPECTIONS—Continued

Reference No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–23–03–220–001–A00	Inspect Pilot Valve harness inside the conduit	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–23–04–220–001–A00	Inspect Vent Valve harness inside the conduit.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–41–03–220–001–A00	Inspect FQIS harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–46–02–220–001–A00	Aft Fuel Tank Internal Inspection: FQGS harness and Low Level SW harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–46–04–220–001–A00	Fwd Fuel Tank Internal Inspection: FQGS harness and Low Level SW harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.

(2) Within 90 days after July 30, 2008 (the effective date of AD 2008–13–15), revise the ALS of the ICA to incorporate Items 1, 2, and 3 of Section A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007.

(3) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h) of this AD.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, revise the ALS of the ICA to incorporate Tasks 28–41–01–720–001–A01 and 28–46–05–720–001–A01 identified in Table 2 of this AD into Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483. After incorporating Tasks 28–41–01–720–001–A01 and 28–46–05–720–001–A01 identified in Table 2 of this AD, Tasks 28–41–01–720–001–A00 and 28–46–05–720–001–A00 identified in Section A2.5.2 of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007, are no longer required. For the fuel limitation tasks identified in Table 2 of this AD, do the initial task at the later of the applicable "Threshold" and "Grace Period" times specified in Table 2 of this AD.

TABLE 2—INSPECTIONS

Task No.	Description	Part No.	Compliance time (whichever occurs later)		Repetitive Interval (not to exceed)
			Threshold	Grace period	
28–41–01–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in the Check section 2; an internal visual inspection as shown in the Repair section 1; a functional check of the safe-life features as shown in Testing and Fault isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the fuel conditioning unit (FCU), in accordance with Parker CMM 28–41–69, Revision 2, dated March 13, 2009.	367–934–002	Before the accumulation of 10,000 total flight hours on the FCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the FCU since the most recent functional check.
28–46–05–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the auxiliary fuel conditioning unit (AFCU), in accordance with Parker CMM 28–41–66, Revision 1, dated March 13, 2009.	367–934–004	Before the accumulation of 10,000 total flight hours on the AFCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the AFCU since the most recent functional check.

TABLE 2—INSPECTIONS—Continued

Task No.	Description	Part No.	Compliance time (whichever occurs later)		Repetitive Interval (not to exceed)
			Threshold	Grace period	
28–46–05–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the AFCU, in accordance with Parker CMM 28-41-90, dated April 3, 2009.	367–934–006	Before the accumulation of 10,000 total flight hours on the AFCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the AFCU since the most recent functional check.

(2) After accomplishing the actions specified in paragraphs (g)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (h) of this AD.

Explanation of CDCCL Requirements

Note 2: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS of the ICA, as required by paragraph (f)(3) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS of the ICA has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

(1) Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, specifies that actions accomplished before the effective date of that AD, in accordance with Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, are considered acceptable for compliance with the corresponding actions specified in the AD. This AD specifies that actions accomplished in accordance with applicable Parker CMM listed in Table 2 of this AD are considered acceptable for compliance.

(2) The applicability of Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, includes models other than Model EMB–135BJ airplanes. However, this AD does not include those other models. Those models are included in the applicability of FAA AD 2008–13–14, Amendment 39–15577. We are considering further rulemaking to revise AD 2008–13–14.

(3) Although Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, specifies both revising the airworthiness limitations and repetitively inspecting, this AD only requires the revision. Requiring a revision of the airworthiness limitations, rather than requiring individual repetitive inspections, requires operators to record AD compliance status only at the time they make the revision, rather than after every inspection. Repetitive inspections specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2007–08–01, effective September 27, 2007, and 2009–08–03, effective August 20, 2009; Sections A2.5.2, Fuel System Limitation Items, and A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER Legacy BJ—Maintenance Planning Guide MPG–1483, Revision 5, dated March 22, 2007; and the Parker CMMs listed in Table 2 of this AD; for related information.

Issued in Renton, Washington, on March 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6308 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1079; Directorate Identifier 2008–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above that would supersede an existing AD. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The earlier MCAI, Brazilian Airworthiness Directive 2007–08–02, effective September 27, 2007, describes the unsafe condition as:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88

(Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

The new MCAI, Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, describes the unsafe condition as:

> An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 19, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–1079; Directorate Identifier 2008–NM–116–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on October 16, 2008 (73 FR 61372). That earlier NPRM proposed to supersede AD 2008–13–14, Amendment 39–15577 (73 FR 35904, June 25, 2008), to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, the Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Airworthiness Directive 2009–08–03, effective August 20, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

Additional Actions Since NPRM Was Issued

Since we issued the earlier NPRM, which included a proposal to require incorporation of critical design configuration control limitations (CDCCLs), we have determined that it is necessary to clarify the proposed AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory procedures have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS of the ICA. But once the CDCCLs are incorporated into the ALS of the ICA, future maintenance actions on components must be done in accordance with those CDCCLs.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Revise Actions Specified in Table 2 of the NPRM

Embraer requests that we revise the actions specified in Table 2 of the NPRM (functional checks of the fuel conditioning unit (FCU) and the ventral FCU). Embraer states that a functional check of the FCU would not entirely address the unsafe condition and that a functional check of the safe-life features is necessary. Embraer notes that Parker revised Component Maintenance Manual (CMM) 28–41–36 on March 5, 2007, to include a functional check of

the safe-life features for FCU part number (P/N) 367–934–001. Embraer recommends that a functional check of the safe-life features and inspections to ensure the safe-life features be included in Table 2 of the NPRM. Embraer also suggests that Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, be included as an optional method of compliance for doing the safe-life check.

We agree to revise Table 2 of the supplemental NPRM to include new actions to check and inspect safe-life features in order to adequately address the identified unsafe condition. We have revised Table 2 of this AD to include FCU P/Ns 367–934–001, 367–934–002, and 367–934–005. However, we have not included Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, as an optional method of compliance because that service bulletin does not refer to a specific component maintenance manual. Instead, we have included the Parker CMMs for these part numbers in Table 2 of this AD, as specified in the following table. We have coordinated this action with ANAC.

PARKER SERVICE INFORMATION

Document	Revision	Date
Parker Component Maintenance Manual 28-41–36 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–001.	4	March 13, 2009.
Parker Component Maintenance Manual 28–41–69 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–002.	2	March 13, 2009.
Parker Component Maintenance Manual 28-41–80 with Illustrated Parts List for Fuel Conditioning Unit Part Number 367–934–005.	Original	April 3, 2009.

Request To Extend Compliance Time

Two commenters request that we revise the "grace period" specified in Table 2 of the NPRM. ExpressJet Airlines states that the availability of parts is a concern because many parts will be affected by the end of the grace period (*i.e.,* "90 days after December 16, 2008") specified in the NPRM. ExpressJet Airlines suggests that for operators that did a functional check on the part, the grace period should be revised to allow an additional 180 days for those parts. Chautauqua Airlines also states that the grace period should be extended due to lack of availability of parts.

We partially agree with the request to revise the compliance time. Although we have not revised the compliance time as requested by the commenter, we have revised the "Grace Period" specified in Table 2 of the supplemental NPRM from "Within 90 days after December 16, 2008" to "Within 90 days after the effective date of this AD." In addition, under the provisions of paragraph (h)(1) of the supplemental NPRM, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety.

Request To Clarify Actions

Parker Hannifin states that the FCU is subject to fuel system limitations (FSL) as defined in FAA Advisory Circular 25.981–1B. The commenter states that there is an equivalent level of safety (ELS) for continued airworthiness of the FCUs and that ESL specifies a 10,000-flight-hour interval for a safe-life test, which includes a physical inspection of FCU components and additional testing. The commenter notes that returned units are subject to normal functional checks only. The commenter concludes that the only way to be sure that all inspections and tests of the safe-life test are done is if there is an explicit request to do all actions or if the part is returned under a previous agreement to perform the safe-life test; then the FCU may be marked in accordance with the service bulletins.

We acknowledge Parker Hannifin's comments and infer the commenter is requesting clarification of the actions. As stated previously, we have revised Table 2 of the NPRM to clarify the actions; this supplemental NPRM would require the actions for the safe-life test specified in Table 2 of the supplemental NPRM.

We have also revised paragraph (g)(1) of this supplemental NPRM to clarify that the new tasks are part of the ALS of the ICA and added a 30-day compliance time to revise the ALS of the ICA to incorporate the new tasks.

Clarification of Service Information

The purpose of paragraph (f)(1) of the NPRM was to define the term "MRBR" as EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report (MRBR) MRB–145/1150, Revision 11, dated September 19, 2007. However, instead of using the term "MRBR" in this supplemental NPRM, we have used the full document citation throughout, as appropriate. Therefore, we have removed paragraph (f)(1) of the NPRM from this supplemental NPRM and have revised the subsequent paragraph identifiers accordingly.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

FAA's Determination and Requirements of this Proposed AD

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

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information

provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 41 products of U.S. registry.

The actions that are required by AD 2008–13–14 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,485, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15577 (73 FR 35904, June 25, 2008) and adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2008–1079; Directorate Identifier 2008–NM–116–AD.

Comments Due Date

(a) We must receive comments by April 19, 2010.

Affected ADs

(b) This AD supersedes AD 2008–13–14, Amendment 39–15577.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; except for Model EMB–145LR airplanes modified according to Brazilian Supplemental Type Certificate 2002S06–09, 2002S06–10, or 2003S08–01.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI), Brazilian Airworthiness Directive 2007–08–02, effective September 27, 2007, states:

Fuel system reassessment, performed according to RBHA–E88/SFAR–88 (Regulamento Brasileiro de Homologacao Aeronautica 88/Special Federal Aviation Regulation No. 88), requires the inclusion of new maintenance tasks in the Critical Design Configuration Control Limitations (CDCCL) and in the Fuel System Limitations (FSL), necessary to preclude ignition sources in the fuel system. * * *

The MCAI, Brazilian Airworthiness Directives 2009–08–03, effective August 20, 2009, states:

An airplane fuel tank systems review required by Special Federal Aviation Regulation Number 88 (SFAR 88) and "RBHA Especial Número 88" (RBHA E 88) has shown that additional maintenance and inspection instructions are necessary to maintain the design features required to preclude the existence or development of an ignition source within the fuel tanks of the airplane.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new limitations for fuel tank systems.

Restatement of Requirements of AD 2008–13–14

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before December 16, 2008, revise the ALS of the ICA to incorporate Section A2.5.2, Fuel System Limitation Items, of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 11, dated September 19, 2007, except as provided by paragraph (g) of this AD. Except as required by paragraph (g) of this AD, for all tasks identified in Section A2.5.2 of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 11, dated September 19, 2007, the initial compliance times start from the applicable times specified in Table 1 of this AD; and the repetitive inspections must be accomplished thereafter at the interval specified in Section A2.5.2 of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 11, dated September 19, 2007, except as provided by paragraphs (f)(3) and (h) of this AD.

TABLE 1—INITIAL INSPECTIONS

Reference No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–11–00–720–001–A00	Functionally Check critical bonding integrity of selected conduits inside the wing tank, Fuel Pump and FQIS connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–17–01–720–001–A00	Functionally Check critical bonding integrity of Fuel Pump, VFQIS and Low Level SW connectors at tank wall by conductivity measurements.	Before the accumulation of 30,000 total flight hours.	Within 90 days after December 16, 2008.
28–21–01–220–001–A00	Inspect Electric Fuel Pump Connector	Before the accumulation of 10,000 total flight hours.	Within 90 days after December 16, 2008.
28–23–03–220–001–A00	Inspect Pilot Valve harness inside the conduit.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–23–04–220–001–A00	Inspect Vent Valve harness inside the conduit.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–27–01–220–001–A00	Inspect Electric Fuel Transfer Pump Connector.	Before the accumulation of 10,000 total flight hours.	Within 90 days after December 16, 2008.
28–41–03–220–001–A00	Inspect FQIS harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.
28–41–07–220–001–A00	Inspect VFQIS and Low Level SW Harness for clamp and wire jacket integrity.	Before the accumulation of 20,000 total flight hours.	Within 90 days after December 16, 2008.

(2) Within 90 days after July 30, 2008 (the effective date of AD 2008–13–14), revise the ALS of the ICA to incorporate items 1, 2, and 3 of Section A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 11, dated September 19, 2007.

(3) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h) of this AD.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, revise the ALS of the ICA to incorporate Tasks 28–41–01–720–001–A01 and 28–41–04–720–001–A01 identified in Table 2 of this AD into Section A2.5.2, Fuel System Limitation Items, of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150. After incorporating Tasks 28–41–01–720–001–A01 and 28–41–04–720–001–A01 identified in Table 2 of this AD, Tasks 28–41–01–720–001–A00 and 28–41–04–720–001–A00 identified in Section A2.5.2 of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report MRB–145/1150, Revision 11, dated September 19, 2007, are no longer required. For the fuel limitation tasks identified in Table 2 of this AD, do the initial task at the later of the applicable "Threshold" and "Grace Period" times specified in Table 2 of this AD.

TABLE 2—INSPECTIONS

Task No.	Description	Part No.	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
			Threshold	Grace period	
28–41–01–720–001–A01.	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in the Check section 2; an internal visual inspection as shown in the Repair section; a functional check of the safe-life features as shown in Testing and Fault isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the fuel conditioning unit (FCU), in accordance with Parker CMM 28–41–36, Revision 4, dated March 13, 2009.	367–934–001	Before the accumulation of 10,000 total flight hours on the FCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the FCU since the most recent functional check.

TABLE 2—INSPECTIONS—Continued

Task No.	Description	Part No.	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
			Threshold	Grace period	
28-41-01-720-001-A01 ..	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the fuel conditioning unit (FCU), in accordance with Parker CMM 28–41–69, Revision 2, dated March 13, 2009.	367–934–002	Before the accumulation of 10,000 total flight hours on the FCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the FCU since the most recent functional check.
28-41-04-720-001-A01 ..	Perform an initial functional check as shown in Testing and Fault Isolation sections 1, 2, and 3; an external visual inspection as shown in Check section 2; an internal visual inspection as shown in Repair section 1; a functional check of the safe-life features as shown in Testing and Fault Isolation section 4; and a final functional check as shown in Testing and Fault isolation sections 1, 2, and 3; of the ventral FCU (VFCU), in accordance with Parker CMM 28-41-80, dated April 3, 2009.	367–934–005	Before the accumulation of 10,000 total flight hours on the VFCU.	Within 90 days after the effective date of this AD.	10,000 flight hours on the VFCU since the most recent functional check.

(2) After accomplishing the actions specified in paragraphs (g)(1) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (h)(1) of this AD.

Explanation of CDCCL Requirements

Note 2: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS of the ICA, as required by paragraph (f)(3) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS of the ICA has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

(1) Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, specifies that actions accomplished before the effective date of that AD, in accordance with Parker Service Bulletin 367–934–28–110, Revision A, dated December 19, 2006, are considered acceptable for compliance with the corresponding actions specified in the AD. This AD specifies that actions accomplished in accordance with the applicable Parker CMM listed in Table 2 of this AD are considered acceptable for compliance.

(2) The applicability of ANAC AD 2009–08–03 includes Model EMB–135BJ airplanes. This AD does not include that model because that model is included in the applicability of FAA AD 2008–13–15, Amendment 39–15578. We are considering further rulemaking to revise AD 2008–13–15.

(3) Although Brazilian Airworthiness Directive 2009–08–03, effective August 20, 2009, specifies both revising the airworthiness limitations and repetitively inspecting, this AD only requires the revision. Requiring a revision of the airworthiness limitations, rather than requiring individual repetitive inspections, requires operators to record AD compliance status only at the time they make the revision, rather than after every inspection. Repetitive inspections specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2007–08–02, effective September 27, 2007, and 2009–08–03, effective August 20, 2009; Sections A2.5.2, Fuel System Limitation Items, and A2.4, Critical Design Configuration Control Limitation (CDCCL), of Appendix 2 of EMBRAER EMB135/ERJ140/EMB145 Maintenance Review Board Report

MRB–145/1150, Revision 11, dated September 19, 2007; and the Parker CMMs listed in Table 2 of this AD; for related information.

Issued in Renton, Washington on March 16, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6309 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0233; Directorate Identifier 2009–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model 382, 382B, 382E, 382F, and 382G airplanes. This proposed AD would require repetitive eddy current inspections to detect cracks in the center wing upper and lower rainbow fittings, and corrective actions if necessary; and repetitive replacements of rainbow fittings, which would extend the repetitive interval for the next inspection. This proposed AD results from a report of fatigue cracking of the wing upper and lower rainbow fittings during durability testing and on in-service airplanes. Analysis of in-service cracking has shown that these rainbow fittings are susceptible to multiple site fatigue damage. We are proposing this AD to detect and correct such fatigue cracks, which could grow large and lead to the failure of the fitting and a catastrophic failure of the center wing.

DATES: We must receive comments on this proposed AD by May 7, 2010.

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

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

For service information identified in this proposed AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com*; Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.htmlx.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5554; fax (404) 474–5606.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0233; Directorate Identifier 2009–NM–014–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Fatigue cracking of the wing upper and lower rainbow fittings during the durability test and on in-service airplanes indicates a requirement to perform inspections prior to the current published Hercules Airfreighter Series Progressive Inspection Procedures and Hercules Airfreighter Progressive Inspection Procedures intervals. Analysis of in-service cracking has shown that these rainbow fittings are susceptible to multiple site fatigue damage. This condition, if not corrected, could lead to the failure of the rainbow fittings and a catastrophic failure of the center wing.

Relevant Service Information

We have reviewed Lockheed Service Bulletin 382–57–82, Revision 3, including Appendixes A, B, and C, dated April 25, 2008. The service bulletin describes procedures for repetitive eddy current inspections to detect cracks in the center wing upper and lower rainbow fittings. The service bulletin specifies marking and reporting suspected cracks but does not provide corrective actions.

The service bulletin also describes procedures for repetitively replacing the upper and lower rainbow fittings, which would extend the interval for the next eddy current inspection. The replacement includes related investigative and corrective actions. The related investigative actions consist of two types of inspections: (1) A general visual inspection for damage and defects (including corrosion and cracking) of the wing faying structure; and (2) a primary automated bolt hole eddy current (ABHEC) inspection to detect cracks of all opened fitting attachment fastener holes in the upper and lower surface skin panel, stringers, splice straps, and splice angles that are common to the rainbow fittings prior to installing the new rainbow fitting. The service bulletin describes procedures for a "redundant" (backup) ABHEC inspection of any suspected damage.

The corrective actions consist of repairing confirmed damage within certain limits, and contacting the manufacturer for damage that exceeds those limits. The service bulletin provides no corrective actions for damage or defects found during the visual inspection.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin." The proposed AD would also require sending the inspection results to Lockheed.

Differences Between the Proposed AD and Service Bulletin

In Lockheed Service Bulletin 382–57–82, Revision 3, dated April 25, 2008, the NOTE in paragraph 1.B.(1) states that operators who have completed a Lockheed Martin usage evaluation analysis may adjust the intervals provided in the service bulletin by severity factors developed for their inspection programs. The proposed AD would require approval of an alternative method of compliance (AMOC) for such an adjustment.

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions and the service bulletin does not specify corrective actions for damage or cracking found during the visual inspection, this proposed AD would require operators to repair those conditions using a method approved by the FAA.

Although the service bulletin does not specify corrective actions for airplanes on which cracking is found during the eddy current inspections, this proposed AD would require operators to replace the rainbow fittings if any cracking is found.

Lockheed Service Bulletin 382–57–82, Revision 3, dated April 25, 2008, also recommends grounding airplanes that have accumulated 20,000 or more flight hours until inspections are done. We have provided a grace period of 365 days or 600 flight hours after the effective date of this AD in paragraph (g)(2) of this AD to prevent grounding the fleet. This time period does not present a safety concern since this area is already being inspected at a repetitive interval and the inspection to this point would have found cracks as intended. We find that the short initial inspection period provided in the proposed AD provides an adequate level of safety.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD would affect 14 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	20	$85	None	$1,700 per inspection cycle	14	$23,800 per inspection cycle.
Fitting replacement	2,438	$85	$40,000	$247,230	14	$3,461,220

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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 AD:

Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Docket No. FAA–2010–0233; Directorate Identifier 2009–NM–014–AD.

Comments Due Date

(a) We must receive comments by May 7, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from a report of fatigue cracking of the wing upper and lower rainbow fittings during durability testing and on in-service airplanes. Analysis of in-service cracking has shown that these rainbow fittings are susceptible to multiple site fatigue damage. The Federal Aviation Administration is issuing this AD to detect and correct such fatigue cracks, which could grow large and lead to the failure of the fitting and a catastrophic failure of the center wing.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Initial Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do eddy current inspections to detect cracking of the center wing upper and lower rainbow fittings on the left and right side of the airplane. Do the actions in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 3, including Appendixes A and B, dated April 25, 2008. Any cracks found during the inspections required by paragraph (g) of this AD must be repaired before further flight in accordance with the actions required by paragraph (l) of this AD.

(1) Before the accumulation of 15,000 total flight hours on the rainbow fitting.

(2) Within 365 days or 600 flight hours on the rainbow fitting after the effective date of this AD, whichever occurs first.

Repetitive Inspection Schedule

(h) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 3,600 flight hours on the center wing, until the rainbow fitting has accumulated 30,000 total flight hours. Any cracks found during the inspections required by paragraph (h) of this AD must be repaired before further flight in accordance with the actions required by paragraph (l) of this AD.

Rainbow Fitting Replacements

(i) Before the accumulation of 30,000 flight hours on the rainbow fitting or within 600 flight hours after the effective date of this AD, whichever occurs later: Replace the rainbow fitting, do all related investigative actions, and do all applicable corrective actions, in accordance with paragraph 2.C. of the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 3, including Appendix C, dated April 25, 2008. Replace the rainbow fitting thereafter at intervals not to exceed 30,000 flight hours.

Post-Replacement Repetitive Inspections

(j) For upper and lower rainbow fittings replaced in accordance with paragraph (i) or (k) of this AD: Do the eddy current inspections specified in paragraph (g) of this AD within 15,000 flight hours after doing the replacement and repeat the eddy current inspections specified in paragraph (h) of this AD thereafter at intervals not to exceed 3,600 flight hours until the rainbow fittings are replaced in accordance with paragraph (i) or (k) of this AD.

Repair of Damaged Rainbow Fittings and Associated Areas

(k) If, during any inspection required by paragraph (g) or (h) of this AD, any crack is detected, before further flight, replace the rainbow fitting, do all related investigative actions and do all applicable corrective actions, in accordance with Paragraph 2.C. of the Accomplishment Instructions of Lockheed Service Bulletin 382–57–82, Revision 3, including Appendix C, dated April 25, 2008, except as provided by paragraph (l) of this AD.

Exceptions to Service Bulletin

(l) Where Lockheed Service Bulletin 382–57–82, Revision 3, including Appendixes A, B, and C, dated April 25, 2008, specifies to contact the manufacturer for disposition of certain repair conditions, and where the service bulletin does not specify corrective actions if certain conditions are found, this AD requires repairing those conditions using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5554; fax (404) 474–5606.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on March 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6307 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0052; Airspace Docket No. 10–ASO–13]

Amendment of Class E Airspace; Clemson, SC and Establishment of Class E Airspace; Pickens, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Clemson, SC, to correct the airspace description and establish Class E airspace at Pickens, SC, to achieve an additional 1000' of airspace to support a new LPV Approach (Localizer Performance with Vertical Guidance) that has been developed for Pickens County Airport. This action enhances the safety and airspace management of Clemson-Oconee County Airport, SC and Pickens County Airport, Pickens, SC.

DATES: Comments must be received on or before May 7, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0052; Airspace Docket No. 10–ASO–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–

2010–0052; Airspace Docket No. 10–ASO–13) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0052; Airspace Docket No. 10–ASO–13." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Clemson, SC, to remove Pickens County Airport from the airspace description and establish Class E airspace at Pickens, SC, to support a new LPV Approach developed for Pickens County Airport.

Class E airspace designations extending upward from 700 feet or more above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in subtitle vii, part, a, subpart i, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it amends Class E airspace at Clemson, SC, and establishes Class E airspace at Pickens, SC.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO SC E5 Clemson, SC [AMENDED]

Clemson-Oconee County Airport, SC
(Lat. 34°40′19″ N., long. 82°53′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Clemson-Oconee County Airport.

* * * * *

ASO SC E5 Pickens, SC [NEW]

Pickens County Airport, SC
(Lat. 34°48′36″ N., long. 82°42′10″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Pickens County Airport and within 3.6 miles each side of the 044° bearing from the airport, extending from the 6.5-mile radius to 11-miles northeast of the airport.

Issued in College Park, Georgia on March 15, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6281 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0054; Airspace Docket No. 10–ASO–11]

Establishment of Class D Airspace, Modification of Class E Airspace; Columbus, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM)

published in the **Federal Register** on March 11, 2010, which proposed to establish Class D airspace and modify existing Class E airspace at Columbus Metropolitan Airport, Columbus, GA. The NPRM is being withdrawn so that the revocation of the existing Class C airspace at Columbus Metropolitan Airport will coincide with the establishment of the Class D airspace in Columbus, GA.

DATES: Effective March 23, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Airspace Specialist, Operations Support Group, Eastern Service Center, Air Traffic Organization, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 11, 2010, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish Class D airspace and modify existing Class E airspace at Columbus, GA. Due to a decrease in air traffic volume at Columbus Metropolitan Airport a less restrictive Class D airspace would be established with specific dates and times established in advance by a Notice to Airmen. The existing Class E surface area would be modified to be coincident with the newly established Class D airspace.

In consideration of the need for the effective dates to coincide for the revocation of Class C airspace and the establishment of Class D airspace at Columbus Metropolitan Airport, Columbus, GA, action is being taken to withdraw the aforementioned legislative mandate. Therefore, action to establish Class D airspace in Columbus, GA, is premature and unnecessary at this time.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 10–ASO–11, as published in the **Federal Register** on March 11, 2010 (75 FR 11475), is hereby withdrawn.

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

Issued in College Park, Georgia, on March 12, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6278 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 111 and 163

[USCBP–2009–0019]

RIN 1505–AC12

Customs Broker Recordkeeping Requirements Regarding Location and Method of Record Retention

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to title 19 of the Code of Federal Regulations regarding customs broker recordkeeping requirements as they pertain to the location and method of record retention. Specifically, Customs and Border Protection (CBP) proposes to amend the CBP regulations to permit a licensed customs broker to store records relating to his customs transactions at any location within the customs territory of the United States, so long as the broker's designated recordkeeping contact, identified in the broker's permit application, makes all records available to CBP within a reasonable period of time from request at the broker district that covers the CBP port to which the records relate. This document also proposes to remove the requirement, as it currently applies to brokers who maintain separate electronic records, that certain entry records must be retained in their original format for the 120-day period after the release or conditional release of imported merchandise. The changes proposed in this document are intended to conform CBP's recordkeeping requirements to reflect modern business practices whereby documents are often generated, stored and transmitted in an electronic format. The proposed changes serve to remove duplicative recordkeeping requirements and streamline recordkeeping procedures for brokers who maintain electronic recordkeeping systems without compromising the agency's ability to monitor and enforce recordkeeping compliance.

DATES: Comments must be received on or before May 24, 2010.

ADDRESSES: You may submit comments, identified by *USCBP docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2009–0019.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Cynthia Whittenburg, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6512.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change,

and include data, information, or authority that support such recommended change.

Background

This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) regarding broker recordkeeping requirements as they pertain to the location and method of record retention.

Many recordkeeping requirements that were once deemed necessary to ensure CBP's ability to monitor broker compliance and enforce the regulations were promulgated at a time when most records existed in a paper format. New technologies in data processing have served to streamline business operations and have drastically changed or rendered obsolete many long-standing business practices.

Location of Stored Records

As the trade operates in an increasingly paperless environment, this document proposes amendments to the CBP regulations that would permit a licensed customs broker to store records relating to its customs transactions at any location within the customs territory of the United States, so long as the designated recordkeeping contact identified in the broker's applicable permit application makes all records available to CBP within a reasonable period of time from request at the broker district that covers the CBP port to which the records relate. These amendments serve to modernize the CBP regulations to reflect the automated commercial environment in which most documents are generated, stored and transmitted electronically, while preserving the agency's ability to monitor and enforce recordkeeping compliance.

Method of Entry Record Storage During Prescribed 120-Day Period From Release or Conditional Release of Imported Merchandise

The recordkeeping provisions set forth in part 163 of title 19 of the CFR require the retention of records for a 5-year period either in their original format (*i.e.,* as created or received by the person responsible for maintenance) or in an alternative format (*i.e.,* electronic formats that are in compliance with generally accepted business standards), unless the records are entry documents (excluding packing lists) in which case they must be retained in their original formats for the prescribed 120-day period from release or conditional release of the imported merchandise.

Currently, all records relating to a broker's customs business, even if originally submitted in paper, are typically stored in an electronic format as the broker receives them and/or at the time the broker files the entry summary in satisfaction of the general 5-year record retention requirement. In situations where the "original" entry documents are in an electronic format, there is no undue hardship in electronically retaining the records for the prescribed 120-day period inasmuch as it runs concurrently with the requisite 5-year document retention period. However, where the "original" entry documents are in a paper format, the broker currently must keep the "original" paper entry records for the prescribed 120-day period regardless of the fact that these same records have already been stored electronically. In these situations, a broker will end up retaining two sets of records (one paper and one electronic) for the same document. Moreover, because the period of retention for original entry documents varies depending on the extent of the "conditional release" period and/or whether a redelivery notice has been issued, a broker is precluded from establishing a reliable schedule for the systematic destruction of these types of documents. In most cases, a broker ends up maintaining both sets of records for the entire 5-year recordkeeping period.

This document proposes to remove this duplicative record retention requirement as it currently applies to brokers who maintain separate electronic records. While importers still must retain entry records in their original format for the 120-day period after the release or conditional release of imported merchandise, brokers who are not serving as the importer of record are exempted from this requirement so long as they retain all records electronically for 5 years. In addition, this exemption does not apply to brokers who do not maintain electronic records (that is, all brokers who only transmit paper documents to CBP). Also, this exemption does not apply to any document that is required by law to be maintained as a paper record, such as some softwood lumber documents.

Explanation of Amendments

For the reasons described above, it is proposed to amend §§ 111.23 and 163.5 of title 19 of the CFR (19 CFR 111.23 and 163.5) regarding broker recordkeeping requirements as they pertain to the location and method of record retention. It is also proposed to amend § 163.12 (19 CFR 163.12) to reflect address changes. A more detailed explanation of the proposed amendments, other than those involving technical corrections or minor wording and editorial changes, is set forth below.

Section 111.23: Retention of Records

Section 111.23 sets forth entry record retention requirements. Paragraph (a)(1) of this section describes where records must be kept. Paragraph (a)(2) provides, in pertinent part, that the records described in paragraph (a)(1) of this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Paragraph (b) prescribes the manner by which brokers may exercise the option to store records on a consolidated system. This provision requires a broker to submit written notice to CBP providing each address at which the broker intends to maintain the consolidated records, a detailed statement describing all the records to be maintained at each location and the methodology of storage, as well as an agreement that there will be no change in the records or their method of storage without first notifying Regulatory Audit.

As CBP proposes to permit a licensed customs broker to store records relating to its customs transactions at any location within the customs territory of the United States, and to remove the requirement that the records must be retained within the specified broker district, a separate consolidated system of record retention as prescribed by existing § 111.23(b) is no longer necessary. Accordingly, CBP proposes to remove current paragraph (b) in § 111.23 and to restructure § 111.23 to set forth the new standards applicable to the location of record storage in paragraph (a), and to redesignate existing paragraph (a)(2), which pertains to the period of record retention, as paragraph (b).

Section 163.5: Methods for Storage of Records

Section 163.5 of title 19 of the CFR prescribes the manner by which records must be stored. Within § 163.5, paragraph (a) sets forth the storage requirements applicable to original records and provides that all persons listed in § 163.2 (*i.e.,* owners, importers, consignees, importers of record, entry filers, or other persons) must maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted.

Paragraph (b) prescribes the standards applicable to "alternative methods of storage" and states that any record, other than those that are specifically required by law to be maintained as original, may be stored in an alternative format.

Section 163.5(b)(2)(iii) identifies entry records, other than packing lists, as among the types of records that must be stored "in their original formats" for a prescribed time period. It is proposed to amend § 163.5(b)(2)(iii) to provide that the requirement to store entry records in their original format for the prescribed time period is limited to importers, brokers who are serving as importers of records, and brokers who only maintain paper records.

Section 163.5(b)(5) sets forth the manner by which CBP will address a failure to comply with alternative storage requirements. This provision currently states that if a person uses an alternative storage method for records that is not in compliance with the regulations, the appropriate CBP office may instruct the person in writing to immediately discontinue the use of such method. The instruction to discontinue the alternative storage method, per the regulations, is effective upon receipt. This document proposes to amend § 163.5(b)(5) to provide that, prior to a discontinuance of the alternative storage method, CBP will provide the recordkeeper with 30-days written prior notice that describes the facts giving rise to the action. If, within that 30-day period, the recordkeeper provides written notice to CBP that establishes, to CBP's satisfaction, that compliance has been achieved, the alternative storage method may continue. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method.

The Regulatory Flexibility Act and Executive Order 12866

Because these proposed amendments liberalize broker recordkeeping requirements, and place no new regulatory requirements on small entities to change their business practices, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The information collections contained in this proposed rule have been previously submitted and approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 1651–0076 and 1651–0034. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Penalties Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 111 and 163 of title 19 of the Code of Federal Regulations are proposed to be amended as set forth below.

PART 111—CUSTOMS BROKERS

1. The authority citation for part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

2. Section 111.23 is revised to read as follows:

§ 111.23 Retention of records.

(a) *Place of retention.* A licensed customs broker may retain records relating to ts customs transactions at any location within the customs territory of the United States in accordance with the provisions of this part and part 163 of this chapter. Upon request by CBP to examine records, the designated recordkeeping contact identified in the broker's applicable permit application, in accordance with § 111.19(b)(6) of this chapter, must make all records available within a reasonable period of time to CBP at the broker district that covers the CBP port to which the records relate.

(b) *Period of retention.* The records described in this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an "active client" as defined in § 111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

PART 163—RECORDKEEPING

3. The authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

4. In § 163.5:

a. Paragraph (a) is amended in the first sentence by removing the word "shall" and adding in its place the word "must", and in the second sentence by removing the word "Customs" and adding in its place the term "CBP" ;

b. Paragraph (b)(2) introductory text is amended in the second sentence by removing the word "Customs" and adding in its place the term "CBP";

c. Paragraph (b)(2)(iii) is revised;

d. Paragraph (b)(2)(v) is amended by removing the word "Customs" and adding in its place the term "CBP";

e. Paragraph (b)(2)(vi) is amended by removing the word "shall" and adding in its place the word "must";

f. Paragraph (b)(3) is amended by removing the words "the Miami regulatory audit field office" and adding in their place the language, "Regulatory Audit, Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217";

g. Paragraph (b)(4) is amended by removing the words "shall be" and adding in their place the word "are"; and

h. Paragraph (b)(5) is revised.

The revision of § 163.5(b) reads as follows:

§ 163.5 Methods for storage of records.

* * * * *

(b) * * *

(2) * * *

(iii) Except in the case of packing lists (*see* § 163.4(b)(2)), entry records must be maintained by the importer in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to CBP custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place. Customs brokers who are not serving as the importer of record and who maintain separate electronic records are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

* * * * *

(5) *Failure to comply with alternative storage requirements.* If a person listed in § 163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP's satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement explaining how compliance has been achieved has been received and accepted by CBP.

§ 163.12 [Amended]

5. In § 163.12:

a. Paragraph (a) is amended by removing the word "Customs" wherever it appears and adding in its place the term "CBP";

b. Paragraph (b)(2) is amended: by removing the word "shall" wherever it appears and adding in its place the word "must", and; in the second sentence, by removing the words "Customs Recordkeeping" and adding in their place the words "CBP

Recordkeeping" and removing the language "the Customs Electronic Bulletin Board (703–921–6155)" and adding in its place the language, "CBP's Regulatory Audit Web site located at *http://www.cbp.gov/xp/cgov/import/regulatory_audit_program/archive/compliance_assessment/";*

c. Paragraph (b)(3) introductory text is amended: in the first, third and fourth sentences, by removing the word "Customs" wherever it appears and adding in its place the term "CBP", and; in the second sentence, by removing the word "Customs" and adding in its place the words "all applicable";

d. Paragraphs (b)(3)(iii), (iv), (v), and (vi) are amended by removing the word "Customs" wherever it appears and adding in its place the term "CBP";

e. Paragraph (c)(1) is amended by removing the word "shall" wherever it appears and adding in its place the word "will";

f. Paragraph (c)(2) is amended: by removing the word "Customs" and adding in its place the term "CBP"; by removing the word "Miami" and adding in its place the word "Charlotte", and; by removing the word "shall" and adding in its place the word "will";

g. Paragraph (d)(1) is amended: in the first sentence, by removing the words "Customs shall" and adding in their place the words "CBP will", and; in the second sentence, by removing the word "Customs" and adding in its place the word "CBP";

h. The introductory text to paragraph (d)(2) is amended by removing the word "shall" and adding in its place the word "must"; and

i. Paragraph (d)(3) is amended: by removing the word "shall" and adding in its place the word "must", and; by removing the word "Customs" and adding in its place the term "CBP".

David V. Aguilar,

Acting Deputy Commissioner, U.S. Customs and Border Protection.

Approved: March 10, 2010.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2010–6362 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1314

[Docket No. DEA–328P]

RIN 1117–AB25

Implementation of the Methamphetamine Production Prevention Act of 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In October 2008, the President signed the Methamphetamine Production Prevention Act of 2008, which clarifies the information entry and signature requirements for electronic logbook systems permitted for the retail sale of scheduled listed chemical products. DEA is promulgating this rule to incorporate the statutory provisions and make its regulations consistent with the new requirements. Once finalized, this action will make it easier for regulated sellers to maintain electronic logbooks by allowing greater flexibility as to how information may be captured.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before May 24, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–328" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept electronic comments containing MS word, WordPerfect, Adobe PDF, or Excel files only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first

paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes.

The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity.

The CSA as amended also requires DEA to regulate the manufacture and distribution of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

Background

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). CMEA amended the CSA to change the regulations for selling products that contain ephedrine, pseudoephedrine, and phenylpropanolamine, their salts, optical isomers, and salts of optical isomers, that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act as nonprescription drugs. CMEA defines these products as "scheduled listed chemical products" (21 U.S.C. 802(45)). Ephedrine, pseudoephedrine, and phenylpropanolamine are List I chemicals because they are used in, and important to, the illegal manufacture of methamphetamine and amphetamine, both Schedule II controlled substances.

Requirements for Retail Sales of Scheduled Listed Chemical Products

CMEA defines nonprescription drug products marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act containing ephedrine, pseudoephedrine, or phenylpropanolamine as "scheduled listed chemical products" (21 U.S.C. 802(45)). Direct, in-person sales to a customer, whether by a regulated seller (e.g., grocery store, general merchandise store, drug store) (21 U.S.C. 802(46), (49)) or a mobile retail vendor (e.g., kiosk, flea market), (21 U.S.C. 802(47)) are subject to requirements for training of employees who either are responsible for delivering scheduled listed chemical products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products (21 U.S.C. 830(e)(1)(A)(vii)). The regulated seller must certify to DEA that the employees have been trained (21 U.S.C. 830(e)(1)(B)). These regulated sellers must also check identifications of purchasers and maintain specific records (the logbook) of each sale of scheduled listed chemical products (21 U.S.C. 830(e)(1)(A)). The only sales exempt from recordkeeping are sales of single packages where the package contains not more than 60 milligrams of pseudoephedrine (21 U.S.C. 830(e)(1)(A)(iii)).

On September 26, 2006, DEA published in the **Federal Register** an Interim Final Rule, "Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products" (71 FR 56008; corrected at 71 FR 60609, October 13, 2006). That rule incorporated the standards set forth by the CMEA, requiring regulated sellers of scheduled listed chemical products to maintain logbooks regarding their sales on and after September 30, 2006. If a regulated seller maintains the logbook on paper, DEA requires that the book be bound, as is currently the case for records of sales of Schedule V controlled substances that are sold without a prescription (21 CFR 1314.30(a)(2)). The records must be readily retrievable and available for inspection and copying by DEA or other State or local law enforcement agencies (21 U.S.C. 830(e)(1)(C)(i), 21 CFR 1314.30(i)). Logs must be kept for not fewer than two years from the date the entry was made (21 CFR 1314.30(g). CMEA required the logs include the information entered by the purchaser (name, address, signature, date and time of sale) and the quantity and form of the product sold.

Where the record is entered electronically, the computer system may enter the date and time automatically. An electronic signature system, such as the ones many stores use for credit card purchases, can be employed to capture the signature for electronic logs (21 CFR 1314.30(c)). The information that the seller must enter can be accomplished through a point-of-sales system and bar code reader.

Changes to § 1314.30

On October 14, 2008, the President signed the Methamphetamine Production Prevention Act of 2008 (Pub. L. 110–415). The Act amends the existing language in 21 U.S.C. 830(e)(1)(A)) by revising clauses (iv) through (vi). The purpose of this Act is to facilitate the creation of electronic logbooks. Several options are provided for obtaining signatures of purchasers and recording transactions at the time of the sale.

Specifically, the requirements now state that a regulated seller of scheduled listed chemical products may not sell such a product unless the purchaser:

- Presents a government issued photographic identification; and
- Signs the written logbook with his or her name, address, time and date of the sale, or signs in one of the following ways:
  - In the case of an electronic logbook, the device must capture the signature in an electronic format.
  - In the case of a bound paper book, a printed sticker must be affixed to the book at the time of sale adjacent to the

signature line. The sticker must display the product name, quantity, name of purchaser, date and address, or a unique identification that can be linked to that information.

○ In the case of a printed document, the document must include a clear line for the purchaser's signature and include product name, quantity, name and address of purchaser, and date and time of sale.

The Methamphetamine Production Prevention Act expressly permits the regulated seller to capture information regarding the name of the product and the quantity sold through bar code, electronic data capture, or similar technology. The regulated seller remains responsible for determining that the name entered corresponds to the photographic identification presented by the purchaser. The Methamphetamine Production Prevention Act indicates that if the prospective purchaser enters the information into the logbook, the regulated seller must determine that the name entered in the logbook corresponds to the name provided on the photographic identification and must determine that the date and time of the sale as entered by the purchaser are correct. If the regulated seller enters the information into the logbook, the prospective purchaser must verify that the information is correct.

In addition, the written or electronic logbook must continue to include a notice to purchasers that entering false statements or misrepresentations in the logbook, or supplying false information or identification that results in the entry of false statements or misrepresentations, may subject the purchaser to criminal penalties under section 1001 of title 18 of the U.S. Code (21 U.S.C. 830(e)(1)(A)(v)). The logbook must be maintained by the regulated seller for not fewer than two years after the date on which the entry is made (21 U.S.C. 830(e)(1)(A)(vi)).

The changes made by the Methamphetamine Production Prevention Act and implemented in this rulemaking will provide greater flexibility for regulated sellers of scheduled listed chemical products. These persons may now choose several alternative ways in which to capture and maintain required logbook information: a fully written logbook, a fully electronic logbook, or a logbook where some information is captured electronically and the prospective purchaser's signature is captured and linked to that information.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). This rule simply codifies statutory provisions, implementing the Methamphetamine Production Prevention Act. This rule will provide greater flexibility to regulated sellers, permitting them to capture required logbook information in a variety of ways.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is codifying statutory provisions. This statutory change imposes no new costs on regulated sellers of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Rather, it provides greater flexibility for regulated sellers who may choose to capture required logbook information in a written form, in an electronic form, or in a manner that combines written and electronic information.

Paperwork Reduction Act of 1995

Although the requirements of the Methamphetamine Production Prevention Act revise the ways in which logbook information may be captured or presented, these requirements are not substantially different than the previously existing requirements for documentation of sales in logbooks. DEA believes that these revised requirements will have a negligible impact on the time estimated to document a sale. Estimates of this time burden are included in information collection 1117–0046, "Certification, Training, and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products." Therefore, as DEA does not believe that the burden associated with this collection will measurably change, DEA is not revising this information collection.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1314

Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1314 is proposed to be amended as follows:

PART 1314—RETAIL SALE OF SCHEDULED LISTED CHEMICAL PRODUCTS

1. The authority citation for part 1314 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 842, 871(b), 875, 877, 886a.

2. § 1314.30 is revised to read as follows:

§ 1314.30 Recordkeeping for retail transactions.

(a) Except for purchase by an individual of a single sales package containing not more than 60 milligrams of pseudoephedrine, the regulated seller must maintain, in accordance with criteria issued by the Administrator, a written or electronic list of each scheduled listed chemical product sale that identifies the products by name, the quantity sold, the names and addresses

of the purchasers, and the dates and times of the sales (referred to as the "logbook").

(b) The regulated seller must not sell a scheduled listed chemical product at retail unless the sale is made in accordance with the following:

(1) The purchaser presents an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of 8 CFR 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B).

(2) The purchaser signs the logbook as follows:

(i) For written logbooks, enters in the logbook his name, address, and the date and time of the sale.

(ii) For electronic logbooks, provides a signature using one of the following means:

(A) Signing a device presented by the seller that captures signatures in an electronic format. The device must display the warning notice in paragraph (d) of this section. Any device used must preserve each signature in a manner that clearly links that signature to the other electronically captured logbook information relating to the prospective purchaser providing that signature.

(B) Signing a bound paper book. The bound paper book must include, for such purchaser, either—

(*1*) A printed sticker affixed to the bound paper book at the time of sale that either displays the name of each product sold, the quantity sold, the name and address of the purchaser, and the date and time of the sale, or a unique identifier which can be linked to that electronic information, or

(*2*) A unique identifier that can be linked to that information and that is written into the book by the seller at the time of sale. The purchaser must sign adjacent to the printed sticker or written unique identifier related to that sale. The bound paper book must display the warning notice in paragraph (d) of this section.

(C) Signing a printed document that includes, for the purchaser, the name of each product sold, the quantity sold, the name and address of the purchaser, and the date and time of the sale. The document must be printed by the seller at the time of the sale. The document must contain a clearly identified signature line for a purchaser to sign. The printed document must display the warning notice in paragraph (d) of this section. Each signed document must be inserted into a binder or other secure means of document storage immediately after the purchaser signs the document.

(3) The regulated seller must enter in the logbook the name of the product and the quantity sold. Examples of methods of recording the quantity sold include the weight of the product per package and number of packages of each chemical, the cumulative weight of the product for each chemical, or quantity of product by Universal Product Code. These examples do not exclude other methods of displaying the quantity sold. Such information may be captured through electronic means, including through electronic data capture through bar code reader or similar technology. Such electronic records must be provided pursuant to paragraph (g) of this section in a human readable form such that the requirements of paragraph (a) of this section are satisfied.

(c) The logbook maintained by the seller must include the prospective purchaser's name, address, and the date and time of the sale, as follows:

(1) If the purchaser enters the information, the seller must determine that the name entered in the logbook corresponds to the name provided on the identification and that the date and time entered are correct.

(2) If the seller enters the information, the prospective purchaser must verify that the information is correct.

(3) Such information may be captured through electronic means, including through electronic data capture through bar code reader or similar technology.

(d) The regulated seller must include in the written or electronic logbook or display by the logbook, the following notice:

WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both.

(e) The regulated seller must maintain each entry in the written or electronic logbook for not fewer than two years after the date on which the entry is made.

(f) A record under this section must be kept at the regulated seller's place of business where the transaction occurred, except that records may be kept at a single, central location of the regulated seller if the regulated seller has notified the Administration of the intention to do so. Written notification must be submitted by registered or certified mail, return receipt requested, to the Special Agent in Charge of the DEA Divisional Office for the area in which the records are required to be kept.

(g) The records required to be kept under this section must be readily retrievable and available for inspection and copying by authorized employees of the Administration under the provisions of section 510 of the Act (21 U.S.C. 880).

(h) A record developed and maintained to comply with a State law may be used to meet the requirements of this section if the record includes the information specified in this section.

Dated: March 16, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–6175 Filed 3–22–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 513

[BOP Docket No. 1157–P]

RIN 1120–AB57

Inmate Access to Inmate Central File: PSRs and SORs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (Bureau) proposes to amend regulations regarding inmate access to Inmate Central File materials to prohibit sentenced inmates incarcerated in Bureau facilities, including those in contract facilities or community confinement, from possessing their Pre-Sentence Investigation Reports (PSRs), Statements of Reasons (SORs), or other similar sentencing documents from criminal judgments. Such inmates under this prohibition will continue to be permitted to review their PSRs and SORs.

DATES: Comments due by May 24, 2010.

ADDRESSES: Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and are available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Proposed Rule

The Bureau proposes to amend its regulation on inmate access to Inmate Central File documents (28 CFR 513.40). We published the current regulation in the **Federal Register** on December 9, 1996 (61 FR 64950). This proposed rule seeks to prohibit sentenced inmates incarcerated in Bureau facilities, including those in contract facilities or in community confinement, from possessing their Pre-Sentence Investigation Reports (PSRs), Statements of Reasons (SORs), or other similar sentencing documents from criminal judgments. Such inmates under this prohibition will be permitted to review their PSRs, SORs, or other similar documents. Further, pretrial inmates in Bureau facilities, including those in contract facilities or in community confinement, may possess and review these documents in preparation for sentencing.

At present, inmates incarcerated in Bureau facilities, including those in contract facilities or in community confinement, may make a request at their facility for an opportunity to review and obtain copies of these documents. Under this rule, such inmates may review these documents and take notes, but are prohibited from possessing copies of these documents. This change addresses the problem of inmates pressuring other inmates for copies of their PSRs, SORs, or other similar documents, to learn if they are informants, gang members, have financial resources, *etc.* This change will help the Bureau better protect the safety and security of its institutions, inmates, staff, and the public.

The SOR is contained on the last page(s) of an inmate's Federal Criminal Judgment (formally known as the Judgment in a Criminal Case). The SOR contains the sentencing court's final advisory U.S. Sentencing Guidelines (USSG) calculations, which reflect its decisions on various issues such as whether to impose a sentence which varies from the USSG and its reasons for doing so. PSRs, SORs, and other similar documents contain personal information regarding, for example, government assistance, gang affiliations, financial resources, involvement of family members and others in the community, *etc.*

In 2002, the Bureau recognized an emerging problem: Inmates, or inmate groups, pressure other inmates for copies of their PSRs and SORs to learn if they are informants, gang members, have financial resources, or to learn of others involved in the offense, *etc.* Inmates who produced, or refused to produce, the documents were often threatened, assaulted, and/or sought protective custody, all of which jeopardized the Bureau's ability to effectively and safely manage its institutions. The defense bar, Federal sentencing courts, and the Bureau identified this issue. The Bureau worked closely with the Administrative Office of the U.S. Courts (AOUSC) in crafting this change.

Inmates incarcerated in Bureau facilities, including those in contract facilities or in community confinement, may still review their PSRs, SORs, or other similar documents locally. Staff must provide inmates reasonable opportunities to locally review these documents as staff time and official duties permit. During local reviews, inmates are allowed to make handwritten notes. Only the inmates' retention of copies of these documents is prohibited, unless the inmate is a pretrial inmate with a need to review these documents prior to sentencing.

In *Dept. of Justice* v. *Julian,* 486 U.S. 1 (1988), the U.S. Supreme Court decided the government was obligated to provide inmates access to their own pre-sentence investigation reports under the Freedom of Information Act (FOIA). By continuing to provide inmates reasonable access to locally review their PSRs and SORs, the Bureau's obligation under the FOIA is satisfied. The *Julian* decision did not mandate that inmates be permitted to obtain and possess copies of these documents contrary to legitimate penological interests, i.e., the safety and security of Bureau institutions, inmates, staff, and the public.

Finally, this rule indicates that persons other than the inmate may not obtain copies of inmate PSRs, SORs, or other similar documents from the Bureau while the inmate is incarcerated, even if they provide written authorization from the inmate. This is necessary because the Bureau has found that third parties not affiliated with the inmate sometimes force inmate authorization and then use the inmate's PSR and/or SOR to prove gang affiliation to other inmates or for other reasons that are contrary to legitimate penological interests, *i.e.,* the safety and security of Bureau institutions, inmates, staff, and the public. Third parties may, however, continue to request copies of PSRs, SORs, or other similar documents directly from the sentencing court, defense counsel, or the U.S. Probation Office.

Executive Order 12866

We drafted and reviewed this regulation reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. It has been determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and Tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 513

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 513, subpart D, as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 513—ACCESS TO RECORDS

1. Revise the authority citation for 28 CFR part 513 to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C.; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4942, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 3711(f); 5 CFR part 297.

2. Revise § 513.40(a) as follows:

§ 513.40 Inmate access to Inmate Central File.

* * * * *

(a) *Inmate review of his/her Inmate Central File.* (1) *Request to review Inmate Central File.* An inmate may at any time request to review all disclosable portions of his/her Inmate Central File by submitting a request to a staff member designated by the Warden. Staff are to acknowledge the request and schedule the inmate, as promptly as is practical, for a review of the file at a time which will not disrupt institution operations.

(2) *Pre-Sentence Investigation Reports, Statements of Reason, or other similar documents.* Inmates incarcerated in Bureau facilities, including those in contract facilities or community confinement, are prohibited from possessing their Pre-Sentence Investigation Reports (PSRs), Statements of Reasons (SORs), or other similar sentencing documents from criminal judgments.

(i) *Sentenced inmates* in Bureau facilities, including those in contract facilities or community confinement, may request an opportunity to review these documents and take notes, but will not be permitted to possess copies of these documents.

(ii) *Pretrial inmates* in Bureau facilities, including those in contract facilities or community confinement, may possess and review these documents in preparation for sentencing.

(iii) *Persons other than the inmate* may not obtain copies of inmate PSRs, SORs, or other similar documents from the Bureau while the inmate is incarcerated in a Bureau facility, including those in contract facilities or community confinement, even if they provide written authorization from the inmate. Such persons may request these documents directly from the sentencing court, defense counsel, or U.S. Probation Office.

[FR Doc. 2010–6288 Filed 3–22–10; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0129]

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations establishing permanent safety zones in the Captain of the Port Lake Michigan zone during annual events. When these safety zones are activated, and thus subject to enforcement, this rule would restrict vessels from portions of water areas during annual events that pose a hazard to public safety. The safety zones amended by this proposed rule are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays, boat races, and other events.

DATES: Comments and related materials must be received by the Coast Guard on or before April 22, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0129 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard, Sector Lake Michigan, Milwaukee, WI, telephone (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.* If you have questions on viewing or submitting

material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0129), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0129" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0129" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact BM1 Adam Kraft at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

This proposed rule will amend the regulations establishing safety zones in the Captain of the Port Lake Michigan zone during annual events. These safety zones are necessary to protect vessels and people from the hazards associated with firework displays, boat races, and other marine events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

This proposed rule will revise the location of three permanent safety zones to reflect the correct enforcement area, and add two permanent safety zones for already established annually occurring events in the Captain of the Port Lake Michigan zone. The proposed rule is necessary to ensure the safety of vessels and people during annual marine events in the Captain of the Port Lake Michigan area of responsibility.

The proposed safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Lake Michigan will notify the public that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or their designated representative. The Captain of the Port or their designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of these safety zones will be periodic, of

short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before, during, and after the time the events occur. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. Each safety zone in this proposed rule will be in effect for a short period of time and only once per year. These safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland

Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule is categorically excluded, under figure 2–1, paragraph 34(g) of the Instruction. This proposed rule amends permanent safety zones established in the Captain of the Port Lake Michigan Zone to protect the public from the hazards associated during annual events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.929 to revise (a)(15)(i), (a)(52)(i), and (a)(65)(i); and to add paragraphs (a)(82) and (a)(83) to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) * * *

(15) *Taste of Chicago Fireworks; Chicago, IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′24″ N, 087°35′59″ W; then east to 41°53′15″ N, 087°35′26″ W; then south to 41°52′49″ N, 087°35′26″ W; then southwest to 41°52′27″ N, 087°36′37″ W; then north to 41°53′15″ N, 087°36′33″ W; then east returning to the point of origin. (NAD 83)

* * * * *

(52) *Gary Air and Water Show; Gary, IN.*

(i) *Location.* All waters of Lake Michigan bounded by a line drawn from 41°37′42″ N, 087°16′38″ W; then east to 41°37′54″ N, 087°14′00″ W; then south to 41°37′30″ N, 087°13′56″ W; then west to 41°37′17″ N, 087°16′36″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(65) *Venetian Night Fireworks; Chicago, IL.*

(i) *Location.* All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53′03″ N, 087°36′36″ W; then east to 41°53′03″ N, 087°36′21″ W; then south to 41°52′27″ N, 087°36′21″ W; then west to 41°52′27″ N, 087°36′37″ W; then north returning to the point of origin. (NAD 83)

* * * * *

(82) *Cochrane Cup; Blue Island, IL.*

(i) *Location.* All waters of the Calumet Sag Channel from the South Halstead Street Bridge at 41°39′27″ N, 087°38′29″ W; to the Crawford Avenue Bridge at 41°39′05″ N, 087°43′08″ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39′7″ N, 087°39′38″ W; to the junction of the Calumet Sag Channel at 41°39′23″ N, 087°39′ W (NAD 83).

(ii) *Enforcement date and time.* The first Saturday of May; 6:30 a.m. to 5 p.m.

* * * * *

(83) *World War II Beach Invasion Re-enactment; St. Joseph, MI.*

(i) *Location.* All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06.55N, 086°29.23W; then west/northwest along the north breakwater to 42°06.59 N, 086°29.41 W; the northwest 100 yards to 42°07.01 N, 086°29.44 W; then northeast 2,243 yards to 42°07.50N, 086°28.43 W; the southeast to the shoreline at 42°07.39N, 086°28.27 W; then southwest along the shoreline to the point of origin (NAD 83).

(ii) *Enforcement date and time.* The third Saturday of June; 8 a.m. to 2 p.m.

* * * * *

Dated: March 8, 2010.

L. Barndt,

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

[FR Doc. 2010–6294 Filed 3–22–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2010–0172; FRL–9129–3]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Determination of Attainment for the Coso Junction Nonattainment Area; Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Coso Junction nonattainment area (CJNA) in California has attained the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). This proposed determination is based upon monitored air quality data for the PM–10 NAAQS during the years 2006–2008. In addition, data for 2009 contained in EPA's Air Quality System (AQS) shows the CJNA continued to attain the PM–10 NAAQS through 2009, and preliminary data for 2010 available to date show no exceedances of the 24-hour NAAQS have been recorded at the CJNA monitoring site. EPA is also proposing to determine that, because the CJNA has attained the PM–10 NAAQS, the obligation to make submissions to meet certain Clean Air Act (CAA or the Act) requirements is not applicable for as long as the CJNA continues to attain the PM–10 NAAQS.

DATES: Written comments must be received on or before April 22, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0172, by one of the following methods:

(1) *Federal eRulemaking portal: http://www.regulations.gov*. Follow the on-line instructions.

(2) *E-mail: mahdavi.sarvy@epa.gov*.

(3) *Mail or deliver:* Sarvy Mahdavi (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Sarvy Mahdavi, EPA Region IX, (415) 972–3173, *mahdavi.sarvy@epa.gov*.

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

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I. Background

A. The NAAQS for PM–10

Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (PM–10) is the subject of this proposed action. The NAAQS are limits for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The 24-hour primary PM–10 standard was set at 150 micrograms per cubic meter (μg/m^3) with no more than one expected exceedance per year. The annual primary PM–10 standard was set at 50 μg/m^3 as an annual arithmetic mean. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, were identical to the primary standards.

On October 17, 2006, EPA revised the primary PM–10 standards by revoking the annual standard of 50 μg/m^3, but retained the 24-hour standard of 150 μg/m^3. EPA also revised the secondary PM–10 standards to be the same as the primary standards. The revised PM–10 NAAQS became effective on December 18, 2006. *See* 71 FR 61144 and 40 CFR 50.6.

B. Designation, Classification and Air Quality Planning for PM–10 for the CJNA

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS. On the date of enactment of the 1990 Clean Air Act Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. *See* 56 FR 11101 (March 15, 1991). At that time, the CJNA was within the boundaries of the Searles Valley planning area and EPA codified the boundaries of the Searles Valley planning area at 40 CFR 81.305; however, EPA subsequently changed the boundaries of the Searles Valley area by dividing it into three separate nonattainment areas: The CJNA, Indian Wells and Trona planning areas. 67 FR 50805 (August 6, 2002).

Once an area is designated nonattainment for PM–10, section 188 of the CAA outlines the process for classifying the area and establishes the area's initial attainment deadline. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, such as the Searles Valley, were initially classified as moderate nonattainment. When EPA changed the boundaries of the Searles Valley area, the Agency also classified the newly created CJNA, Indian Wells and Trona planning areas as moderate. In the same action, EPA determined that the Trona planning area had attained the PM–10 NAAQS by the statutory attainment deadline. 67 FR 50805. EPA redesignated the Indian Wells planning area to attainment for the PM–10 NAAQS on December 17, 2002. 67 FR 77196. This proposed action concerns only the moderate CJNA.

C. Attainment Determinations

We generally determine whether an area's air quality meets the PM–10 NAAQS for purposes of sections 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the EPA AQS database. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of areas. *See* 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. We will also consider air quality data from other air monitoring stations in the nonattainment area regardless of whether they have been entered into the EPA AQS database if the stations meet the federal monitoring requirements for SLAMS. *See* 40 CFR 58.20 and August 22, 1997 Memorandum "Agency Policy on the Use of Special Purpose Monitoring Data," from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the 24-hour PM–10 standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 μg/m^3. The 24-hour standard is attained when the expected number of days per year with levels above 150 μg/m^3 (averaged over a three-year period) is less than or equal to one. Three consecutive years of air quality data are necessary to show attainment of the 24-hour standard for PM–10. *See* 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, includes all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

II. Proposed Attainment Determination for the CJNA

The CJNA has one SLAMS site operated by the Great Basin Unified Air Pollution Control District (District or GBUAPCD). This monitoring site is located in the Rose Valley of Coso Junction at the southern end of Inyo County and currently has a continuous

PM–10 analyzer which records PM–10 concentrations on an hourly basis.[1]

PM–10 data collected in the CJNA is reported by the GBUAPCD to the EPA AQS database. The database contains three consecutive years of complete, quality-assured and certified data for 2006–2008 for CJNA. Table 1 summarizes the exceedances of the 24-hour PM–10 NAAQS of 150 μg/m^3 measured in the CJNA during the 2006–2008 period. This table also summarizes data for 2009 that are contained in the AQS database but not yet certified.

TABLE 1—CJNA 24-HOUR PM–10 EXCEEDANCES, 2006–2009

Monitoring site	Date of exceedance	Maximum (μg/m^3)	Number of expected exceedances 2006–2008	Number of expected exceedances 2007–2009
Coso Junction	12/8/06	295	1	1
	6/5/07	217		
	12/6/07	283		
	*12/22/09	*168		

Source: EPA AQS Database.
* The 2009 data have been submitted to the AQS database but are not yet certified.

As noted above, the 24-hour PM–10 standard is attained when the expected number of days per year with levels above 150 μg/m^3 (averaged over a three-year period) is less than or equal to one. As can be seen from Table 1, there were three exceedances of the 24-hour PM–10 NAAQS for both the 2006–2008 and 2007–2009 periods; therefore the expected number of days per year with levels above 150 μg/m^3 (averaged over that three-year period) for both of these periods is one.[2] [3] EPA is not aware of any exceedances to date during the year 2010. Thus, based on quality-assured and certified data for the period 2006–2008 and data in AQS for the period 2007–2009 that show the area continues to attain, we propose to find that the CJNA has attained the 24-hour PM–10 NAAQS. Before EPA finalizes its rulemaking on a determination of attainment for CJNA, the Agency will consider the most current data available at that time.

III. Applicability of Clean Air Act Planning Requirements

The air quality planning requirements for moderate PM–10 nonattainment areas, such as the CJNA, are set out in part D, subparts 1 and 4 of title I of the Act. EPA has issued guidance in a General Preamble [4] describing how we will review state implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing moderate PM–10 nonattainment area SIP provisions.

In nonattainment areas where monitored data demonstrate that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore, we do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations, reasonably available control measures (RACM), and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in its final rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). *See* discussion in the preamble to the rule at 70 FR 71612, 71645–46 (November 29, 2005). The D.C. Circuit upheld this Clean Data regulation as a valid interpretation of the Clean Air Act *NRDC* v. *EPA,* 571 F. 3d 1245 (D.C. Cir. 2009). EPA also finalized its interpretation in a regulation that was part of its Implementation Rulemaking for the PM2.5 NAAQS. 40 CFR 51.1004(c). Thus, EPA has codified the policy when it established final rules governing implementation of new or revised NAAQS for the pollutants. 70 FR 71612, 71644–46 (November 29, 2005) (ozone); 72 FR 20585, 20665 (April 25, 2007) (PM–2.5). Otherwise, it applies the policy in individual rulemakings related to specific nonattainment areas. *See, e.g.,* 75 FR 6571 (February 10, 2010). EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," our PM–2.5 implementation rule, and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards", are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM–10. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration, RACM and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM–10, ozone or PM–2.5.

In our recent proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM–10 standard, EPA set forth at length our rationale for applying the Clean Data Policy to PM–10. The

[1] The Federal Reference Method (FRM) for PM–10 monitoring sites is a manual sampler operated on a once every six day schedule. These samplers draw ambient air through a quartz fiber filter which is weighed before and after sampling in order to determine the mass of PM–10 that is collected after the 24-hour run period. The GBUAPCD was operating two FRMs at the CJNA monitoring site on a staggered once every six day schedule that enabled the District to collect a 24-hour PM–10 sample every three days until June 30, 2006 when the FRMs were terminated. See EPA AQS Database, Monitor Description Report. Prior to terminating the FRMS, the GBUAPCD added a tapered element oscillating microbalance (TEOM) analyzer on May 11, 2006. *Id.* The TEOM analyzer, which records PM–10 levels continuously, is not a FRM but has been designated a Federal equivalent method (FEM) by EPA. All exceedances monitored from 2006 to date were recorded by this TEOM.

[2] Based on data from the EPA AQS database.

[3] We note that the GBUAPCD has reported the 4th quarter data for 2009 before the deadline. Under 40 CFR 58.16(b), quarterly data are not required to be reported in the AQS database until 90 days after the quarter; thus the data for the 4th quarter of 2009 must be reported by no later than March 31, 2010. The AQS data for the year 2009 must be certified by May 1, 2010. *See* 40 CFR 58.15.

[4] "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), as supplemented at 57 FR 18070 (April 28, 1992).

Ninth Circuit subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy in the context of the PM–10 standard. *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.) Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy for PM–10, the Court stated:

> As the EPA rationally explained, if an area is in compliance with PM–10 standards, then further progress for the purpose of ensuring attainment is not necessary.

The reasons for relieving an area that has attained the relevant standard of certain part D, subparts 1 and 2 obligations, applies equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM–10 nonattainment areas. As we have explained in the Phase 2 Final Rule and our ozone and PM–2.5 clean data memoranda, EPA believes that it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (*i.e.* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data). Every U.S. Circuit Court of Appeals that has considered the Clean Data Policy has upheld EPA rulemakings applying its interpretation, for both ozone and PM–10. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum,* supra.

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

57 FR at 13564. EPA believes the same reasoning applies to the PM–10 provision of part D, subpart 4.

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM–10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress "toward attainment by the applicable attainment date," as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a state that fails to achieve a milestone must submit a plan that assures that the state will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that "the purpose of the milestone requirement is to 'provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep. No. 490 101st Cong., 2d Sess. 267 (1990))." 57 FR 13539 (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[5] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). We are extending that interpretation to the specific provisions of part D, subpart 4. In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564). *See* also our September 4, 1992 memorandum from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo), p. 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

> Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of section 182(b) and (c). In the May 10, 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of Subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or

[5] Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is "redesignated attainment," as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182 (c)(2), which refer to the RFP requirements as applying until the "attainment date," since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required "for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date * * *." As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo, and the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR at 13564).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." (57 FR at 13564); Seitz memo, pp. 5–6.

Both sections 172(c)(1) and 189(a)(1)(C) require "provisions to assure that reasonably available control measures" (*i.e.,* RACM) are implemented in a nonattainment area. The General Preamble, 57 FR at 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a "component" of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[6] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

Here, as in both our Phase 2 Final Rule and ozone and PM–2.5 clean data memoranda, we emphasize that the suspension of a requirement to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as a nonattainment area continues to monitor attainment of the standard. If such an area experiences a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. Therefore, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. However, once EPA ultimately redesignates the area to attainment, the area will be entirely relieved of these requirements to the extent the maintenance plan for the area does not rely on them.

Should EPA at some future time determine that an area that has attained the standard, but which has not yet been redesignated as attainment for a NAAQS, has violated the relevant standard, the area would again be required to submit the pertinent SIP requirements for the area. Attainment determinations under the policy do not shield an area from other required actions, such as provisions to address pollution transport.

As set forth above, EPA finds that because the CJNA is attaining the PM–10 NAAQS, the requirements to submit an attainment demonstration, reasonable further progress, reasonably available control measures and contingency measures no longer apply for so long as the area continues to monitor attainment of the PM–10 NAAQS.[7] If in the future EPA determines, after notice and comment rulemaking, that the CJNA violates the PM–10 NAAQS, the basis for the attainment demonstration, RFP, RACM and contingency measure requirements being suspended would no longer exist. In that event, we would notify the State that we have determined that the area is no longer attaining the PM–10 standard and provide notice to the public in the **Federal Register.**

IV. EPA's Proposed Action

Based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, we propose to determine that the CJNA has attained the 24-hour PM–10 NAAQS. Preliminary data indicate that the area continues to attain the standard. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3) because we would not yet have approved a maintenance plan as required under section 175(A) of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain moderate nonattainment for this area until such time as California meets the CAA requirements for redesignation of the CJNA to attainment.

EPA also finds that, because the CJNA is attaining the NAAQS, the obligation to submit the following CAA requirements is not applicable for so long as the CJNA continues to attain the PM–10 standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of 189(a)(1)(C), the RFP provisions established by section 189(c)(1), and the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized; result in the suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

[6] The EPA's interpretation that the statute only requires implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *EPA,* 314 F.3d 735, 743–745 (5th Cir. 2002), and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club* v. *EPA,* 294 F.3d 155, 162–163 (D.C. Cir. 2002)).

[7] We note that our application of the Clean Data Policy to the CJNA is consistent with actions we have taken for other PM–10 nonattainment areas that we also determined were attaining the standard. *See* 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area) and 72 FR 14422 (March 28, 2007) (Miami, Arizona area).

Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Parts 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: March 15, 2010.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2010–6338 Filed 3–22–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 11, 12, and 15

[Docket No. USCG–2004–17914]

RIN 1625–AA16

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of Proposed Rulemaking; next stage.

SUMMARY: The Coast Guard announces that it is revisiting the approach proposed in the Notice of Proposed Rulemaking (NPRM) on the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as published in the **Federal Register** on November 17, 2009.

DATES: The Coast Guard published its NPRM on the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, in the **Federal Register** on November 17, 2009 (74 FR 59354). Comments on the NPRM were due by February 16, 2010.

ADDRESSES: The docket for this rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2004–17914 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or e-mail Mayte Medina, U.S. Coast Guard; telephone 202–372–1406, e-mail *Mayte.Medina2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The United States ratified the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention), on June 10, 1991. On November 17, 2009, the Coast Guard published a NPRM on the Implementation of the 1995 Amendments to the STCW Convention. The Coast Guard held five public meetings and received a large number of comments to the rulemaking docket in response to the NPRM.

The International Maritime Organization (IMO) is currently developing amendments to the STCW Convention that are expected to be adopted at a diplomatic conference in June 2010. If adopted, these amendments will change the minimum training requirements for seafarers. They are expected to enter into force in accordance with Article XII of the Convention on January 1, 2012 for all countries that are party to the STCW Convention.

In response to feedback we have received and to the expected adoption of the 2010 amendments to the Convention under development at the IMO, the Coast Guard is reviewing the approach outlined in the NPRM. As such, we are considering publishing a Supplemental NPRM (SNPRM) as a next step. The SNPRM would describe any proposed changes from the NPRM, and seek comments from the public on those proposed changes.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: March 17, 2010.

F.J. Sturm,

Deputy Director, Office of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–6297 Filed 3–22–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0085; MO 92210–0–0009]

RIN 1018–AW88

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed revision of critical habitat for the bull trout (*Salvelinus confluentus*)

under the Endangered Species Act of 1973, as amended. In total, approximately 36,498 kilometers (km) (22,679 miles (mi)) of streams (which includes 1,585.7 km (985.30 mi) of marine shoreline area in the Olympic Peninsula and Puget Sound), and 215,870 hectares (ha) (533,426 acres (ac)) of reservoirs or lakes are being proposed for the revised critical habitat designation. If you have previously submitted comments, please do not resubmit them because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: We will consider comments received or postmarked on or before April 5, 2010. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m., Eastern Standard Time, on April 5.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* In the box that reads "Enter Keyword or ID," enter the docket number for the proposed rule, which is FWS–R1–ES–2009–0085. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R1–ES–2009–0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Information regarding this notice is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Gary Burton, Acting Field Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 South Vinnell Way, Boise, ID 83702; telephone 208–378–5243; facsimile 208–378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: On January 14, 2010, we published our proposed revised designation of critical habitat for bull trout in the coterminous United States (75 FR 2269). This proposed rule established a 60-day comment period and announced the availability of the draft economic analysis (DEA) of the proposed revised critical habitat designation. At the request of the public, we are reopening the comment period until April 5, 2010.

All details of the proposed revised critical habitat designation are provided in our January 14, 2010, proposed rule, available online at *http://www.regulations.gov*, or by contacting the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies of the previous proposed and final bull trout critical habitat rules and a map showing the relationship of the 2005 critical habitat designation and the current proposed revised designation are available on the Idaho Fish and Wildlife Office Web site at *http://www.fws.gov/pacific/bulltrout.* The draft economic analysis is available for review at *http://www.regulations.gov*, or at *http://www.fws.gov/pacific/bulltrout*, or by contacting the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). For further information on bull trout biology and habitat, population abundance and trends, distribution, demographic features, habitat use and conditions, threats, and conservation measures, please see the Bull Trout 5-year Review Summary and Evaluation, completed April 25, 2008. This document is available on the Idaho Fish and Wildlife Office Web site at *http://ecos.fws.gov/docs/five_year_review/doc1907.pdf.*

We are seeking data and comments from the public on all aspects of the proposed rule to revise the critical habitat designation for bull trout in the coterminous United States and the associated draft economic analysis. We may revise the proposed rule or supporting documents to incorporate or address information we receive during this reopened public comment period.

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the proposed rule. We will consider information and recommendations from all interested parties. For the complete list of subjects on which we seeks comments, please refer to the January 14, 2010, proposed rule, available online at *http://www.regulations.gov*, or from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may submit your comments and materials concerning our proposed rule and the associated DEA by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. Before including your address, phone number, e-mail 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. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

In preparing the final rule, we will consider all comments and any additional information that we receive during this reopened comment period on the proposed rule. Accordingly, the final decision may differ from the proposal.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 17, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–6401 Filed 3–22–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0010]

[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90–day finding on a petition to list the southern hickorynut mussel (*Obovaria jacksoniana*) as threatened or endangered under the Endangered Species Act of 1973, as amended. Based on our review, we find that the petition does not present substantial scientific or commercial information indicating that listing the southern hickorynut mussel may be warranted. Therefore, we will not be initiating a further status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the southern hickorynut mussel or its habitat at any time.

DATES: The finding announced in this document was made on March 23, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the Jackson, MS, Ecological Services Field Office (see **ADDRESSES**), by telephone (601-321-1125) or by facsimile to 601-965-4340. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Petition History

On October 15, 2008, we received a petition, dated October 9, 2008, from WildEarth Guardians, Santa Fe, NM, requesting that the southern hickorynut mussel and five other mussel species be listed as threatened or endangered under the Act. The petition clearly identified itself as such and included the requisite identification information of the petitioner required at 50 CFR 424.14(a). In a November 26, 2008, letter to the petitioner, we acknowledged receipt of the petition and stated that the petition for the six mussel species was under review by staff in our Southwest (Region 2) and Southeast (Region 4) Regional Offices. Region 2 already addressed 5 of the 6 petitioned species including smooth pimpleback, Texas pimpleback, false spike, Mexican fawnsfoot, and Texas fawnsfoot, in a separate finding (74 FR 66260; December 15, 2009). This finding addresses the petition to list the southern hickorynut mussel.

Legal Requirements for Petition Review

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time the petition is received. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is, ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species (status review), which is subsequently summarized in a 12–month finding.

We base this finding on information provided by the petition that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the receipt of the petition. We have been accumulating information on mussel species of concern, including the southern hickorynut, for a number of years ; therefore, we have considerable information in our files regarding this species. We evaluated all information in accordance with 50 CFR 424.14(b). Our process for making this 90–day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Species Information

The southern hickorynut is a medium-sized mussel growing to 55 millimeters (2 inches) in length. The shell is moderately thick, smooth, and oval to subtriangular in shape; the beaks are raised above the hinge line. Shell color is brown to black, sometimes with dark green rays. The interior of the shell is white in color, iridescent along the margin; the beak cavity is moderately deep. For a more detailed description, see Williams *et al.* 2008, p. 463. The southern hickorynut can be confused with the Alabama hickorynut (*Obovaria unicolor*), the ovate clubshell (*Pleurobema perovatum*), and the black clubshell (*P. curtum*) in the Mobile River drainage (Williams *et al.* 2008, p. 464); the Ouachita creekshell (*Villosa arkasasensis*) in the Ouachita and White river drainages (WildEarth Guardians 2008, p. 10; NatureServe 2008); and round hickorynut (*Obovaria subrotunda*) in the Lower Mississippi River drainage (Hartfield and Ebert 1986, p. 23; Hartfield and Rummel 1985, p. 118). Taxonomic problems with identification of the species have been recently noted. Phylogenetic analysis suggests that Ouachita creekshell (*Villosa arkansasensis*) may be the same species as the southern hickorynut (Inoue *et al.* 2008, unpaginated). It has also been suggested that populations of southern hickorynut from the east and west sides of the Mississippi river may be taxonomically distinct (Inoue *et al.* 2008, unpaginated).

The southern hickorynut is found in small streams to large rivers in stable sand and gravel substrates, and in slow to moderate currents (Williams *et al.* 2008, p. 464). Fish hosts for the species are unknown.

The southern hickorynut is widely distributed in streams of the Gulf Coastal plain from the Mobile River Basin west to the Neches River in Eastern Texas (Williams *et al.* 2008, p. 464), and north into Arkansas, Oklahoma, southeastern Missouri, and western Tennessee (NatureServe 2008). The species occurs sporadically within this area. Known drainage populations

include the Buttahatchee and East Fork Tombigbee Rivers and Yellow Creek (Mississippi), and the Sipsey River and Lubbub Creek (Alabama) in the Mobile River drainage (Williams *et al.* 2008, p. 464); the Big Black, Bayou Pierre, and Pascagoula Rivers in Mississippi, the Pearl River in Mississippi and Louisiana, and the Amite River in Mississippi and Louisiana (Hartfield and Ebert 1986, p. 23; Hartfield and Rummel 1985, p. 118; Jones *et al.* 2005, p. 90; NatureServe 2008); the Tickfaw, Tangipahoa, Tensas, Boeuf, Ouachita, Dugdemona, Little, Cane, Sabine, and Neches Rivers, and Bayou Dorcheat and Kisatchie Bayou in Louisiana (Vidrine 1993, p. 207); the South Fourche LaFave, Strawberry, Arkansas, Ouachita, and White river systems in Arkansas (Harris *et al.* 1997, pp. 80-81; NatureServe 2008); the Kiamichi, Little, Mountain Fork, and Glover Rivers in Oklahoma (NatureServe 2008); the Neches River drainage in Texas (Howells *et al.* 1996, p. 86); the Hatchie River of west Tennessee (Parmalee and Bogan 1998, p. 163); and the Whitewater River and Cane Creek in Missouri (Oesch 1984, p. 162).

Status of the species in most historically occupied stream drainages is poorly known, but the southern hickorynut is apparently extirpated from the Cahaba River, Alabama (McGregor *et al.* 2000, p. 230), and the Saint Francis and Black Rivers, Missouri (NatureServe 2008). It is likely extirpated from the mainstem Tombigbee River in Alabama and Mississippi (e.g., McGregor and Garner 2001, p. 7), and the mainstem Alabama River in Alabama (e.g., Hartfield and Garner 1998, p. 15). The southern hickorynut is considered uncommon to rare in all States where it occurs; however, status is poorly known and threats have not been adequately assessed (NatureServe 2008). The species is reported as locally common in the Ouachita River and tributaries in Arkansas (Anderson 2006, p. 971), and Vidrine (2008, p. 127) notes the species is common in Kisatchie Bayou and in numerous streams of the Calcasieu River in Louisiana.

Five-Factor Analysis

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the southern hickorynut, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

The petition asserts that the range of the southern hickorynut is declining, especially in Louisiana, and that it has been extirpated from two sites in Alabama (WildEarth Guardians 2008, pp. 11–12). The petition asserts that the southern hickorynut is declining at a short-term global rate of 10 to 30 percent, and is threatened by loss of habitat (WildEarth Guardians 2008, pp. 11–12) attributed to sedimentation, channelization, impoundment, sand and gravel mining, and chemical runoff (WildEarth Guardians 2008, pp. 21–26).

Evaluation of Information in the Petition and Our Files

The southern hickorynut continues to be reported throughout its geographical range, which includes Mississippi, Alabama, Oklahoma, Missouri, Texas, Tennessee, and Louisiana (NatureServe 2008, WildEarth Guardians 2008, pp. 11–12). There is evidence that some population segments have become extirpated in the Mobile River Basin. For example, the species has not been collected in the Cahaba River since 1973, apparently due to historical episodes of water quality degradation (McGregor *et al.* 2000, p. 230); and surveys in recent years have also failed to locate southern hickorynut in the Alabama River (Hartfield and Garner 1998, p. 15) or the mainstem Tombigbee River (Hartfield and Jones 1989, p. 10; McGregor and Garner 2001, p. 7), which have been impounded and channeled for navigation. However, there are several population segments of southern hickorynut known to persist in the Mobile River Basin that were not recognized in the petition, including the Buttahatchee and East Fork Tombigbee Rivers and Yellow Creek in Mississippi, the Sipsey River and Lubbub Creek in Alabama, and Bayou Pierre in Mississippi (Hartfield and Ebert 1986, p. 23; Williams *et al.* 2008, p. 464, McGregor and Haag 2004, p. 22).

The petition specifically notes a decline in the abundance and range of southern hickorynut in Louisiana (WildEarth Guardians 2008, p. 11). based on the NatureServe (2008) account of , suspected extirpations from most historically occupied streams in Louisiana, and a conclusion that the species is uncommon to rare throughout its range (WildEarth Guardians 2008, p. 11).

NatureServe (2008) reports that occurrences of the species have declined from 16 streams in Louisiana (Vidrine 1993, p. 207), to only two streams, based on a publication by Brown and Banks (2001, p. 195). Information in our files does not support this assertion. Brown and Banks (2001, p. 195), surveyed only portions of 3 of the 16 streams referenced by Vidrine's comprehensive report (1993, p. 207). There is no information presented in NatureServe, the petition, or in our files to document that the southern hickorynut has declined or become extirpated from any of the other 13 streams cited by Vidrine (1993) as occupied by the species. Rather, information in our files includes a recent report that the southern hickorynut is considered common in Kisatchie Bayou as well as in numerous streams of the Calcasieu River in Louisiana (Vidrine 2008, p. 127). This report, as well as an account that the species is locally common in the Ouachita River and tributaries in Arkansas (Anderson 2006, p. 971), contradicts the petition assertion that the species is uncommon to rare throughout its range.

Therefore, the information provided by the petition, along with NatureServe records, appears to reflect a lack of recent survey effort and information on the status of the southern hickorynut throughout most of its range rather than the documentation of a range-wide decline. While there is evidence that the species has been locally extirpated from some historical collection sites, information in our files indicates the southern hickorynut continues to persist throughout most of its historical range.

The petition provides general information and references on impacts of sand and gravel mining to freshwater mussels and other invertebrates (e.g., WildEarth Guardians 2008, pp. 21–22, citing National Marine Fisheries Service 1996, Brim Box and Mossa 1999, pp. 103–104; Roell 1999). Information in our files document past events of instream sand and gravel mining in the Amite and Tangipahoa Rivers in

Louisiana, and stream capture by floodplain mines in the Buttahatchee River in Mississippi, along with detrimental effects to the mussel communities in those streams (Hartfield 1993, pp. 135–138). The decline in abundance of southern hickorynut in the Buttahatchee River, however, occurred prior to stream capture by the mines and was attributed to geomorphic effects from the construction of the Tennessee–Tombigbee Waterway, and/or sedimentation from headwater kaolin mines (Hartfield and Jones 1990, pp. 22–24). The kaolin mines that were the suspected source of sedimentation in the Buttahatchee have since been stabilized, sand and gravel mining is now regulated and Best Management Practices have been developed and implemented to protect water and habitat quality (e.g., Louisiana Department of Environmental Quality 2007). Neither the petition nor our files contain any site-specific threats to the southern hickorynut from current sand and gravel mining activities.

The petition provides general information and references on impacts of dredging and channelization to freshwater mussels (e.g., WildEarth Guardians 2008, pp. 22–23, citing Aldridge 2000, p. 247), but no information on activities conducted within streams occupied by the southern hickorynut. Information in our files suggests channelization has impacted mussel faunas in areas known to be occupied by the southern hickorynut in the Big Black, Yazoo, and Buttahatchee Rivers, and Luxapalila Creek in Mississippi (Hartfield 1993, pp. 132–138); however, the southern hickorynut continues to persist in these drainages. Although there has been a documented decline from historical population levels in the Buttahatchee River (Hartfield and Jones 1990, pp. 22–24), the primary causes of the decline have been stabilized, and this population segment of southern hickorynut has continued to persist over the past two decades. We have no information that any additional channel work is planned for these streams, and the petition does not contain any site-specific threats to southern hickorynut from dredging and channelization.

The petition provides general information and references on impacts of impoundment to freshwater mussels (e.g., WildEarth Guardians 2008, pp. 23–24, citing Burlakovaa and Karatayev 2007, pp. 290–291; Vaughn and Taylor 1999, p. 912; Watters 1999, pp. 261and 268); however, the petition provides no information specific to the streams occupied by the southern hickorynut. Information in our files suggests impoundment contributed to the apparent extirpation of southern hickorynut from the mainstem Tombigbee and Alabama Rivers (e.g., Hartfield and Jones 1989, p. 10; Hartfield and Garner 1998, p. 15). However, we have no information on threats of impoundment to streams currently occupied by southern hickorynut.

The petition notes the harmful effects of water fluctuation in impoundments to mollusk fauna inhabiting reservoirs (WildEarth Guardians 2008, p. 24). The southern hickorynut is not known to currently or historically inhabit any impounded areas, so this is not a historical or current documented threat to the species.

The petition provides general information and references on impacts of excessive sediments to freshwater mussels (WildEarth Guardians 2008, pp. 24–25). The petition notes the contribution of activities such as logging, agriculture, ranching, mining, urban development, and construction activities to excessive sediment rates in some streams, along with the potential impacts of excessive sediments on freshwater mussel communities. However, the petition does not provide, nor do our files contain, any specific evidence of detrimental rates of sedimentation to any southern hickorynut mussel population segment.

The petition states that pollutants pose a threat to the hickorynut (WildEarth Guardians 2008, p. 12); however, the petition provides only general information and references on impacts of contaminants and polluted runoff to freshwater mussels (WildEarth Guardians 2008, pp. 25–26, citing Foster and Bates 1978, p. 958). No information is provided, nor are we currently aware of information on, any specific contaminant or pollution threats to the southern hickorynut in the stream drainages known to be occupied by the species.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range, especially given its continued persistence in seven States and numerous stream drainages, information that it is locally common in Louisiana and Arkansas, and in the absence of documented threats to habitat or range of extant populations.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petition did not provide any information concerning this factor. Information in our files shows that mussels have historically been, and continue to be, commercially exploited for their shells in some States; however, southern hickorynut is not considered a commercial species and has little value in commerce. Additionally, all States within the range of the southern hickorynut either regulate or restrict mussel harvest. For example, the State of Mississippi is closed to any mussel harvest, and the State of Alabama prohibits mussel harvest in streams currently known to be occupied by the southern hickorynut. All States within the range of the hickorynut require permits to take mussels for scientific purposes. Therefore, there is no evidence that overutilization is a threat to southern hickorynut.

C. *Disease or Predation*

The petition did not provide any information concerning this factor. Information in our files indicates that disease in freshwater mussels is poorly known, and there is no evidence of disease in any population of southern hickorynut. Freshwater mussels are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Predation by naturally occurring predators is a normal aspect of the population dynamics of a mussel species and is not known to be a threat to any of the existing populations of the southern hickorynut. Therefore, there is no information provided in the petition, or other information in our files, that presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation.

D. *The Inadequacy of Existing Regulatory Mechanisms*

The petition asserts that the southern hickorynut is not protected under any existing Federal or State Law, and therefore, current regulatory mechanisms are inadequate for conservation. The petition references the need to protect mussels from commercial harvest.

Evaluation of Information in the Petition and Our Files

Contrary to the assertion in the petition, the southern hickorynut is identified as a species of conservation concern in all States where it occurs. This recognition extends some level of consideration under State and Federal

environmental laws when project impacts are reviewed. Although, current State and Federal regulations regarding pollutants are generally assumed to be protective of freshwater mollusks, we do have information to indicate that some pollutant standards may not be protective for freshwater mussels (e.g., Augspurger *et al.* 2007, p. 2026). However, there is no information in our files to suggest specific pollution threats to the southern hickorynut in any specific area, and the petition provided no information to support the assertion therein that existing regulatory mechanisms are inadequate to protect the species. Furthermore, as noted under Factor B, above, the southern hickorynut is not considered a commercial species, has little value in commerce, and all States within the range of the southern hickorynut either regulate or restrict mussel harvest.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulations.

E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petition asserts that fragmentation of freshwater mussel stream habitat makes mussel species more vulnerable to droughts and floods attributed to climate change (e.g., WildEarth Guardians 2008, p. 27, citing Hamlet and Lettenmaier 2007, p. 43).

Evaluation of Information in the Petition and Our Files

The petition provided no information on habitat fragmentation or changes in the frequency of droughts and floods within the range of the southern hickorynut, or on specific detrimental effects of habitat fragmentation, droughts, or floods to the hickorynut. Information in our files documents mollusk declines within small perennial streams that have lost flow as a direct result of drought (for example, Golladay *et al.* 2004, p. 494; Haag and Warren 2008, p. 1165). However, most recent site records of the southern hickorynut are from medium to large perennial stream channels (e.g., the Big Black, Buttahatchee, Amite, Pearl, Tickfaw, Neches, Arkansas, White, Ouachita, and Hatchie Rivers) that are less susceptible to total loss of flow by drought. In addition, the wide distribution of the species reduces its vulnerability to extinction due to local stochastic threats. Therefore, information provided by the petition and in Service files does not indicate or document a threat to southern hickorynut mussels due to drought or floods.

Finding

We have reviewed the petition and supporting information provided with the petition and evaluated that information in relation to other pertinent literature and information, and we have evaluated the information to determine whether the sources cited support the claims made in the petition. We recognize that many freshwater mussel species are experiencing declines in both range and population abundances due to the generalized threats identified by the petition. However, review of the information provided in the petition and in our files indicates that this species is not declining range-wide.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act. We found no information to suggest that threats are acting on the southern hickorynut such that the species may become extinct now or in the foreseeable future.

Based on this review and evaluation, we find that the petition does not present substantial scientific or commercial information to indicate that listing the southern hickorynut under the Act as threatened or endangered may be warranted at this time. Although we will not commence a status review at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding the species, you may submit your information or materials to the Field Supervisor, Mississippi Ecological Services Field Office (see **ADDRESSES** section) at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 9, 2010.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–6111 Filed 3–22–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0007] [MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Striped Newt as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the striped newt (*Notophthalmus perstriatus*) as threatened under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the striped newt may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding

this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before May 24, 2010. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for Docket No. FWS-R4-ES-2010-0007 and then follow the instructions for submitting comments.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R4-ES-2010-0007; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-965-4900); or by facsimile (601-965-4340). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Requested

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species (status review). To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on the striped newt from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

1) The species' biology, range, and population trends, including:
   a) Habitat requirements for feeding, breeding, and sheltering;
   b) Genetics and taxonomy;
   c) Historical and current range, including distribution patterns;
   d) Historical and current population levels, and current and projected trends; and
   e) Past and ongoing conservation measures for the species, its habitat, or both.
2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:
   a) The present or threatened destruction, modification, or curtailment of its habitat or range;
   b) Overutilization for commercial, recreational, scientific, or educational purposes; c) Disease or predation;
   d) The inadequacy of existing regulatory mechanisms; or
   e) Other natural or manmade factors affecting its continued existence.
3) The potential effects of climate change on this species and its habitat.

If we determine that listing the striped newt is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the striped newt, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection.

In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other supporting publications or data) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time the petition is received. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species, which will be subsequently summarized in our 12–month finding.

Petition History

On July 14, 2008, we received a petition dated July 10, 2008, from Dr. D. Bruce Means, Ryan C. Means, and Rebecca P.M. Means of the Coastal Plains Institute and Land Conservancy requesting that we list the striped newt (*Notophthalmus perstriatus*) as threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required at 50 CFR 424.14(a). In an August 15, 2008, letter to the petitioners, we stated that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. These delays continued until earlier this fiscal year, when we were able to allocate funding to the petitioned action.

Previous Federal Actions

We included the striped newt in the November 15, 1994, notice of plant and animal taxa regarded as candidates for possible listing under the Act as a Category 2 candidate species (59 FR 58982). In the February 28, 1996, notice (61 FR 7596), the Service discontinued the designation of Category 2 species as candidates and thus the striped newt was no longer considered a candidate species. However, the Service has monitored this species and has supported research addressing its distribution, status, life history, and taxonomy.

Species Information

The striped newt (*Notophthalmus perstriatus*) is a small salamander that reaches a total length of 2 to 4 inches (5 to 10 centimeters) (Conant and Collins 1991, p. 258). A continuous red stripe runs the length of the side of its trunk and extends onto the head and tail where it may become fragmented. The stripe is dark-bordered, but not so boldly and evenly as in the broken-striped newt (*N. viridescens dorsalis*) (Conant and Collins 1991, p. 258). There may be a row of red spots along the side of the body and a faint light stripe down the center of its back. The ground color of the sides and back is olive-green to dark brown. The belly is yellow, usually sparsely marked with black specks. The skin of newts tends to be rougher and less slimy than other salamanders. The costal grooves (grooves along the side body of salamanders used in species identification) are indistinct.

Striped newts occur only in Florida and Georgia. Their range extends along the Atlantic Coastal Plain of southeastern Georgia into peninsular north-central Florida and up through the Florida panhandle into portions of southwest Georgia. The historical range of striped newts was probably similar to the current range. However, due to extensive habitat modification, many populations have likely been lost (Dodd *et al.* 2005, p. 887).

Within their range, striped newts may occur in longleaf pine (*Pinus palustris*) - dominated savanna, scrub, or sandhills that have a rich groundcover of grasses and forbs maintained by frequent fire (Petranka 1998, pp. 448-449). Adults and juvenile newts live in underground retreats in these uplands. Adults move out of the uplands from late fall to early spring and into isolated, shallow, temporary ponds to breed. Immigration to ponds is correlated with heavy rains that result in pond filling; emigration occurs in response to pond drying and metamorphosis (Dodd *et al.* 2005, p. 888). Striped newts breed exclusively in small, ephemeral ponds that lack predaceous fish (Christman and Means 1992, p. 62; Dodd *et al.* 2005, p. 888). These breeding ponds are typically sinkhole ponds in sandhills and cypress and bay ponds in the wetter pine flatwoods communities (Christman and Means 1992, p. 62). Striped newts spend the majority of their lives in the pine uplands that surround their breeding ponds. Terrestrial adults may commonly move between 1,640 feet (ft) and 2,297 ft (500 meters (m) to 700 m) from ponds after breeding (Dodd 1996, p. 47; Johnson 2003, p. 16). Johnson (2003, p. 3) found that at least 16 percent of individuals breeding at a single pond migrated in excess of 1,640 ft (500 m) from the pond into the uplands.

Only two species of newt occur in the eastern United States, the striped newt (*N. perstriatus*) and the eastern newt *(N. viridescens*) (Conant and Collins 1991, p. 256). The striped newt has no subspecies. The eastern newt consists of four subspecies: the broken-striped newt (*N. v. dorsalis*), the central newt (*N. v. louisianensis*), the peninsula newt (*N. v. piaropicola*), and the red-spotted newt (*N. v. viridescens*). Superficially, the striped newt resembles these subspecies. However, allozyme (genetic markers used to compare genetic variation) data presented by Reilly (1990, p. 55) indicated that the closest relative of the striped newt is the black-spotted newt (*N. meridionalis*), which occurs in south Texas and adjacent Mexico.

The striped newt has one of the most complex life cycles of any amphibian (Johnson 2002, p. 384). Sexually mature adults migrate to breeding ponds where courtship, copulation, and egg-laying take place. Eggs hatch and develop into externally gilled larvae in the temporary pond environment. Once larvae reach a size suitable for metamorphosis, they may either undergo metamorphosis and exit the pond as immature terrestrial newts (efts), or remain in the pond and eventually mature into gilled aquatic adults (neotenes) (Petranka 1998, pp. 449-450; Johnson 2005, p. 384). An eft is orange-red with the red stripe of the adult and is adapted for life in dry longleaf pine-wiregrass forests (Means 2006, p. 162). The eft remains terrestrial for 1 to 3 years (presumably until sexually mature) and then returns to a breeding pond where its skin changes into the aquatic adult form. If a breeding pond retains water and does not dry up after the normal summer drying period, larvae may bypass the eft stage and become sexually mature as gilled larvae. This is termed neoteny (retention of larval characteristics when sexually mature) and occurs frequently in striped newts. After reproducing, these individuals initiate metamorphosis and migrate from the breeding pond into the surrounding uplands (Johnson 2002, p. 384). When ponds dry, both aquatic adult forms and larviform adults transform and assume the terrestrial adult form (Dodd *et al.* 2005, p. 888).

Very little is known about the terrestrial life of the striped newt. A striped newt has survived in captivity as an aquatic adult for more than 17 years (LaClaire 2008), although such a long aquatic life probably rarely occurs in nature because of the ephemeral nature of the species' breeding ponds. Whether this potential longevity extends to the terrestrial stage of adult striped newts is unknown. The upland microhabitat preferences of striped newts and the prey items they use there are also unknown. It is assumed they occur under grass clumps, under leaf litter, or in burrows, and consume any small invertebrates they can catch, as do other salamanders in similar below-ground habitats (Bishop 1941, pp. 70, 128, 151).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;
(C) Disease or predation;
(D) The inadequacy of existing regulatory mechanisms; or
(E) Other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the striped newt, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is discussed below.

A. *The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Information Provided in the Petition

The petitioners state that striped newts appear sensitive to habitat loss from disturbance of upland soils and replacement of native longleaf pine vegetation surrounding breeding ponds. Habitat loss includes conversion of native pines to pine plantations, agriculture, or urban development. In a study comparing national forest lands with nearby pine plantations on the Woodville Karst plain in the panhandle of Florida, striped newts were present on the national forest lands but absent from pine plantations (Means and Means 2005, p. 58). Urban development can result in disruptions of dispersal between breeding sites and upland adult habitat due to paved and dirt roads, towns, power line and gas pipeline rights-of-way, and open fields. Presence of roads can be barriers to movement or can result in direct mortality during migration or both.

In a study conducted at or near historical striped newt localities in Georgia, Dodd and LaClaire (1995, p. 37) encountered the striped newt at only five widely separated locations. In Florida, Franz and Smith (1999, pp. 8-9) identified 100 historic records for the striped newt. Johnson and Owen (2005, p. 7) resurveyed the habitat surrounding these records and ranked only 26 ponds and their surrounding uplands (26 percent) as having excellent potential to support striped newt populations. A 12–year study (1995-2007) of vertebrates dependent on small, isolated wetlands was conducted in the Munson Sandhills of Apalachicola National Forest, Florida. This area has one of the largest known historical clusters of breeding ponds (18 ponds) within the species' range (Means 2007, p. 19). After the severe drought of 1999-2000, no more than five adult striped newts and no larvae were observed in the following 7 years of the study (Means 2007, p. 19). This decline was caused, at least in part, by degradation and loss of longleaf pine habitats due to various causes, especially lack of fire and hardwood invasion.

Habitat degradation and destruction of temporary pond breeding sites within forested habitat represent more specific threats. Cumulative effects of breeding pond destruction include:

(1) Increasing the dispersal distance between ponds and negatively impacting striped newt metapopulations (neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation); and

(2) Reducing the number of young individuals recruited into populations (Semlitsch and Bodie 1998, p. 1129). The number of breeding ponds known for the striped newt throughout its naturally small geographic range has undergone a drastic decline in the 67 years since the species was discovered and named.

Littoral zones (the shallow areas of pond where light penetrates and rooted plants occur) of breeding sites have been destroyed by off-road vehicles (ORVs). This area of a pond is where striped newt adults and larvae generally occur. It is also where most primary productivity occurs and is the location where the pond invertebrates and tadpoles, which are food sources for striped newts, occur. When this area is destroyed, the striped newt's food source is lost, as well as the cover that protects the salamanders from predators. The petitioners provided documentation of ORV destruction of the littoral zone in five striped newt breeding ponds.

Evaluation of Information Provided in the Petition and Available in Service Files

Data in our files supports the petitioners' assertions that habitat destruction and degradation is a substantial threat to the striped newt in Florida. In addition, in a survey of 25 historical striped newt localities in Georgia, only 2 sites (8 percent) were judged to be currently suitable for the striped newt (Stevenson 2000, p. 3).

Longleaf pine forests in the Southeast were extensively clear cut around the turn of the 19th century, and pine forest acreage has continued to decline. For example, the area of natural pine (from Virginia southeast through Texas) declined by 54 percent between 1953 and 1999 (Ware and Greis 2002, p. 46). Data from the 1980s and 1990s indicated that 28 percent of new pine plantations came from forest that was previously natural pine (Ware and Greis 2002, p. 46). Forecast models predict that southern forests will continue to be lost to urbanization (Ware and Greis 2002, p. 92). The result of this habitat loss is that longleaf pine ecosystems now occupy only 2 percent of their original range (Ware and Greis 2002, p. 66).

Effects of adjacent land-use conversions on wetland water quality can extend over comparatively large distances (Houlahan and Findlay 2004, p. 677). Therefore, conversion of forest to urban and agricultural uses, in the vicinity of striped newt breeding ponds, can have negative impacts on the quality of breeding sites.

Protection of their longleaf pine ecosystem breeding habitat, dispersal habitat, and upland adult habitat is essential for the survival of the striped newt. Population models of an amphibian (California tiger salamander) with a life cycle similar to the striped newt were more sensitive to reductions in sub-adult and adult survivorship than reproductive parameters (Trenham and Shaffer 2005, p. 1158). Striped newts may move greater than 1,640 ft (500 m) between breeding and upland sites. This data emphasizes the importance of habitat connectivity in sub-adult and adult survivorship. Habitat destruction, degradation, and fragmentation of upland habitats can severely impact the survival of a striped newt population (Marsh and Trenham 2001, p. 40; Green 2003, p. 331).

Habitat degradation, fragmentation, and destruction have all been documented within the range of the striped newt. Effects of adjacent land use to striped newt habitat are also a concern. Since striped newts require wetland breeding habitat, dispersal habitat, and adult upland habitat, all of these areas are needed to support a population. The loss of any one of these three habitat types would disrupt the life cycle of the species and ultimately cause the extinction of the striped newt population. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Information Provided in the Petition

The petitioners state that in the 1970s and 1980s, some striped newt adults from the Munson Sandhills populations were collected and sold in the pet trade. However, they believe there is no evidence to suggest over-exploitation is a cause for the decline of striped newt populations. This is supported by a review conducted in Florida on the commercial harvest of amphibians and reptiles for the pet trade in which no data were found to indicate striped newts had been collected (Enge 2005, p. 200).

Evaluation of Information Provided in the Petition and Available in Service Files

There is no evidence provided by the petitioner, or within our files, to support threats under this factor. Therefore, we concur with the petitioner that collection is not a threat to the striped newt. In summary, we find that the information provided in the petition, as well as other information in our files, does not indicate or document that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to this species. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. *Disease or Predation*

Information Provided in the Petition

The petitioners state that although many amphibians are declining worldwide due to habitat loss, other unidentified processes are causative agents in about 50 percent of declining species. They also assert that disease pathogens represent one of the potential causes of declines. Mortality and population declines due to viruses, bacteria, and fungi have been widely reported in amphibians.

The petitioners also indicate that chytridiomycosis (a disease caused by a fungus) is implicated or documented as a causative agent in many New World amphibian declines. Although no disease has been reported in the populations studied by the petitioners, they believe that the total lack of reproduction in 18 of their striped newt study ponds over a period of 8 years indicates a serious problem exists, and disease is a potential cause that needs to be considered.

Evaluation of Information Provided in the Petition and Available in Service Files

Disease is difficult to document in amphibians, and in pond-breeding amphibians that live most of their lives underground in particular. Mortality events in breeding ponds are difficult to observe because in an aquatic environment, amphibians decompose within days after dying. Mortality below ground would be even more difficult to document. In addition, the rarity of the striped newt is also a factor in documenting mortality in the species. However, there are reasons to believe that disease may be a possible factor in the decline of striped newts. Mitchell (2002, p. 3) documented the chytrid fungus (*Batrachochytrium dendrobatidis*) which causes disease in amphibians at Fort Stewart Military Installation where striped newts have been in decline over the past 10 to 15 years. Chytrid fungal infections have been reported in a newt of the same genus as the striped newt, the eastern red-spotted newt (*Notophthalmus v. viridescens)* (Ouellet *et al.* 2005, p. 1434).

Chytridiomycosis (a disease caused by a fungus) is implicated or documented as a causative agent in many New World amphibian declines (Blaustein and Johnson 2003, p. 91). The effect of the disease on striped newts is unknown; however, California newts (*Taricha torosa*) have tested positive for the pathogen in ponds where a die-off of the species was previously reported (Padgett-Flohr and Longcore 2007, p. 177). We agree that disease pathogens represent one of the potential causes of declines (Blaustein and Johnson 2003, pp. 87-92).

Another disease caused by a fungus-like protist, *Amphibiocystidium viridescens,* has been recently described and has been reported in an eastern red-spotted newt population (Raffel *et al.* 2008, p. 204). Evidence of mortality and morbidity due to infection with this disease, and the potential importance of secondary infections as a source of mortality, have been reported for this population (Raffel *et al.* 2008, p. 204). Another important issue is that lethal outbreaks of a disease appear to have complex causes and may result when other stressors, such as habitat degradation, are affecting a population (Ouellet *et al.* 2005, p. 1431).

Diseases have been documented in declining salamander populations and have caused mortality in a population of the eastern newt, which is in the same genus as the striped newt. It is likely that diseases are or have been present in striped newt populations, but due to the rarity of this species, the diseases have not been detected. Widespread habitat degradation and loss is a stressor on many existing striped newt populations and may make them more susceptible to disease outbreaks and potential population extinction. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to disease, especially given other stressors on striped newt populations such as habitat loss and habitat degradation.

D. *Inadequacy of Existing Regulatory Mechanisms*

Information Provided in the Petition

The petitioners state that the striped newt is not formally recognized at any government level in either of the States in which the species naturally occurs (Florida and Georgia).

Ephemeral ponds used for breeding by striped newts are provided little Federal regulatory protection. The U.S. Supreme Court ruled that isolated wetlands were not necessarily protected under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq.) by nature of their use as habitat for migratory birds, which are under Federal jurisdiction. Legislation to clarify this issue has been proposed since 2003, but has not been acted upon by Congress.

Ephemeral ponds are provided some protection under Florida State regulations. In Florida, wetland protection is regulated by the five Water Management Districts (WMDs) and the Florida Department of Environmental Protection. All WMDs include isolated wetlands in the Environmental Resource Permit process, which means that a permit is required for activities in, on, or over wetlands, including isolated wetlands. Below a minimum permitting threshold size of 0.5 acres (ac) (0.2 hectare (ha)), impacts to fish and wildlife and their habitat are not addressed for mitigation unless a wetland

a) Supports endangered or threatened species;
b) Is located in an area of critical state concern;
c) Is connected by standing or flowing surface water at seasonal high water level to one or more wetlands that total greater than 0.5 ac (0.2 ha); or
d) The wetland is of more than minimal value to fish and wildlife.

This may offer some protection for striped newt breeding sites. However, under Chapter 373.406 of Florida

Statutes, agriculture (which includes silviculture) has broad exemptions to alter topography provided it is not for the sole or predominant purpose of impounding or obstructing surface waters (Northwest Florida Water Management District 2008, p. 1).

Evaluation of Information Provided in the Petition and Available in Service Files

Although the striped newt has not been given protected status by Florida (Florida Fish and Wildlife Conservation Commission 2007, p. 2), it is listed as threatened in Georgia. Georgia law prohibits harassment, capture, killing, or otherwise directly causing the death of any protected animal species, and it prohibits selling, purchasing, or possessing the protected species unless authorized by permit, and prohibits destroying habitat of any protected animal species on public lands (Georgia Department of Natural Resources 2006, p. 1). However, these regulations do not protect the striped newt from destruction of its habitat on private land.

The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (ACOE) have provided guidance memoranda for implementing recent court cases addressing jurisdiction over waters of the United States under the CWA (EPA and ACOE 2001, pp. 1-7; EPA and ACOE 2008, pp. 1-13). It is clear from this guidance that isolated wetlands are not considered waters of the United States under the "navigable waters" definition and thus are not provided protection under this mechanism adopted by Congress to implement the CWA.

Wetland regulation in the United States is primarily based on wetland size (Snodgrass *et al.* 2000, p. 415). However, for amphibians, there is no relationship between wetland size and species richness. In fact, small, short hydroperiod wetlands support a unique group of species, including the striped newt (Snodgrass *et al.* 2000, p. 414). For these wetlands, size is not a good predictor for production of juvenile recruits, adults, or number of amphibian captures (Greenberg and Tanner 2005, p. 87). Most wetland regulations do not protect small, short hydroperiod wetlands and thus do not protect the unique species that breed in them, many of which are in decline.

At the time the petition was submitted to the Service, the U.S. Forest Service was drafting revisions to its regulations on the Apalachicola National Forest (ANF) to prohibit riding ORVs in or around ponds or wetlands. These revisions are now incorporated into their regulations. In addition, the Service had been advised previously that the striped newt ponds would be specifically designated off-limits to ORVs (Petrick 2006). Unfortunately, many striped newt ponds on the ANF have already been degraded by ORV use and it will take years for them to recover from past damage.

There are no existing regulatory mechanisms that protect the striped newt from destruction of its upland forested habitat on private land. There are no existing regulatory mechanisms that adequately protect the wetland breeding habitat of the striped newt. Habitat degradation, fragmentation, and destruction are the primary threats to the species. The lack of regulatory mechanisms to protect against habitat loss increases the extinction probability of the striped newt. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms, especially the lack of regulations protecting most breeding and upland habitat of the striped newt.

E. *Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Information Provided in the Petition

The petitioners state that ecological succession is a possible cause of decline in the striped newt. They presented data demonstrating loss of striped newt breeding habitat and adult upland longleaf pine habitat due to succession resulting from inadequate habitat management (insufficient prescribed burning to control hardwood encroachment into breeding ponds and upland forest; see Factor A).

Long-term regional drought has contributed to the decline or disappearance of striped newts from almost all of their breeding ponds in the Munson Sandhills of the Apalachicola National Forest in Florida during the petitioners' 12–year study. Droughts, seasonal and long-term, have been normal phenomena in the ecology of the striped newt and other ephemeral pond breeders. However, while drought might explain why so few ponds have been found with either breeding adults or larvae in the past decade, drought may mask or exacerbate other causes of population declines such as habitat degradation and loss. While the other species that breed in temporary ponds in the Munson Sandhills appear to have recovered somewhat from the drought, the striped newt has not.

Evaluation of Information Provided in the Petition and Available in Service Files

Summary data from southern forests indicate that natural succession, in conjunction with pine harvesting, is resulting in conversion of forests with pine species to those with species such as oaks and hickories (Ware and Greis 2002, p. 47). In addition, the Service has other supporting data that indicate prolonged drought has played a factor in reducing the hydroperiod of striped newt breeding sites. In southeastern Georgia, striped newt breeding ponds monitored from 1992 to 2004 remained dry for 7 of the 13 years of the study (Stevenson and Cash 2008, p. 253). In Florida, a known breeding pond in Putnam County where thousands of striped newts had previously been collected was dry for a little over 9 years before re-filling (Dodd and Johnson 2007, p. 150). Monitoring of the pond post-filling resulted in the capture of only four larval newts (Dodd and Johnson 2007, p. 150).

The threats of natural succession, as a result of inadequate management, and prolonged drought worsen the effects of high population fluctuations and local extinctions that occur under normal conditions in striped newts. The addition of these threats to the already substantial degradation, fragmentation, and destruction of striped newt habitat increases the probability of extinction of this species. In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial information indicating that the petitioned action may be warranted due to other natural or manmade factors, especially ecological succession due to fire suppression and long-term regional drought.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the striped newt throughout its entire range may be warranted. This finding is based on information provided under Factors A, C, D, and E. Habitat degradation, fragmentation, and destruction have all been documented within the range of the striped newt and represent the primary threats to the species (Factor A). Since striped newts require wetland breeding habitat, dispersal habitat, and adult upland habitat, the loss of any one of these

three habitat types would disrupt the life cycle of the species and ultimately cause the extinction of a striped newt population. Diseases have been documented in declining salamander populations and have caused mortality in a population of the eastern newt, which is in the same genus as the striped newt (Factor C). It is likely that diseases are, or have been, present in striped newt populations, but due to the rarity of this species the diseases have not been detected. Habitat loss may make striped newts more susceptible to disease outbreaks and potential population extinction. There are no existing regulatory mechanisms that protect the striped newt from destruction of its upland forested habitat on private land or that adequately protect their wetland breeding habitat (Factor D). The lack of regulatory mechanisms to protect against the primary threat of habitat loss increases the extinction probability of the striped newt. Other natural or manmade factors, such as the threats of natural succession, prolonged drought, extreme population fluctuations, and local extinctions, increase the probability of extinction of this species (Factor E). Because we have found that the petition presents substantial information indicating that listing the striped newt may be warranted, we are initiating a status review to determine whether listing the striped newt under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

A complete list of references cited in this document is available on the Internet at *http://www.regulatons.gov* and upon request from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff members of the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 4, 2010.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–6108 Filed 3–22–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register
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Tuesday, March 23, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Performance Reporting System, Management Evaluation.

OMB Control Number: 0584–0010.

Summary of Collection: The purpose of the Performance Reporting System is to ensure that each State agency and project area is operating the Supplemental Nutrition Assistance Program (SNAP) in accordance with the Act, regulations, and the State agency's Plan of Operation. Section 11 of the Food and Nutrition Act (the Act) of 2008 requires that State agencies maintain necessary records to ascertain that SNAP is operating in compliance with the Act and regulations and must make these records available to the Food and Nutrition Service (FNS) for inspection.

Need and Use of the Information: FNS will use the information to evaluate state agency operations and to collect information that is necessary to develop solutions to improve the State's administration of SNAP policy and procedures. Each State agency is required to submit one review schedule every one, two, or three years, depending on the project areas make-up of the state.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 492,222.

Food and Nutrition Service

Title: Generic Clearance to Conduct Formative Research.

OMB Control Number: 0584–0524.

Summary of Collection: This information collection is based on section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1787) Section 5 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1754) and section 11(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2020). Diet has a significant impact on the health of citizens and is linked to four leading causes of disease, which can reduce the quality of life and cause premature death. While these diet-related problems affect all Americans, they have a greater impact on the disadvantaged populations reached by many of the Food and Nutrition Service (FNS) programs. One of FNS' goals includes improving the nutrition of children and low-income families by providing access to program benefits and nutrition education. The basis of FNS' approach rests on the philosophies that all health communications and social marketing activities must be science-based, theoretically grounded, audience-driven, and results-oriented. FNS will collect information through formative research methods that will include focus groups, interviews (dyad, triad, telephone, etc.), surveys and Web-based information gathering tools.

Need and Use of the Information: FNS will collect information to provide formative input and feedback on how best to reach and motivate the targeted population. The collected information will provide input regarding the potential use of materials and products during both the developmental and testing stages. FNS will also collect information regarding effective nutrition education and outreach initiatives being implemented by State agencies that administer nutrition assistance programs to address critical nutrition program access issues.

Description of Respondents: Individuals or households.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 7,008.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–6262 Filed 3–22–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the

methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Farm Service Agency

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Summary of Collection: The Farm Service Agency (FSA) amended its agricultural loan mediation regulations to implement the requirements of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the 1994 Act) and the United States Grain Standards Act of 2000 (the Grain Standards Act). The regulation continues to provide a mechanism to States to apply for and obtain matching funds grants from USDA to supplement the expenses involved with the administration of an agricultural mediation program. FSA will collect information by mail, phone, fax, and in person.

Need and Use of the Information: FSA will collect information to determine whether the State meets the eligibility criteria to be recipients of grant funds, and secondly, to determine if the grant is being administered as provided by the Act.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 35.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,190.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Summary of Collection: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney-in-fact in connection with certain Farm Service Agency (FSA), Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs, Federal Crop Insurance Corporation (FCIC), Natural Resources Conservation Service (NRCS) and related actions must complete a Power of Attorney form and Extension Sheet to accommodate additional signatures (FSA–211/211A). The FSA–211/211A serves as evidence that the grantor has appointed another to act on their behalf for certain FSA, CCC, FCIC, RMA, and NRCS programs and related actions giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

Need and Use of the Information: FSA will collect information to verify an individual's authority to sign and act for another in the event of errors or fraud that requires legal remedies. The information collected on the FSA–211/211A is limited to the grantor's name, signature, and identification number, the grantee's name, address, and the applicable FSA, CCC, FCIC, NRCS, and RMA programs. Failure to collect and maintain the data collected on the form will limit or eliminate USDA's ability to accept an individual's signature on behalf of another individual or entity.

Description of Respondents: Individuals or households.

Number of Respondents: 11,250.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 5,861.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–6271 Filed 3–22–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 21, 2010.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include A0651–0017 Practitioner Records Maintenance, Disclosure and Discipline Before the United States Patent and Trademark Office comment@ in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Christine Nucker, Enrollment and Discipline Administrator, United States Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6071; or by e-mail to *Christine.Nucker@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Director of the United States Patent and Trademark Office (USPTO) has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2, 32 and 33). The USPTO Code of Professional Responsibility (37 CFR 10.20 to 10.112) describes how attorneys or practitioners should conduct themselves professionally and outlines their responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings rules (37 CFR 11.19 to 11.61) dictate how the USPTO can discipline attorneys and practitioners.

The USPTO Code of Professional Responsibility requires an attorney or agent to maintain complete records of all funds, securities, and other properties of clients coming into his or

her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties. These recordkeeping requirements are necessary to maintain the integrity of client property. Each State Bar requires its attorneys to perform similar record keeping.

The Code also requires an attorney or agent to report knowledge of certain violations of the Code to the USPTO. If the complaint is found to have merit, the USPTO will investigate and possibly prosecute violations of the Code. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on noncompliance with the regulations.

Practitioners who have been excluded or suspended from practice before the USPTO must keep and maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner's proof of compliance with the order.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when an individual is required to participate in the information collection.

III. Data

OMB Number: 0651–0017.

Form Number(s): There are no forms associated with this collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for profits; not-for-profit institutions.

Estimated Number of Respondents: 635 responses.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 2 to 40 hours, depending upon the complexity of the situation, to gather the necessary information, maintain the required records, prepare the complaint, and submit the various documents in this information collection to the USPTO.

Estimated Total Annual Respondent Burden Hours: 12,330 hours.

Estimated Total Annual Respondent Cost Burden: $1,275,120. At $100 per hour for a para-professional/clerical worker, the USPTO estimates $1,197,000 per year for salary costs associated with respondents for the recordkeeping requirements in this collection. For complaint/violation reporting, the USPTO predicts that half of the complaints will be filed by practitioners and that the remaining complaints will be split evenly between non-legal professionals and semi-professionals or skilled trades persons. The USPTO estimates that it will cost practitioners $325 per hour, non-legal professionals $156 per hour, and semi-professionals or skilled trades persons $60 per hour to submit a complaint, for a weighted average rate of $217 per hour. Considering these factors, the USPTO estimates $78,120 per year for salary costs associated with filing a complaint, for a total annual respondent cost burden of $1,275,120 per year.

Item	Estimated time for response (in hours)	Estimated annual responses	Estimated annual burden hours
Recordkeeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	26	445	11,570
Recordkeeping Maintenance Under Suspension or Exclusion from the USPTO	40	10	400
Complaint/Violation Reporting	2	180	360
Total	.....	635	12,330

Estimated Total Annual (Non-hour) Respondent Cost Burden: $487. There are no capital start-up costs, maintenance costs or filing fees associated with this information collection. There are, however, postage costs.

The public may submit the complaints in this collection to the USPTO by mail through the United States Postal Service. If these documents are sent by first-class mail, a certificate of mailing for each piece of correspondence, stating the date of deposit or transmission to the USPTO, may also be included. The USPTO expects that 180 complaints will be mailed to the USPTO with first-class postage, with 50% or 90 complaints weighing 2 ounces at an average cost of 61 cents for a total of $55; and 50% or 90 complaints weighing 1 pound at an average cost of $4.80 for a total of $432. Therefore, this information collection has a total of $487 in annual (non-hour) respondent cost burden.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (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 or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 16, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–6312 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non–Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for the Final Results and Rescission in Part of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 23, 2010.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0238 and (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2009, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on circular welded non–alloy steel pipe from the Republic of Korea, covering the period November 1, 2007 through October 31, 2008. *See Circular Welded Non–Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review*, 74 FR 64670 (December 8, 2009) ("*Preliminary Results*"). The final results of this administrative review were originally due no later than April 7, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final results of this review is currently April 14, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department has determined that it requires additional time to complete this review. Verification was conducted after the *Preliminary Results* and the Department needs to allow time for parties to brief the issues, provide rebuttal comments, and conduct a hearing, if requested. Moreover, the Department needs to consider all the issues raised, possibly including complex issues regarding cost methodology. Thus, it is not practicable to complete this review by April 14, 2010, and the Department is extending the time limit for completion of the final results by an additional 60 days to June 13, 2010, in accordance with section 751(a)(3)(A) of the Act. However, June 13, 2010, falls on a Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is now no later than June 14, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 17, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–6347 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV40

Marine Mammals; File No. 14118

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Becky Woodward, Ph.D., 266 Woods Hole Road, MS #50, Woods Hole, MA 02543, has applied in due form for a permit to conduct research on cetaceans.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 22, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14118 from the list of available applications. These documents are also available upon written request or by appointment in the following offices: See SUPPLEMENTARY INFORMATION.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a permit to attach tags to a variety of large and small endangered and non-endangered cetacean species. Research would occur in the North Atlantic from Maine to Texas and in the North Pacific from Alaska to California, including Hawaii. A peduncle belt type tag attachment mechanism has been developed as a noninvasive tagging option for medium to long-term cetacean studies. Two different types of peduncle belt tags would be used: (1) a form-fitting saddle pack tag which sits on the dorsal ridge of the peduncle just before the fluke insertion and (2) a peduncle-let harness which secures a towed telemetry buoy. Multiple research objectives would be addressed using data from the tags, including: (1) long-term movement and habitat use studies using satellite/GPS/depth tags, (2) medium-term acoustic studies using an audio recording package to examine transmitted and received sound, and (3) extended fine-scale behavioral ecology studies using multi-sensor data recording packages.

Initial efforts would be limited to five species. In the first year, a maximum of 10 humpback whales (*Megaptera novaeangliae*), 10 long-finned pilot whales (*Globicephala melas*), 10 short-

finned pilot whales (*G. macrorhynchus*), and 10 false killer whales (*Pseudorca crassidens*) would be tagged in the Atlantic Ocean. In the Pacific Ocean, the applicant would tag a maximum of 10 long-finned pilot whales, 10 short-finned pilot whales, 10 false killer whales, and 10 belugas (*Delphinapterus leucas*) of the Bristol Bay stock during the first year of the permit.

Based on the success of the tagging, research efforts would expand during the life of the permit to incorporate new species and to increase the number of animals tagged annually. During the second year of the permit, sperm whales (*Physeter macrocephalus*), minke whales (*Balaenoptera acutorostrata*), Blainville's beaked whales (*Mesoplodon densirostris*), Cuvier's beaked whales (*Ziphius cavirostris*), and eastern North Pacific gray whales (*Eschrichtius robustus*) would also be targeted for tagging. In year three, the applicant would add North Atlantic right whales (*Eubalaena glacialis*) and belugas of the Cook Inlet stock to the species that may be tagged.

Other research activities include photo-identification, behavioral observations, tracking and monitoring, passive acoustics, photography and video both above water and underwater, and collection of sloughed skin. Other animals, including fin (*B. physalus*) and sei (*B. borealis*) whales, may be incidentally harassed during tagging operations. See the application for specific take numbers by species and year. The permit would be valid for a period of five years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Dated: March 18, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–6336 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV41

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold a joint work session by telephone conference that is open to the public.

DATES: The telephone conference will be held Thursday, April 8, 2010, from 8:30 a.m. to 10:30 a.m. or when business for the day is completed.

ADDRESSES: A public listening station will be available at the following location:

Pacific Fishery Management Council, Small Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, 503–820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review an application for an exempted fishing permit for 2010 research activities. The CPSMT and the CPSAS will also review other available information in the Council's April meeting briefing book and will develop comments and recommendations for consideration at the April 2010 Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the CPSMT and CPSAS for discussion, those issues may not be the subject of formal action during this meeting. CPSMT and CPSAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: March 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–6313 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV42

National Marine Fisheries Service, Pacific Fishery Management Council (Pacific Council); April 9–15, 2010 Pacific Council Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 9–15, 2010. The Pacific Council meeting will begin on Saturday, April 10, 2010 at 8:00 a.m., reconvening each day through Thursday, April 15, 2010. All meetings are open to the public, except a closed session will be held from 10:00 a.m. until 11:00 a.m. on Saturday, April 10 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be

held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, Oregon 97220; telephone: 503–281–2500. The Pacific Council address is Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204 toll free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda
B. Open Comment Period
1. Comments on Non-Agenda Items
C. Enforcement Issues
1. U.S. Coast Guard Annual West Coast Fishery Enforcement Report
D. Marine Protected Areas
1. Update on Olympic Coast National Marine Sanctuary Management Plan Review
E. Habitat
1. Current Habitat Issues
F. Coastal Pelagic Species Management
1. Exempted Fishing Permit for Sardine Aerial Survey Research
G. Highly Migratory Species Management
1. National Marine Fisheries Service Report
2. Fishery Management Plan Amendment 2 – Annual Catch Limits and Accountability Measures
3. Consideration of Effort Limitation in the Albacore Tuna Fishery
4. Critical Habitat Designation for Leatherback Turtles
H. Salmon Management
1. Tentative Adoption of 2010 Ocean Salmon Management Measures for Analysis
2. Clarify Council Direction for 2010 Management Measures
3. National Marine Fisheries Service Report
4. Methodology Review Process and Preliminary Topic Selection for 2010
5. Final Action on 2010 Ocean Salmon Management Measures
I. Groundfish Management
1. Regulatory Deeming for Fishery Management Plan Amendment 20—Trawl Rationalization
2. Harvest Specifications for 2011–2012 Groundfish Fisheries
3. National Marine Fisheries Service Report
4. Part I of Management Measures for 2011–2012 Groundfish Fisheries
5. Consideration of Inseason Adjustments
6. Part II of Management Measures for 2011–2012 Groundfish Fisheries
J. Pacific Halibut Management
1. Incidental 2010 Catch Regulations in the Salmon Troll Fishery
K. Administrative Matters
1. Legislative Matters
2. Membership Appointments and Council Operating Procedures
3. Future Council Meeting Agenda and Workload Planning

SCHEDULE OF ANCILLARY MEETINGS

Friday, April 9, 2010
Ad Hoc Regulatory Deeming Committee 8 am
Groundfish Management Team 8 am
Highly Migratory Species Advisory Subpanel 8 am
Highly Migratory Species Management Team 8 am
Habitat Committee 8:30 am
Legislative Committee 1:00 pm
Scientific and Statistical Committee Highly Migratory
Species Subcommittee 1:00 pm
Saturday, April 10, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Ad Hoc Regulatory Deeming Committee 8 am
Enforcement Committee 8 am
Groundfish Advisory Subpanel 8 am
Groundfish Management Team 8 am
Highly Migratory Species Advisory Subpanel 8 am
Highly Migratory Species Management Team 8 am
Scientific and Statistical Committee 8 am
Sunday, April 11, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Ad Hoc Regulatory Deeming Committee 8 am
Enforcement Consultants 8 am
Groundfish Advisory Subpanel 8 am
Groundfish Management Team 8 am
Salmon Advisory Subpanel 8 am
Salmon Technical Team 8 am
Scientific and Statistical Committee 8 am
Tribal Policy GroupAs Needed
Tribal and Washington Technical Group As Needed
Chair's Reception 6:00 pm
Monday, April 12, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Ad Hoc Regulatory Deeming Committee 8 am
Enforcement Consultants 8 am
Groundfish Advisory Subpanel 8 am
Groundfish Management Team 8 am
Salmon Advisory Subpanel 8 am
Salmon Technical Team 8 am
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed
Tuesday, April 13, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Enforcement Consultants 8 am
Groundfish Advisory Subpanel 8 am
Groundfish Management Team 8 am
Salmon Advisory Subpanel 8 am
Salmon Technical Team 8 am
Ad Hoc Regulatory Deeming Committee As Needed
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed
Wednesday, April 14, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Groundfish Advisory Subpanel 8 am
Groundfish Management Team 8 am
Salmon Advisory Subpanel 8 am
Salmon Technical Team 8 am
Ad Hoc Regulatory Deeming Committee As Needed
Enforcement Consultants As Needed
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed
Thursday, April 15, 2010
California State Delegation 7:00 am
Oregon State Delegation 7:00 am
Washington State Delegation 7:00 am
Groundfish Management Team 8 am
Salmon Advisory Subpanel 8 am
Salmon Technical Team 8 am
Ad Hoc Regulatory Deeming Committee As Needed
Enforcement Consultants As Needed
Tribal Policy Group As Needed
Tribal and Washington Technical Group As Needed

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: March 18, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–6327 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 18, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: IES Research Training Program Surveys: Predoctoral Survey, Postdoctoral Survey, Special Education Postdoctoral Survey.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 679.
Burden Hours: 170.

Abstract: The surveys are for predoctoral and postdoctoral fellows taking part in the Institute of Education Sciences' three education training grant programs under which funds are provided to universities to support three types of training programs in the education sciences. The results of the survey will be used to both improve the fellowship programs as well as to provide information on the programs to policymakers, practitioners, and the public.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4197. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.,gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–6356 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 21, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Extension.
Title: Streamlined Clearance Process for Discretionary Grant Information Collections.
Frequency: Annually.
Affected Public: State, Local or Tribal Gov't.
Reporting and Recordkeeping Hour Burden:
Responses: 1.
Burden Hours: 1.

Abstract: Section 3505(a)(2) of the PRA of 1995 provides the OMB Director authority to approve the streamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in January of 1997. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by two months or 60 days. This is desirable for two major reasons: it would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants. This is a request to extend the clearance process for discretionary grant information collections, and continue to be streamlined in the following manner: the clearance process begins when ED submits the collection to OMB and, simultaneously, publishes a 30-day public comment period notice in the **Federal Register**. OMB has 60 days, following the beginning of the public comment period, to reach a decision on the collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4250. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–6358 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 18, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.
Title: Generic Clearance for Outreach Contests.
Frequency: Once.
Affected Public: Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden

Responses: 3,000.
Burden Hours: 18,000.
Abstract: The Department is requesting OMB approval for a generic clearance for ED's outreach contests. ED's Office of Communications and Outreach plans to host approximately four outreach contests each year as part of an ongoing effort to reach out to the general public on priority issues in the Department's national education agenda. Each contest will aim to capture and promote improving public education from works (*i.e.* videos, essays, etc.) made by individuals in a specific sub-group (*i.e.* teachers, principals, *etc*) or from the general public. The individual contests will be submitted under this generic clearance for approval as they occur throughout the year.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4201. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.,gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–6357 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Program for North American Mobility in Higher Education

ACTION: Extension; Notice extending deadline dates.

SUMMARY: On January 27, 2010, we published a notice in the **Federal Register** (75 FR 4356) inviting applications for new awards for fiscal year (FY) 2010 for the Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Program for North American Mobility in Higher Education (Application Notice). Through this notice, we extend the *Deadline for Transmittal of Applications* and the *Deadline for Intergovernmental Review* dates announced in the Application Notice.

DATES: The *Deadline for Transmittal of Applications* date, as published on pages 4356 and 4357 of the Application Notice, has been extended to April 16, 2010.

The *Deadline for Intergovernmental Review* date, as published on pages 4356 and 4357 of the Application Notice, has been extended to June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Frank Frankfort, Fund for the Improvement of Postsecondary Education, Program for North American Mobility in Higher Education, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. Telephone: (202) 502–7513.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: 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), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: March 18, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–6365 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter Schools Program (CSP): State Educational Agencies; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A.

Dates:

Applications Available: March 23, 2010.

Deadline for Transmittal of Applications: May 7, 2010.

Deadline for Intergovernmental Review: June 30, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. The Secretary awards grants to State educational agencies (SEAs) to enable them to conduct charter school programs in their States. SEAs use their CSP funds to award subgrants to non-SEA eligible applicants for planning, program design, and initial implementation of a charter school, and to support the dissemination of information about charter schools, including successful practices in charter schools.

Priorities: This competition includes four competitive preference priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(1) and 34 CFR 75.105(b)(2)(iv), competitive preference priorities 1 through 4 are from section 5202(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7221a(e).

Competitive Preference Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional forty (40) points to an application, depending on how well the application meets one or more of these priorities.

Note: In order to receive preference under these priorities, an applicant must identify the priority or priorities that it believes it meets and provide documentation, including citations and examples from their State's charter school law, supporting its claims. In order to receive points for priority 1 or to receive points for priorities 2 through 4, an application must meet priority 1 and must meet one or more of priorities 2 through 4.

An SEA that meets priority 1 but does not meet one or more of priorities 2 through 4 will not receive any points for priorities 1 through 4.

An SEA that does not meet priority 1 but meets one or more of priorities 2 through 4 will not receive any points for priorities 2 through 4.

These priorities are:

Priority 1—Periodic Review and Evaluation (10 points). The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the student academic achievement requirements and goals for charter schools as set forth under State law or the school's charter.

Priority 2—Number of High-Quality Charter Schools (10 points). The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an SEA applies for a grant under this competition.

Priority 3—One Authorized Public Chartering Agency Other than a Local Educational Agency (LEA), or an Appeals Process (10 points). The State—

(a) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(b) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

Priority 4—High Degree of Autonomy (10 points). The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

High-Quality Charter Schools in Urban or Rural Areas.

The Secretary is particularly interested in projects designed to enhance and expand a State's capacity to support high-quality charter schools in one or more geographic areas, particularly urban and rural areas, in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA. The proposed project should be based on research evidence and demonstrate effective practices in building charter school capacity through one or more of the following types of activities: (1) The dissemination of information on the implementation of the school turnaround and restart models (as described in the Notice of Final Requirements for the School Improvement Grants published in the **Federal Register** on December 10, 2009 (74 FR 65618)) in charter schools and information on best practices for turning around the public schools identified as the persistently-lowest achieving schools under Title I, Part A of the ESEA; (2) the creation of new charter schools in the vicinity of public schools closed as a consequence of a LEA implementing a restructuring plan under section 1116(b)(8) of the ESEA, provided that this is done in coordination with the LEA; or (3) the identification and replication of high-performing charter schools in "high-need communities", as this term is defined in section 2151(e)(9)(B) of the (ESEA), 20 U.S.C. 6651(e)(9)(B).

Requirements:

Applicants approved for funding under this competition must attend a two-day meeting for project directors in the Washington, DC area during each year of the project. Applicants are encouraged to include the cost of attending this meeting in their proposed budgets.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

The FY 2010 appropriation for the Charter Schools Program is $256,031,000, of which an estimated $124,237,000 will be used for this competition. Contingent upon the availability of funds, and the quality of the applications, we may make additional awards later in FY 2010 and FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $1,000,000-$15,000,000 per year.

Estimated Average Size of Awards: $8,000,000 per year.

Estimated Number of Awards: 6–10.

Note: The Department is not bound by any estimates in this notice. The estimated range, size, and number of awards are based on a single 12-month budget period. However, the Department may choose to fund more than 12 months of a project using the FY 2010 funds.

Project Period: Up to 36 months.

Note: Planning and implementation subgrants awarded by an SEA to non-SEA eligible applicants will be awarded for a period of up to three years, no more than 18 months of which may be used for planning and program design and no more than two years of which may be used for the initial implementation of a charter school. Dissemination subgrants are awarded for a period of up to two years.

III. Eligibility Information

1. *Eligible Applicants:* SEAs in States with a State statute specifically authorizing the establishment of charter schools.

Note: Non-SEA eligible applicants in States in which the SEA elects not to participate in or does not have an application approved under the CSP may apply for funding directly from the Department. The Department plans to hold a separate competition for non-SEA eligible applicants under CFDA numbers 84.282B and 84.282C.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Leslie Hankerson or Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W249, Washington, DC 20202–5970. Telephone: (202) 205–8524, or (202) 453–7698 or by e-mail: *Leslie.Hankerson@ed.gov* or *Richard.Payton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

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. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 60 pages, using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:*

Applications Available: March 23, 2010.

Deadline for Transmittal of Applications: May 7, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 30, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* The following funding restrictions apply to this competition:

Use of Funds for Post-Award Planning and Design of the Educational Program and Initial Implementation of the Charter School. A non-SEA eligible applicant receiving a subgrant under this program may use the subgrant funds only for—

(a) Post-award planning and design of the educational program, which may include (i) refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include (i) Informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources. (20 U.S.C. 7221c(f)(3))

Use of Funds for Dissemination Activities. An SEA may reserve not more than 10 percent of its grant funds to support dissemination activities (20 U.S.C. 7221c(f)(1)). A charter school may use those funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program) or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student academic achievement in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement (20 U.S.C. 7221c(f)(6)(B)(i) through (iv)).

Award Basis. In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing CSP grant and the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.233(b) and 75.217(d)(ii)).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP, CFDA number 84.282A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modification to these hours are posted in the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable document) format. If you upload a file type other than the three file types specified in this paragraph or

submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date. We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Leslie Hankerson or Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W249, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.282A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260. You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

V. Application Review Information

Application Requirements: Applicants applying for CSP grant funds must address both the following application requirements, which are based on the statute, and the selection criteria described in this notice. An applicant may choose to respond to the application requirements in the context of its responses to the selection criteria.

(i) Describe the objectives of the SEA's charter school grant program and how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(ii) Describe how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and Federal programs in which the charter school may participate;

(iii) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and a year in which the school's enrollment expands significantly;

(iv) Describe how the SEA will disseminate best or promising practices of charter schools to each LEA in the State;

(v) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(vi) If an SEA desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(vii) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

Selection Criteria: The selection criteria for this competition are from the authorizing statute for this program and 34 CFR 75.210 of EDGAR and are as follows:

SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (i) through (vii) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (i) through (v) and (vii) only. SEAs that do not address criterion (vi) because they are not proposing to use a portion of their grant funds for dissemination activities will not be penalized. The maximum possible score is 180 points for SEAs that do not propose to use grant funds to support dissemination activities and 210 points for SEAs that propose to use grant funds to support dissemination activities. The maximum possible score for each criterion is indicated in parentheses following the criterion.

(i) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (30 points).

Note: The Secretary encourages the applicant to provide a description of the objectives for the SEA's charter school grant program and to explain how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program and how the SEA will disseminate best or promising practices of charter schools to each LEA in the State.

(ii) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (30 points).

Note: The Secretary encourages the applicant to include a description of how the State's law establishes an administrative relationship between the charter school and the authorized public chartering agency and exempts charter schools from significant State or local rules that inhibit the flexible operation and management of public schools.

The Secretary also encourages the applicant to include a description of the degree of autonomy charter schools have achieved over such matters as the charter school's budget, expenditures, daily operation, and personnel in accordance with their State's law.

(iii) The number of high-quality charter schools to be created in the State (30 points).

Note: The Secretary considers the SEA's reasonable estimate of the number of new charter schools to be authorized and opened in the State during the three-year period of this grant.

The Secretary also considers how the SEA will inform each charter school in the State about Federal funds the charter school is eligible to receive and ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and during a year in which the school's enrollment expands significantly.

(iv) The quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers 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 (30 points).

Note: In addition to describing the proposed objectives of the SEA charter school grant program and how these objectives will be fulfilled, the Secretary encourages applicants to provide descriptions of the steps to be taken by the SEA to award subgrant funds to eligible applicants desiring to receive these funds, including descriptions of the peer review process the SEA will use to review applications for assistance, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(v) The SEA's plan to monitor and hold accountable authorized public chartering agencies through such activities as providing technical assistance or establishing a professional development program, which may include providing authorized public chartering agency staff with training and assistance on planning and systems development, so as to improve the capacity of those agencies to authorize, monitor, and hold accountable charter schools (30 points).

(vi) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6) of the ESEA, the quality of the dissemination activities (15 points) and the likelihood that those activities will improve student academic achievement (15 points).

Note: The Secretary encourages the applicant to describe the steps to be taken by the SEA to award these funds to eligible applicants, including a description of the peer review process the SEA will use to review applications for dissemination, the timelines for awarding such funds, and how the SEA will assess the quality of the applications.

(vii) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data (30 points).

Note: The Secretary encourages the applicant to include a strong evaluation plan in the application narrative and to use that plan, as appropriate, to shape the development of the project from the beginning of the grant period. The Secretary encourages the applicant to design the plan so that it includes (a) benchmarks to monitor progress toward specific project objectives and (b) outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. In its plan, we encourage the applicant to identify the individual and/or organization that will serve as the evaluator and to describe the qualifications of the evaluator. We also encourage the applicant to describe, in its application, the evaluation design, indicating: (1) The types of data that will be collected; (2) when various types of data will be collected; (3) the methods that will be used; (4) the instruments that will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

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). 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. *Reporting:* 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 multi-year 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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has set two performance indicators to measure progress toward this goal: (1) The number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more years).

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Leslie Hankerson or Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W249, Washington, DC 20202–5970. Telephone: (202) 205–8524 or (202) 453–7698 or by e-mail: *Leslie.Hankerson@ed.gov* or *Richard.Payton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. 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 computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** of section VII in this notice.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 17, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–6370 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter Schools Program (CSP) Grants for National Leadership Activities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282N

Dates:

Applications Available: March 23, 2010.

Date of Pre-Application Meeting: April 8, 2010.

Deadline for Transmittal of Applications: May 14, 2010.

Deadline for Intergovernmental Review: July 12, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools, and to evaluate the effects of charter schools, including their effects on students, student academic achievement, staff, and parents. Section 5205 of the Elementary and Secondary Education Act of 1965, (ESEA) (20 U.S.C. 7221d), authorizes the Secretary to award grants under the CSP to carry out national activities.

For FY 2010, the Department is holding a grant competition for national activities projects listed in section 5205(a) of the ESEA. Grants for national activities projects under the CSP are highly competitive. Applicants should make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed project and of the approach the project would take to addressing those problems or issues.

Priority: This notice includes one invitational priority. Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010 this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

This priority is:

High-Quality Charter Schools in Urban or Rural Areas.

The Secretary is particularly interested in projects designed to enhance and expand a State's capacity to support high-quality charter schools in one or more geographic areas, particularly urban and rural areas, in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA. A project meeting this priority should be based on research evidence and demonstrate effective practices through one or more of the following types of activities: (1) The dissemination of information on the implementation of school turnaround and restart models (as described in the Notice of Final Requirements for the School Improvement Grants published in the **Federal Register** on December 10, 2009 (74 FR 65618) (SIG Notice)) in charter schools and information on best practices for turning around a State's persistently lowest-achieving schools under Title I (also as identified by the State under the SIG notice); (2) opening new charter schools in the vicinity of schools closed as a consequence of a local educational agency (LEA) implementing a restructuring plan under section 1116(b)(8) of the ESEA, or schools identified as persistently lowest-achieving, provided this is done in coordination with the local educational agency (LEA); (3) the identification and replication of high-performing charter schools in "high-need communities", as this term is

defined in section 2151(e)(9)(B) of the ESEA (20 U.S.C. 6651(e)(9)(B)); (4) the creation and dissemination of models for high-quality authorizing practices that hold charter schools accountable for increasing student achievement and that provide for their closure if they do not raise achievement; (5) activities that improve the academic performance of African-American students, Hispanic students, students with disabilities, English learners, or children from low-income families; (6) recruitment, training, ongoing professional development, and retention of highly qualified teachers, including highly qualified mid-career professionals and recent college graduates who have not majored in education, as teachers in "high-need" charter schools (charter schools meeting the definition of a high-need school in section 2304(d)(3) of the ESEA (20 U.S.C. 6674(d)(3)); or (7) increasing public or private funding options for charter school facilities and access to existing public school buildings.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

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 only to institutions of higher education.

Note: The regulations in 34 CFR part 99 apply only to an educational agency or institution.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The FY 2010 appropriation for the Charter Schools Program is $256,031,000, of which an estimated $3,500,000 will be used for this competition. Contingent upon the availability of funds and the quality of the applications received, we may make additional awards later in FY 2010 and in FY 2011 from the list of unfunded applications from this competition.

Estimated Range of Awards: $250,000–$750,000 per year.

Estimated Average Size of Awards: $500,000 per year.

Estimated Number of Awards: 5–7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to three years.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) and local educational agencies (LEAs) in States with a State statute specifically authorizing the establishment of charter schools; and public and private non-profit organizations, including non-profit charter management organizations. Eligible applicants may also apply as a group or consortium.

2. *Cost-Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Annual Meeting Attendance.* Applicants approved for funding under this competition must attend a two-day meeting for project directors in the Washington, DC area during each year of the project. Applicants are encouraged to include the cost of attending this meeting in their proposed budgets.

IV. Application and Submission Information

1. *Address to Request Application Package:* Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W225, Washington, DC 20202–5970. Telephone: (202) 453–7698 or by e-mail: *richard.payton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

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. The Secretary strongly encourages applicants to limit Part III to the equivalent of no more than 50 pages, using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: March 23, 2010.

Date of Pre-Application Meeting: The Department will hold a pre-application meeting for prospective applicants on April 8, 2010, from 1:00 p.m. to 3:00 p.m. at the U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC. Interested parties are invited to participate in this meeting to discuss the purpose of the program, absolute and competitive priorities, selection criteria, application requirements, submission requirements, and reporting requirements. Interested parties may participate in this meeting either by conference call or in person. This site is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the Seventh Street and Maryland Avenue exit of the L'Enfant Plaza station. After the meeting, program staff will be available from 3:00 p.m. to 5:00 p.m. on that same day to provide information and technical assistance through individual consultation.

Individuals interested in attending this meeting are encouraged to pre-register by e-mailing their name, organization, and contact information with the subject heading PRE–APPLICATION MEETING to *CharterSchools@ed.gov.* There is no registration fee for attending this meeting. For further information contact Richard Payton, U.S. Department of Education, Office of Innovation and Improvement, Room 4W225, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 453–7698 or by e-mail: *richard.payton@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

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. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Deadline for Transmittal of Applications: May 14, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 12, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* An eligible applicant receiving a grant under this program may use the grant funds only for—

(a) *Access to Federal Funds.* Disseminating information to charter schools about Federal funds they are eligible to receive and other Federal programs in which they may be eligible to participate; and providing assistance to charter schools in applying for Federal education funds that are allocated by formula.

(b) *Research.* Conducting evaluations or studies on the impact of charter schools on student academic achievement and other issues concerning charter schools, such as teacher qualifications and retention, and the demographic makeup (*e.g.*, age, race, gender, disability, English learners, and previous public school enrollment) of charter school students.

(c) *Technical Assistance and Planning.* Assisting States and charter school developers with all aspects of planning, design, and implementing a charter school. Some areas in which newly created charter schools face challenges include program design, curriculum development, defining the school's mission, hiring staff, drafting charter applications, student recruitment and admissions, public relations and community involvement, governance, acquiring equipment and services, budget and finances, facilities, assessment and accountability, parental involvement, serving students with disabilities and English learners, and collaborating with other entities to provide high-quality instruction and services.

(d) *Best or Promising Practices.* Disseminating information on best or promising practices in charter schools to other public schools, including charter schools.

(e) *Facilities.* Collecting and disseminating information about programs and financial resources available to charter schools for facilities, including information about successful programs and how charter schools can access private capital.

(f) *Quality Authorizing.* Providing technical assistance to authorized public chartering agencies in order to increase the number of high-performing charter schools, including assisting authorized public chartering agencies in designing rigorous application processes; developing strong accountability and evaluation systems; building or enhancing capacity to authorize, monitor, and hold accountable charter schools; and closing persistently low-performing charter schools.

(g) *School Improvement.* Assisting LEAs in the planning and startup of charter schools as a means of implementing school turnaround or restart intervention models, or both, in persistently low-performing schools in order to increase student achievement, decrease the achievement gaps across student subgroups, and increase the rates at which students graduate from high school prepared for college and careers.

Award Basis. In determining whether to approve a grant award and the amount of such award, the Department will consider, among other things, the amount of any carryover funds the applicant has under an existing CSP grant and the applicant's performance and use of funds under a previous or existing award under any Department program (34 CFR 75.217(d)(ii) and 75.233(b)).

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Charter School Programs—CFDA number 84.282N—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and

6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dean Kern, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W231, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282N, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282N, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria. The selection criteria for this competition are in 34 CFR 75.210 and are as follows.

In evaluating an application, the Secretary considers the following criteria:

(i) Need for project (20 points). The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) Significance (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers—

(1) The national significance of the proposed project.

(2) 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.

(3) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(iii) Quality of the project design (20 points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers—

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) Quality of project services (20 points). The Secretary considers the quality of the services to be provided by the proposed project. 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 applicants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers—

(1) The extent to which the services provided reflect up-to-date knowledge from research and effective practice.

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(v) Quality of project personnel (20 points). The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of the project personnel, the Secretary considers the extent to which the applicant encourages 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. In addition, the Secretary considers the following factors—

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(vi) Quality of the management plan (20 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers 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.

(vii) Quality of the project evaluation (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also 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. *Reporting:* 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 multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure progress toward this goal: (1) the number of charter schools in operation around the Nation, and (2) the percentage of charter school students who are achieving at or above the proficient level on State examinations in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

All grantees will be expected, as applicable, to submit an annual performance report documenting their contribution in assisting the Department in meeting these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W225, Washington, DC 20202–5970. Telephone: (202) 453–7698 or by e-mail: *richard.payton@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. 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 computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 17, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–6378 Filed 3–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement Overview Information; Ready To Teach Program—General Programming Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.286A

Dates:

Applications Available: March 23, 2010.

Deadline for Notice of Intent To Apply: April 22, 2010.

Date of Meeting for Prospective Applicants: April 15, 2010.

Deadline for Transmittal of Applications: May 24, 2010.

Deadline for Intergovernmental Review: July 21, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program:

The Ready to Teach program (RTT) supports the use of telecommunications to improve teaching by assisting elementary school and secondary school teachers to prepare all students to achieve challenging State academic content and student academic achievement standards in core curriculum areas.

Background:

In order to improve the Nation's lowest-achieving schools, the Secretary recognizes the need to improve the professional development of teachers, including early childhood professionals. In this competition, the Secretary encourages applicants to create new professional development models that incorporate emerging technologies and innovative strategies into digital professional development content and to disseminate products and results through open educational resources (OER).

Through this competition, the Department intends to promote telecommunications innovations that support effective teaching. Examples of using telecommunications innovations to support effective teaching include the distribution of digital professional development content through cell phone applications, or the creation of new games, simulations, or other electronic applications that improve the academic achievement of high-need students and are available as open educational resources through the Internet, online portals, or other digital media platforms.

In addition, the Secretary encourages applicants to consider developing rigorous research and evaluation strategies to increase knowledge about the impact of educational technology on improving teaching practices and student outcomes.

Statutory Requirements: Under the requirements for this program in section 5477 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to be eligible to receive a Ready to Teach General Programming Grant, an applicant must submit an application that—

a. Demonstrates that the applicant will use the public broadcasting infrastructure, the Internet, and school digital networks, where available, to deliver video and data in an integrated service to train teachers in the use of materials and learning technologies for achieving challenging State academic content and student academic achievement standards;

b. Ensures that the project will be conducted in cooperation with appropriate State educational agencies, local educational agencies, and State or local nonprofit public telecommunications entities; and

c. Ensures that a significant portion of the benefits available for elementary schools and secondary schools from the project will be available to schools of local educational agencies that have a high percentage of children counted under Part A of Title I of the ESEA.

Priorities: This competition includes two invitational priorities and one competitive preference priority.

Invitational Priorities: Under this competition we are particularly interested in applications that address the following priorities. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1. Applications that use innovative strategies to deliver professional development content (such as through the Internet, online portals, learning modules, games, simulations, cell phones, and other technological

applications or emerging digital media platforms) to teachers serving high-need students, including early learners, in the persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program, 74 FR 65618; 75 FR 3375).

Invitational Priority 2. Applications that propose to develop and disseminate products and project results through OER. OER are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others. This invitational priority encourages applications that include plans that describe how the applicants will make the grant products and resources developed with these grant funds freely available through various media platforms, in an effort to share digital professional development methodologies, proven teaching strategies, and lessons learned in implementing RTT projects with other educators, including early learning professionals.

Note: Each applicant addressing this priority is encouraged to include plans for how the applicant will disseminate resources, for example, through a Web site that is freely available to all users. Each applicant is also encouraged to include plans specifying how the project will identify quality resources, such as lesson plans, primary source activities, reading lists, teacher reflections, and videos of quality teaching and student learning in action, for presentation to other educators.

Competitive Preference Priority: This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586). For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 20 points to an application, depending on how well the application meets this priority. These points are in addition to any points the application earns under the selection criteria.

When using the priority to give competitive preference to an application, we will review the applications using a two-stage review process. In the first stage, we will review the applications without taking the competitive preference priority into account. In the second stage of the process, we will review the applications rated highest in the first stage of the process to determine whether they will receive the competitive preference points. We will consider awarding competitive preference points only to those applicants with top-ranked scores based on the selection criteria.

This priority is:

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous, scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—e.g., students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—e.g., students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cut-off point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

We encourage applicants to take advantage of the competitive preference priority if their model allows them to do so.

Definitions:

As used in the competitive preference priority in this notice—

Scientifically based research (section 9101(37) of the ESEA, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and

across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Random assignment or experimental design means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

Quasi-experimental designs include several designs that attempt to approximate a random assignment design.

Carefully matched comparison groups design means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

Regression discontinuity design means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score ("cut score") are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the "cut score" is established at the point where the program funds available are exhausted.

Single subject design means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

Treatment reversal design means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

Multiple baseline design means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

Interrupted time series design means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

Program Authority: 20 U.S.C. 7257–7257b; 7257d.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

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 only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,650,000.

Estimated Range of Awards: $2,662,000–$5,325,000 for the first year of the project. Funding for the second, third, and fourth years is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $2,662,000.

Estimated Number of Awards: 2–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to receive a General Programming Grant, an applicant must be a nonprofit telecommunications entity or partnership of such entities.

Note: If more than one non-profit telecommunications entity wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 of EDGAR.

2. *Cost Sharing or Matching:* An applicant submitting an application under this competition for General Programming Grants (84.286A) is not required to provide matching funds.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program as follows: CFDA number 84.286A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this program. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to Sharon Harris at *readytoteach@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding.

Meeting for Prospective Applicants: The Ready to Teach program will hold a webinar for prospective applicants on April 15, 2010 from 2:00 p.m.–3:00 p.m.

Washington, DC time. The conference will offer information about how to apply for a Ready to Teach grant. For information and to register, please send an e-mail to *Sharon.Harris@ed.gov*.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (Part III) to the equivalent of no more than 40 single-sided pages, using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 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 one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: March 23, 2010.

Deadline for Notice of Intent to Apply: April 22, 2010.

Date of Meeting for Prospective Applicants: April 15, 2010.

Deadline for Transmittal of Applications: May 24, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 21, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Under section 5485 of the ESEA (20 U.S.C. 7257d), an entity that receives a General Programming Grant may not use more than five percent of the amount received under the grant for administrative purposes. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Ready to Teach Program—CFDA Number 84.286A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sharon Harris, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W216, Washington, DC 20202–5980. FAX: (202) 205–5720.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.286A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.286A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The Note following selection criterion (6) is guidance to help applicants prepare their applications; it is not required by statute or regulations. The selection criteria are as follows:

(1) *Need for project (15 points).* The Secretary considers the need for the proposed project by considering the following factors:

(a) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance (10 points).* The Secretary considers the significance of the proposed project by considering the likely utility of the products (such as

information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(3) *Quality of the project design (25 points).* The Secretary considers the quality of the design of the proposed project by considering the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(b) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) *Quality of project personnel (10 points).* The Secretary considers the quality of the personnel who will carry out the proposed project by considering the extent to which the applicant encourages 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. In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(5) *Quality of the management plan (20 points).* The Secretary considers the quality of the management plan for the proposed project by considering the following factors:

(a) 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.

(b) 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.

(c) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(6) *Quality of the project evaluation (20 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project by considering the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note on Factors Applicants May Wish to Consider in Developing an Evaluation Plan: The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

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). 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. *Grant Administration:* Applicants should budget for a one-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* 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 multi-year 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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measure for the Ready to Teach Grant Program: The percentage of digital professional development products deemed to be of high quality by a panel of experts in the field.

This measure constitutes the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to the GPRA measure in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting the Department's indicator.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sharon Harris, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W216, Washington, DC 20202–5980. Telephone: (202) 205–5880 or by e-mail: *readytoteach@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. 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 computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 17, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–6286 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition; Overview Information; Language Enhancement, and Academic Achievement for Limited English Proficient Students; Foreign Language Assistance Program—State Educational Agencies (SEAs); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.293C.

Dates:

Applications Available: March 23, 2010.

Deadline for Notice of Intent to Apply: April 7, 2010.

Deadline for Transmittal of Applications: April 22, 2010.

Deadline for Intergovernmental Review: May 24, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to SEAs for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. An SEA that receives a grant under this program must use the funds to support programs that promote systemic approaches to improving foreign language learning in the State.

Priorities: This notice involves two competitive preference priorities. Competitive Preference Priority #1 is from the notice of final priority for this program published in the **Federal Register** on May 19, 2006 (71 FR 29222). In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority #2 is from Title V, Part D, Subpart 9, section 5493 of the Elementary and Secondary Education Act of 1965, as amended.

Competitive Preference Priority #1. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Critical Need Languages

This priority supports projects that establish, improve, or expand foreign language learning, primarily during the traditional school day, within grade kindergarten through grade 12, and that exclusively teach one or more of the following less commonly taught languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Competitive Preference Priority #2: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority over an application of comparable merit that does not meet the priority.

This priority is:

Consortia Applicants

Applications describing programs that are carried out through a consortium comprised of the SEA receiving the grant and an elementary or secondary school.

Program Authority: 20 U.S.C. 7259a–7259b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98 and 99. (b) The notice of final priority, published in the **Federal Register** on May 19, 2006 (71 FR 29222).

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $900,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applications from this competition.

Estimated Range of Awards: $50,000–$250,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Deputy Secretary and Director for the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months. Applicants that request funding for a project period of other than 36 months will be deemed ineligible and their applications will not be read.

III. Eligibility Information

1. *Eligible Applicants:* SEAs.

2. *Cost Sharing or Matching:* Title V, Part D, Subpart 9, section 5492 of the Elementary and Secondary Education Act of 1965, as amended, requires that the Federal share of a project funded under this program for each fiscal year be 50 percent. For example, an SEA requesting $100,000 in Federal funding for its foreign language program each fiscal year must match that amount with $100,000 of non-Federal funding for each year. 34 CFR 80.24 of EDGAR addresses Federal cost-sharing requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Yvonne Mathieu, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C138, Washington, DC 20202–6510. Telephone: (202) 401–1461 or by e-mail: *Yvonne.Mathieu@ed.gov.*

Note: Please include "84.293C FLAP SEA Application Request" in the subject heading of your e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: If you intend to apply for a grant under this competition, contact Yvonne Mathieu by e-mail: *Yvonne.Mathieu@ed.gov.*

Note: Please include "84.293C FLAP SEA Intent to Apply" in the subject heading of your e-mail. Your e-mail should specify: (1)

The SEA name and (2) proposed language(s) of instruction. We will consider an application submitted by the deadline date for transmittal of applications, even if the applicant did not provide us notice of its intent to apply.

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. You must limit the application narrative to the equivalent of no more than 35 pages using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 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 two-page abstract. However, the page limit does apply to all of the application narrative section in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 23, 2010.

Deadline for Notice of Intent to Apply: April 7, 2010.

Deadline for Transmittal of Applications: April 22, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 24, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Foreign Language Assistance Program—State Educational Agencies, CFDA number 84.293C, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C144, Washington, DC 20202–6510. FAX: (202) 260–5496.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293C), 550 12th Street, SW., Room 7041, Potomac Center Plaza,Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the following paragraphs. The *Notes* we have included after each criterion are guidance to assist applicants in understanding each criterion as they prepare their applications and are not required by statute or regulation (except that the requirement described in Note I under paragraph (b) is in statute and the requirement described in the Note under paragraph (d) is in regulation. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Need for Project (5 Points)

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Notes for (a) Need for project

Note I: In addressing this criterion, applicants may want to describe how the SEA identified the specific foreign language needs in the State, including gaps or weaknesses in foreign language learning, and describe how the proposed project will address gaps or weaknesses in foreign language learning through systemic approaches.

Note II: In addressing this criterion, applicants may also want to describe how the proposed project will meet the needs in the State by training teachers and developing assessments, standards, or curriculum.

(b) Quality of the Project Design (60 Points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(5) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(6) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

Notes for (b) Quality of the Project Design

Note I: Please note that Title V, Part D, Subpart 9, section 5492 of the Elementary and Secondary Education Act of 1965, as amended, provides grants for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. An SEA that receives a grant under this program must use the funds to support programs that promote systemic approaches to improving foreign language learning in the State.

Note II: In addressing this criterion, applicants may want to consider describing how the project is aligned with standards for foreign language learning and performance guidelines for K–12 learners.

Note III: In addressing this criterion, for school-based projects, applicants may want to describe how their performance objectives are ambitious but realistic; raise expectations for student achievement; provide ways for students to demonstrate progress each year of the grant; and are achievable using the target languages, the planned model of instruction, and contact hours in the targeted languages.

Note IV: In discussing this criterion, applicants may want to describe how program objectives are aligned with the Government Performance and Results Act (GPRA) measures for this program.

Note V: In addressing this criterion, applicants may want to discuss how the project design is based on a review of the relevant literature, including a review of available curriculum, instructional materials, and assessments in the target language.

(c) Quality of Project Personnel (10 Points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages 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. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(d) Quality of the Management Plan (10 Points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) 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.

(2) 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.

Note for (d) Quality of the Management Plan: Please note that 34 CFR 75.112(b) of EDGAR requires an applicant to include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective.

(e) Quality of the Project Evaluation (15 Points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(4) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Notes for (e) Quality of the Project Evaluation

Note I: Grantees will be expected to report on the progress of their evaluation through the required annual performance report as discussed in section VI.4 of this notice.

Note II: In addressing this criterion, applicants may want to use the evaluation plan to shape the development of the project from the beginning of the grant period. Applicants also may want to include benchmarks to monitor progress toward specific project objectives, including ambitious student foreign language proficiency objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

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). 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. *Grant Administration:* Applicants should budget for a two-day meeting for project directors in Washington, DC, and a FLAP meeting at the American Council on the Teaching of Foreign Languages (ACTFL) Conference in Boston, MA, November 19–21, 2010. Funding for the meeting and conference should be budgeted in each subsequent year of the grant.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an annual performance report that provides the most current performance and financial expenditure information as specified 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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* In response to the Government Performance and Results Act (GPRA), the Department developed one objective for evaluating the overall effectiveness of the FLAP SEA program.

Objective 1: To improve foreign language teaching.

Measure 1.1 of 2: The number of teachers in the State receiving training as a result of the FLAP SEA project(s).

Measure 1.2 of 2: The number of schools that use the assessments, standards, or curriculum developed by the FLAP SEA project(s) in the State.

We will expect each SEA funded under this competition to document how its project is helping the Department meet these performance measures. Grantees will be expected to report on progress in meeting these performance measures in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C144, Washington, DC 20202–6510. Telephone: (202) 401–1443 or by e-mail: *rebecca.richey@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. 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 computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 18, 2010.

Richard Smith,

Acting Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. 2010–6369 Filed 3–22–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 08–70–LNG]

Freeport LNG Development, L.P.; Application To Amend Blanket Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application to Amend Blanket Authorization.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on March 4, 2010, by Freeport LNG Development, L.P. (Freeport LNG), requesting an amendment to its blanket authorization to export liquefied natural gas (LNG) granted by DOE/FE on May 28, 2009, in DOE/FE Order No. 2644, and amended on September 22, 2009, in DOE/FE Order No. 2644–A. Freeport LNG seeks authorization to export foreign-sourced LNG from its Quintana Island, Texas facilities to any other country (in addition to those already specifically listed in DOE/FE Order No. 2644, as amended) with capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy.

The application is filed under section 3 of the Natural Gas Act (NGA) (15 U.S.C. 717b), as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102–486), DOE Delegation Order No. 00–002.00I (Nov. 10, 2009), and DOE Redelegation Order No. 00–002.04D (November 6, 2007). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, April 22, 2010.

ADDRESSES: U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Fossil Energy and Energy Efficiency, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Freeport LNG is a Delaware limited partnership with one general partner, Freeport LNG–GP, Inc., a Delaware corporation, which is owned 50% by an individual, Michael S. Smith, and 50% by ConocoPhillips Company (ConocoPhillips). Freeport LNG's limited partners are: (1) Freeport LNG Investments, LLLP, a Delaware limited liability limited partnership, which owns a 45% limited partnership interest in Freeport LNG; (2) Cheniere FLNG, L.P., a Delaware limited partnership, which owns a 30% limited partnership interest in Freeport LNG; (3) Texas LNG Holdings LLC, a Delaware limited liability company and wholly-owned subsidiary of The Dow Chemical Company, which owns a 15% limited

partnership interest in Freeport LNG; and (4) Turbo LNG LLC, a Delaware limited liability company and wholly-owned subsidiary of Osaka Gas Co., Ltd., which owns a 10% limited partnership interest in Freeport LNG.

The Federal Energy Regulatory Commission (FERC) has authorized Freeport LNG to site, construct and operate a new LNG import, storage, and vaporization terminal on Quintana Island, Texas and an associated 9.6-mile long send-out pipeline which will be utilized to import up to 1.55 billion cubic feet (Bcf) per day of LNG.[1] On July 1, 2008, FERC issued a letter Order granting Freeport LNG's request to commence service at its Quintana Island import terminal.

On January 15, 2008, FE granted Freeport LNG blanket authorization to import up to 30 Bcf of LNG from various international sources for a two-year term beginning March 1, 2008.[2] On May 28, 2009, FE granted Freeport LNG blanket authorization to export on its own behalf or as agent for others, LNG that previously had been imported from foreign sources in an amount up to the equivalent of 24 Bcf of natural gas on a short-term or spot market basis from Freeport LNG's facilities on Quintana Island, Texas to the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China and/or Taiwan over a two-year period commencing May 28, 2009.[3] Further, on September 22, 2009, Freeport LNG's blanket authorization, DOE/FE Order No. 2644 was amended to include the export of previously imported LNG from Freeport LNG's Quintana Island, Texas facilities to Canada and Mexico.[4]

Current Application

In the instant application, Freeport LNG seeks to further amend DOE/FE Order No. 2644 for authorization to export foreign-sourced LNG from its Quintana Island, Texas facilities to any other country (in addition to those already specifically listed in DOE/FE Order No. 2644, as amended) with capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy.

Public Interest Considerations

In support of its application, Freeport LNG states that pursuant to Section 3 of the NGA, FE is required to authorize exports to a foreign country unless there is a finding that such exports "will not be consistent with the public interest."[5] Section 3 thus creates a statutory presumption in favor of approval of this Amendment which opponents bear the burden of overcoming.[6] Further, in evaluating an export application, FE applies the principles described in DOE Delegation Order No. 0204–111, which focuses primarily on domestic need for the gas to be exported, and the Secretary's natural gas policy guidelines.[7] Finally, as detailed below, Freeport LNG states that their proposal to export LNG to those countries with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy is consistent with Section 3 of the NGA and FE's policy.

Freeport LNG states that in DOE/FE Order No. 2644, which granted Freeport LNG blanket authorization to export up to 24 Bcf (cumulative) of previously imported foreign-sourced LNG, FE determined that there presently is no domestic reliance on the volumes of imported LNG that Freeport LNG would seek to export. Freeport LNG also states that most recently, FE made the same finding in granting ConocoPhillips blanket authority to export from the Freeport LNG Quintana Island terminal up to 500 Bcf of previously imported LNG.[8] FE stated that "the record shows there is sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on the LNG which ConocoPhillips seeks to export * * *."[9]

Freeport LNG is requesting further authorization, for itself and as agent for third parties, to periodically export LNG imported under DOE/FE Order No. 2457, as well as LNG of third parties, to any other country not specifically identified in DOE/FE Order No. 2644 with the capacity to import LNG via ocean-going vessel and with which trade is not prohibited by U.S. law or policy, should market conditions in the United States not support domestic sale of those supplies. Freeport LNG states that Amendment of Freeport LNG's short term blanket authorization as requested herein would provide Freeport LNG with the necessary flexibility it requires to respond to changes in domestic and global markets for natural gas and LNG. The additional flexibility sought herein would further encourage Freeport LNG to obtain and store spot market LNG cargoes. Natural gas derived from imported LNG will be available to supply local markets when conditions support it, and will thereby serve to moderate U.S. gas price volatility. As such, Freeport LNG states the requested export authorization is consistent with the public interest.

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00I (Nov. 10, 2009) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). In reviewing this LNG export application amendment, DOE will consider any changes that have occurred since the original application in the following areas: domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

Freeport LNG asserts the proposed authorization is in the public interest. Under section 3 of the NGA, as amended, an LNG export from the United States to a foreign country must be authorized unless "the proposed exportation will not be consistent with the public interest." Section 3 thus creates a statutory presumption in favor of approval of this application, and parties opposing the authorization bear the burden of overcoming this presumption.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

Freeport LNG states that there would be no changes required to the Freeport LNG facilities for the proposed exportation of LNG. Consequently, granting this application will not be a Federal action significantly affecting the human environment within the meaning of NEPA.

[1] Freeport LNG Order Granting Authorization Under Section 3 of the NGA, 107 FERC ¶ 61,278 (2004), Order Granting Rehearing and Clarification, 108 FERC ¶ 61,253 (2004); Order Amending Section 3 Authorization, 112 FERC ¶ 61,194 (2005).

[2] *Freeport LNG,* DOE/FE Order No. 2457, January 15, 2008 (2 FE ¶ 71,579).

[3] *Freeport LNG.,* DOE/FE Order No. 2644, May 28, 2009.

[4] *Freeport LNG,* DOE/FE Order No. 2644–A, September 22, 2009.

[5] 15 U.S.C. 717b.

[6] *In Panhandle Producers and Royalty Owners Associations* v. *ERA*, 822 F.2d 1105, 1111 (D.D. Circ. 1987), the court found that Section 3 of the NGA "requires an affirmative showing of inconsistency with the public interest to deny an application" and that a "presumption favoring * * * authorization * * * is completely consistent with, if not mandated by, the statutory directive."

[7] See 49 FR 6684, February 22, 1984.

[8] *ConocoPhillips,* DOE/FE Order No. 2731, November 30, 2009.

[9] Id. at p. 11.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the application must file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Oil and Gas Global Security and Supply at the address listed above.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by Freeport LNG is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The application is also available electronically by going to the following Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on March 17, 2010.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2010–6319 Filed 3–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting correction.

On March 9, 2010, the Department of Energy published a notice announcing an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). In that notice, the starting time for the Thursday, March 25, 2010, meeting listed under **DATES** was indicated as 1 p.m. The starting time has been updated. The open meeting will now begin at 11 a.m. on Thursday, March 25, 2010, break at 12:30 p.m., and reconvene at 1:30 p.m.

Also, in that notice under PUBLIC PARTICIPATION it was indicated that individuals and representatives of organizations may offer comments at the end of the meeting on Friday, March 26, 2010. Those wishing to speak at the end of the meeting should register to do so beginning at 8 a.m. on Friday morning, March 26, 2010. The time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. Those unable to attend the meeting or do not have sufficient time to speak may send their written statement to Timothy A. Frazier, U.S. Department of Energy 1000 Independence Avenue, SW., Washington DC 20585, or e-mail *CommissionDFO@nuclear.energy.gov.*

Additionally, every effort is being made to live webcast the meeting. Additional information will be available regarding the webcast via the Department of Energy Web site at *http://www.energy.gov.*

Issued in Washington, DC on March 18, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–6364 Filed 3–22–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 16, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1150–001; ER07–964–002; ER07–1232–003.

Applicants: Tucson Electric Power Company; UNS Electric, Inc.; UniSource Energy Development Company.

Description: Tucson Electric Power Co. submits a supplement to Triennial Market Power Update.

Filed Date: 03/11/2010.

Accession Number: 20100316–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, April 1, 2010.

Docket Numbers: ER00–2885–025; ER05–1232–020; ER09–335–006; ER07–1112–009; ER07–1113–009; ER07–1116–008; ER07–1117–011; ER07–1118–010; ER07–1356–011; ER07–1358–010; ER01–2765–024; ER09–609–002; ER02–2102–024; ER03–1283–019; ER09–1141–003;

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC,BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Rayle LLC.

Description: JPMorgan Sellers submit Supplement of Red Hills Notice of Non-Material Change in Status.

Filed Date: 03/12/2010.

Accession Number: 20100312–5120.

Comment Date: 5 p.m. Eastern Time on Friday, April 2, 2010.

Docket Numbers: ER01–2765–025; ER00–2885–026; ER05–1232–021; ER09–335–007; ER07–1112–010; ER07–1113–010; ER07–1116–009; ER07–1117–012; ER07–1118–011; ER07–1356–012; ER07–1358–011; ER09–609–003; ER02–2102–025; ER03–1283–020; ER09–1141–005.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC,BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility

Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Rayle LLC.

Description: JPMorgan Sellers submit Supplement of Rail Splitter Notice of Non-Material Change in Status.

Filed Date: 03/12/2010.

Accession Number: 20100312–5117.

Comment Date: 5 p.m. Eastern Time on Friday, April 2, 2010.

Docket Numbers: ER05–1232–018; ER09–335–004; ER07–1112–008; ER07–1113–008; ER07–1116–007; ER07–1117–009; ER07–1118–009; ER07–1356–010; ER07–1358–009; ER00–2885–024; ER01–2765–023; ER09–609–001; ER02–2102–023; ER03–1283–018; ER09–1141–008.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Rayle LLC.

Description: JPMorgan Sellers submit Supplement of Smoky II Notice of Non-Material Change in Status.

Filed Date: 03/12/2010.

Accession Number: 20100312–5118.

Comment Date: 5 p.m. Eastern Time on Friday, April 2, 2010.

Docket Numbers: ER06–750–004; ER00–38–008; ER00–1115–008; ER00–3562–008; ER06–749–004; ER06–751–005; ER06–441–003; ER01–480–007; ER06–752–004; ER07–1335–004.

Applicants: Broad River Energy LLC, Calpine Construction Finance Company, LP, Calpine Energy Services LP, Carville Energy LLC, Columbia Energy LLC, Decatur Energy Center, LLC, Mobile Energy LLC, Morgan Energy Center, LLC; Pine Bluff Energy, LLC; Santa Rosa Energy Center, LLC.

Description: Supplement to Update Market Power Analysis for the Southeast Region of Auburndale Peaker Energy Center, L.L.C., *et al.*

Filed Date: 03/15/2010.

Accession Number: 20100315–5232.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER07–501–024; ER07–758–021; ER08–649–017; ER06–739–025; ER06–738–025; ER02–537–028; ER03–983–025.

Applicants: Birchwood Power Partners, L.P.; Inland Empire Energy Center, L.L.C.; EFS Parlin Holdings, LLC; East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company, LLC; Shady Hills Power Company, L.L.C.

Description: Notice of Non-Material Change in Status of East Coast Power Linden Holding, LLC.

Filed Date: 03/15/2010.

Accession Number: 20100315–5234.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER08–912–011; ER08–387–013; ER09–32–008; ER06–200–022; ER09–279–006; ER10–378–002; ER07–254–016; ER03–1326–022; ER07–460–013; ER09–1723–006; ER05–365–024; ER09–30–007; ER10–377–002; ER09–31–007; ER05–1262–027; ER06–1093–023; ER03–296–026; ER09–382–006; ER01–3121–024; ER02–418–023; ER03–416–026; ER05–332–023; ER07–287–016; ER08–933–010; ER07–195–018; ER08–934–011; ER07–242–017; ER03–951–026; ER09–282–006; ER04–94–023; ER02–2085–019; ER09–281–005; ER02–417–023; ER07–1378–015; ER090–1284–005; ER05–1146–023; ER10–228–002; ER09–1285–004; ER05–481–024; ER07–240–017.

Applicants: Iberdrola Renewables Inc.; Atlantic Renewable Projects II LLC; Barton windpower LLC; Big Horn wind Project LLC; Buffalo Ridge I LLC; Buffalo Ridge II LLC; Casselman Windpower LLC; Colorado Green Holdings LLC; Dillon Wind LLC; Dry Lake Wind Power, LLC; Elk River Windfarm, LLC; Elm Creek Wind, LLC; Elm Creek Windfarm II LLC; Farmers City Wind, LLC; Flat Rock Windpower LLC; Flat Rock Windpower II LLC; Hay Canyon Wind LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power LLC; Klondike Wind Power II LLC; Klondike Wind Power III LLC; Lempster Wind, LLC; Locust Ridge Wind Farm, LLC; Locust Ridge Wind Farm II, LLC; MinnDakota Wind, LLC; Moraine Wind LLC; Moraine Wind II LLC; Mountain View Power Partners III, LLC; Northern Iowa Windpower II LLC; Pebble Springs Wind LLC; Phoenix Wind Power LLC; Providence Heights Wind, LLC; Rugby Wind LLC; Shiloh I wind Project, LLC; Star Point wind Project LLC; Streator-Cayuga Ridge Wind Power LLC; Trimont Wind I LLC; Twin Buttes Wind LLC.

Description: Quarterly Report (4Q 2009) Pursuant to 18 CFR 35.42(d) and Order 697–C of the Iberdrola Renewables MBR Sellers.

Filed Date: 01/29/2010.

Accession Number: 20100129–5125.

Comment Date: 5 p.m. Eastern Time on Friday, March 26, 2010.

Docket Numbers: ER10–64–001.

Applicants: CPV Keenan II Renewable Energy Company,

Description: Notification of Non-Material Change in Facts of CPV Keenan II Renewable Energy Company, LLC.

Filed Date: 03/15/2010.

Accession Number: 20100315–5236.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–286–001.

Applicants: Cleco Power LLC and Acadia Power Partner.

Description: Cleco Power LLC *et al.* submits revised tariff sheets for reflecting the waivers granted in the Order.

Filed Date: 03/15/2010.

Accession Number: 20100315–0153.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–841–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits Sixth Revised Sheet 44 *et al.* to its FERC Electric Tariff, Original Volume 1 to be effective 5/4/10 under ER10–841.

Filed Date: 03/12/2010.

Accession Number: 20100315–0222.

Comment Date: 5 p.m. Eastern Time on Friday, April 2, 2010.

Docket Numbers: ER10–882–000.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England Inc. *et al.* submits revisions to the Forward Capacity Market rules.

Filed Date: 03/15/2010.

Accession Number: 20100315–0156.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–883–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits Standard Large Generator Interconnection Agreement.

Filed Date: 03/15/2010.

Accession Number: 20100315–0158.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–884–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Connection Construction Agreement etc.

Filed Date: 03/15/2010.

Accession Number: 20100315–0157.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–885–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc. submit amendment to its Open Access Transmission Tariff, FERC

Electric Tariff Original Volume No 3 with an effective date of 4/1/2010.

Filed Date: 03/15/2010.

Accession Number: 20100315–0150.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–886–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits First Revised Rate Schedule No 104.

Filed Date: 03/15/2010.

Accession Number: 20100315–0149.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–887–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits an amendment to the October 12, 1995 Agreement for Sale and Purchase of Capacity and Energy between Progress and Seminole Electric Cooperative, Inc, First Revised Rate Schedule 176 etc.

Filed Date: 03/15/2010.

Accession Number: 20100316–0206.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–888–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff to modify Pro Forma Meter Agent Services Agreement and Related Tariff provisions with an effective date of 5/14/2010.

Filed Date: 03/15/2010.

Accession Number: 20100316–0207.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–889–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits the 2016–2024 Agreement for Sale and Purchase of System Combined Cycle Capacity and Energy between Progress and Seminole Energy Cooperative, Inc. dated 12/18/09 etc.

Filed Date: 03/15/2010.

Accession Number: 20100316–0208.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–890–000.

Applicants: NewCorp Resources Electric Cooperative, Cap Rock Energy Corporation.

Description: Refund Report of NewCorp Resources Electric Cooperative, Inc. and Cap Rock Energy Corporation.

Filed Date: 03/15/2010.

Accession Number: 20100315–5233.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–891–000.

Applicants: California Independent System Operator Corporation

Description: Petition of the California Independent System Operator Corporation for Approval of Disposition of Proceeds of Penalty Assessments.

Filed Date: 03/16/2010.

Accession Number: 20100316–5090.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 6, 2010.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–6305 Filed 3–22–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–9129–1; EPA ICR Number 1765.07; OMB Control Number 2060–0353]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request to the Office of Management and Budget with no changes to the Information Collection Request burden estimates. This Information Collection Request is scheduled to expire on June 30, 2010. Before submitting the Information Collection Request to Office of Management and Budget for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Additional comments may be submitted on or before May 24, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0120 by one of the following methods: Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW., Mail Code: 6102T, Washington, DC 20460.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution

Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Electronic Docket ID No. EPA–HQ–OAR–2003–0120. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise to be protected through *http://www.regulations.gov* or e-mail. The Web site is an "anonymous access" system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to us without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment as a result of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Natural Resources and Commerce Group, Mail Code E143–03, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–3470; e-mail address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this Information Collection Request (ICR) under Docket ID No. EPA–HQ–OAR–2003–0120 which is available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone for the Reading Room is 202–566–1744, and the telephone for the Air Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Particularly Interests EPA?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To What Information Collection Activity or ICR Does This Apply?

Docket ID No. EPA–HQ–OAR–2003–0120.

Affected Entities: Entities potentially affected by this action as respondents are manufacturers and importers of automobile refinish coatings and coating components. Manufacturers of automobile refinish coatings and coating components fall within standard industrial classification (SIC) 2851, "Paints, Varnishes, Lacquers, Enamels, and Allied Products" and North American Industry Classification System (NAICS) code 325510, "Paint and Coating Manufacturing." Importers of automobile refinish coatings and coating components fall within SIC 5198, "Wholesale Trade: Paints, Varnishes, and Supplies," NAICS code 422950, "Paint, Varnish and Supplies Wholesalers," and NAICS code 444120, "Paint and Wallpaper Stores."

Title: Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (40 CFR part 59).

ICR number: EPA ICR Number 1765.07, Office of Management and Budget (OMB) Control Number 2060–0353.

ICR status: This ICR is currently scheduled to expire on June 30, 2010. 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 OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. Under OMB regulations, the

Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The EPA is required under section 183(e) of the Clean Air Act to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

EPA provided notice and sought comments on the previous ICR renewal on July 8, 2003 (68 FR 40654) and January 25, 2007 (72 FR 3387) pursuant to 5 CFR 1320.8(d). The EPA received no comments to that notice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average four hours per response. Burden means 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. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One or less per year.

Estimated total annual burden hours: 14.

Estimated total annual costs: $940. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There are no changes being made to the estimates in this ICR from what EPA estimated in the earlier renewal (2007) of this ICR.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 15, 2010.

Peter Tsirigotis,

Director, Sector Policies and Programs Division.

[FR Doc. 2010–6341 Filed 3–22–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AMERICAN FAMILY ASSOCIATION, Station WSQH, Facility ID 91176, BMPED–20100205ABG, From MERIDIAN, MS, To DECATUR, MS; BRAHMIN BROADCASTING CORPORATION, Station KPAD, Facility ID 166006, BPH–20100127AAK, From WHEATLAND, WY, To RAWLINS, WY; BRAHMIN BROADCASTING CORPORATION, Station KMJY, Facility ID 164284, BPH–20100127ABI, From CHUGWATER, WY, To MEDICINE BOW, WY; JLF COMMUNICATIONS, LLP, Station KYRO, Facility ID 59251, BP–20100205ABZ, From POTOSI, MO, To TROY, MO; MORNING STAR MEDIA, LLC, Station WZKR, Facility ID 76435, BPH–20100205ABA, From DECATUR, MS, To COLLINSVILLE, MS; TRUTH BROADCASTING CORPORATION, Station KFFF–FM, Facility ID 6417, BPH–20100126AGR, From BOONE, IA, To JOHNSTON, IA; WAYNE RADIO WORKS LLC, Station KCTY, Facility ID 35659, BPH–20100204AAQ, From WAYNE, NE, To EMERSON, NE.

DATES: Comments may be filed through May 24, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application 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 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2010–6328 Filed 3–22–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 26; Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades; Order of Investigation

March 17, 2010.

Pursuant to the Shipping Act of 1984, 46 U.S.C. 40101 *et seq.* ("Shipping Act"), the Federal Maritime Commission ("FMC" or "Commission") is charged with regulating the common carriage of goods by water in the foreign commerce of the United States ("liner service"). In doing so, the Commission must be mindful of the statutory purpose of its regulation. Those purposes include a non-discriminatory regulatory process, an efficient and economic transportation system, and promotion of the growth and development of U.S. exports. 46 U.S.C. 40101.

Like many sectors of the global economy, in 2009 shippers and ocean carriers experienced one of the worst years in the more than fifty-year history of international containerized shipping.

During this economic downturn, U.S. liner exports fell by 14 percent and imports fell by 16 percent. Freight rates dropped precipitously, and carriers laid up more than 500 vessels worldwide, or roughly 10 percent of the global fleet capacity.

Reflecting the worldwide uptick in economic activity during the fourth quarter of 2009 and early 2010, cargo volumes shipped to the United States from Asia have increased, as has the demand for export shipments from the United States. As a result, shipping rates have increased. Many ships remain idle, however, and the Commission has received a growing number of reports that importers and exporters have had difficulty obtaining vessel space, particularly in the U.S.-Asia trades. The Commission has also received reports of U.S. exporters experiencing problems with the distribution and availability of shipping containers for their goods on those same Asian trades.

On January 27, 2010, the President launched a National Export Initiative with the goal of doubling U.S. exports over the next five years. On March 11, 2010, the President issued Executive Order No. 13534 and has directed the use of "every available federal resource" in support of that effort.

Recent reports of container vessel capacity and equipment constraints have raised concerns over both the cause of the constraints and whether those constraints could hinder the nascent economic recovery. Therefore, consistent with its statutory duty, pursuant to 46 CFR 502.281 *et seq.,* the Commission hereby *orders* a non-adjudicatory investigation into current conditions and practices in the U.S. liner trades, and into potential impediments to the flow of ocean-borne import and export trades. The Commission will use the information obtained in this investigation and recommendations of the Fact-Finding Officer (FFO) to determine its policies with respect to vessel and equipment capacity-related issues.

Specifically, the Fact-Finding Officer (FFO) named herein is to develop a record on the following:

1. Recent conditions in the U.S. export liner trades;

2. Recent conditions in the U.S. import liner trades;

3. Current and forecasted common practices by vessel-operating common carriers (VOCCs) regarding the management and allocation of VOCC-, shipper-, and leasing company-owned equipment for the U.S. import and export trades, specifically the management, supply, allocation and availability of containers for all U.S. export commodities and categories.

4. Current practices and plans of VOCCs regarding the deployment of vessel capacity in the U.S. trades;

5. Current and planned common practices relating to service contracting in the U.S. liner trades, specifically:

a. The practices of VOCCs with respect to the booking of cargo before and after a minimum quantity commitment of a service contract has been met but before the term of that contract has expired;

b. The practices of VOCCs with respect to the cancellation of cargo bookings;

c. The practices of carriers and shippers with respect to the overbooking of cargo; and

d. The impact of those practices on the availability of liner service to meet the demands of U.S. exporters and importers; and

6. Any related conditions or practices that affect the U.S. liner trades.

The FFO is to report to the Commission within the time specified herein, with recommendations for any further Commission action, including any policies, rulemaking proceedings, or other actions warranted by the factual record developed in this proceeding.

Interested persons are invited and encouraged to contact the FFO named herein, at (202) 523–5715 (telephone), (202) 275–0521 (facsimile), or by e-mail at *factfinding@fmc.gov,* should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

Therefore, it is ordered, That, pursuant to 46 U.S.C. 41302, 40302, 40502 to 40503, 41101 to 41109, 41301 to 41309, and 40104, and 46 CFR 502.281 to 502.291, a non-adjudicatory investigation is hereby instituted into the current conditions in the U.S. ocean-borne common carrier trades, to gather facts related to the issues set forth above and to provide a basis for any subsequent action by the Commission;

It is further ordered, That, pursuant to 46 CFR 502.284 and 502.25, Commissioner Rebecca F. Dye is designated as the FFO. The FFO shall have, pursuant to 46 CFR 502.281 to 502.291, full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas *ad testifacandum* and *duces tecum*), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission. The FFO shall be assisted by staff members as may be assigned by the Commission's Managing Director, and the FFO is authorized to delegate any authority enumerated herein to any assigned staff member as the FFO determines to be necessary.

It is further ordered, That the Investigative Officer shall issue an interim report of findings and recommendations no later than June 15, 2010, a final report of findings and recommendations no later than July 31, 2010, and provide further interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

It is further ordered, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

It is futher ordered, That notice of this Order be published in the **Federal Register.**

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–6339 Filed 3–22–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Robert G. Burton, Athens, Georgia; to acquire additional voting shares of NBG Bancorp, Inc., and thereby indirectly acquire additional voting shares of National Bank of Georgia, both of Athens, Georgia.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Ross H. Smith, Jr. and Eva J. Smith, both of Bridge City, Texas; to acquire additional voting shares of OSB Financial Services, Inc., and thereby indirectly acquire additional voting shares of Orange Savings Bank, SSB, both of Orange, Texas.

Board of Governors of the Federal Reserve System, March 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–6334 Filed 3–22–10; 8:45 am]

BILLING CODE 6210–01–S

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 also will 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. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 April 16, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Investar Holding Corporation, Baton Rouge, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Investar Bank, Baton Rouge, Louisiana.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. North Asia Investment Corporation, Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Pacific City Financial Corporation, and Pacific City Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, March 18, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–6333 Filed 3–22–10; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 3090–00XX; Docket 2010–0002; Sequence 15]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Form 1217, Lessor's Annual Cost Statement

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Lessor's Annual Cost Statement. A request for public comments was published in the **Federal Register** at 74 FR 63704, on December 4, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 22, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00XX, Lessor's Annual Cost Statement, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–1448 or via e-mail to *Beverly.cromer@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the proposed GSAR 570.802(d), the GSA Form 1217 is used to obtain information about operating expenses for property being offered for lease to house Federal agencies. These expenses are normally included in the rental payments we make to lessors. The form also provides an equitable way to compare lessor proposals, and it provides costs of building expenses that can be negotiated to obtain fair and reasonable prices.

B. Annual Reporting Burden

Respondents: 5,733.

Responses per Respondent: 1.

Annual Responses: 5,733.

Hours per Response: 1.

Total Burden Hours: 5,733.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–00XX, Lessor's Annual Cost Statement, in all correspondence.

Dated: March 17, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–6394 Filed 3–22–10; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090; Docket 2010–0083; Sequence 16]

Federal Acquisition Regulation; Information Collection; Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights in data and copyrights.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 24, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3775 or e-mail *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 27.4, Rights in Data and Copyrights is a regulation which concerns the rights of the Government and Contractors with whom the Government contracts, regarding the use, reproduction, and disclosure of information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to ensure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data it would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluating work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts should require this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of deliverables provided to the Government under the contract (final report, drawings, specifications, *etc.*). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to ensure that the Government can fully evaluate the research in order to ascertain future activities and to ensure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause (52.227.14) outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there may rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 1,100.

Responses per Respondent: 1.

Annual Responses: 1,100.

Hours per Response: .95.

Total Burden Hours: 1,040.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:

Recordkeepers: 9,000.

Hours per Recordkeeper: 2.

Total Recordkeeping Burden Hours: 18,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: March 18, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–6402 Filed 3–22–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; Docket 2010–0083, Sequence 17]

Submission for OMB Review; Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Use of Project Labor Agreements for Federal Construction Projects.

A request for public comments was published in the **Federal Register** at 74 FR 33953, on July 14, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 22, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (MVCB), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–00XX, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3775 or via e-mail to *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 22.501 prescribes policies and procedures to implement Executive Order 13502, February 6, 2009, which encourages Federal agencies to consider the use of a project labor agreement (PLA), as they may decide appropriate, on large-scale construction projects, where the total cost to the Government is more than $25 million, in order to promote economy and efficiency in Federal procurement. A PLA is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project. FAR 22.503(b) provides that an agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(1) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and,

(2) Be consistent with law.

B. Annual Reporting Burden

Respondents: 70.

Responses per Respondent: 1.

Annual Responses: 70.

Hours per Response: 1.

Total Burden Hours: 70.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–00XX, Use of Project Labor Agreements for Federal Construction Projects, in all correspondence.

Dated: March 18, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–6404 Filed 3–22–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0146]

Draft Guidance for Industry on Irritable Bowel Syndrome—Clinical Evaluation of Products for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Irritable Bowel Syndrome—Clinical Evaluation of Products for Treatment." This guidance addresses the following three main topics regarding irritable bowel syndrome (IBS) sign and symptom assessment for IBS with diarrhea (IBS–D) and IBS with constipation (IBS–C): The evolution of primary endpoints for IBS clinical trials, interim recommendations for IBS clinical trial design and endpoints, and the future development of patient-reported outcome (PRO) instruments for use in IBS clinical trials. This guidance is intended to assist the pharmaceutical industry and other investigators who are conducting new product development for the treatment of IBS.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 24, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ruyi He, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 22, rm. 5122, Silver Spring, MD 20993–0002, 301–796–0910.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Irritable Bowel Syndrome—Clinical Evaluation of Products for Treatment." This guidance is intended to assist the pharmaceutical industry and other investigators who are conducting new product development for the treatment of IBS–D and IBS–C.

A content-valid PRO instrument that measures the clinically important signs and symptoms associated with each IBS subtype is the ideal primary efficacy assessment tool in clinical trials used to support labeling claims. However, at this time, an adequate instrument is not available. We recognize that it will take some time to develop adequate instruments and that in the meantime there is a great need to develop effective therapies for patients with IBS. Therefore, until the appropriate PRO instruments have been developed, this guidance recommends interim strategies for IBS clinical trial design and endpoints, and discusses the future development of PRO instruments for use in IBS clinical trials.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on clinical evaluation of products for the treatment of irritable bowel syndrome. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: March 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6310 Filed 3–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Food and Drug Administration and Process Analytical Technology for Pharma Manufacturing: Food and Drug Administration—Partnering With Industry; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

The Food and Drug Administration (FDA) is announcing a joint conference with the University of Rhode Island (URI) College of Pharmacy entitled "FDA and PAT for Pharma Manufacturing: FDA—Partnering with Industry." This 2-day public conference is cosponsored by FDA and the URI College of Pharmacy. This public conference is intended to disseminate current and accurate information on process analytical technology (PAT) to the pharmaceutical industry and create a venue for dialogue between PAT users and FDA. The public conference will feature FDA's perspective on where PAT will be applicable in the manufacturing process and FDA's current thinking on how PAT will be reviewed in new and abbreviated new drug applications, amendments, or supplements to an application.

Date and time: The public conference will be held on May 11 and 12, 2010, from 8 a.m. to 5 p.m.

Location: The public conference will be held at the Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, MD 20814, 301–657–1234.

Contact Persons:

For information regarding the conference and registration: Christi Counts, Pharma Conference Inc., P.O. Box 291386, Kerrville, TX, 78029–1386, 830–896–0027, FAX: 830–896–0029, *http://www.pharmaconference.com*.

For information regarding this notice: Chris Watts, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4142, Silver Spring, MD 20993–0002, 301–796–1625.

Registration: There is a registration fee. The registration fee includes conference materials, continental breakfast, breaks, and lunches. For payment received by April 15, 2010, the fee is $1,795. For payment received after April 15, 2010, the fee is $1,995. The fee for government employees is $750. The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks. No checks will be accepted on site. Early registration is recommended because seating is limited. There will be no onsite registration. To register for the public conference online, please visit *http://www.pharmaconference.com/upcoming2010/beth_10.htm*. To register by mail, please send your name, title, firm name, address, telephone and fax numbers, e-mail, and credit card information or a company check for the fee to Pharma Conference Inc., P.O. Box 291386, Kerrville, TX, 78029–1386. To register by overnight mail, the address is Pharma Conference Inc., 819 Water St., suite 350, Kerrville, TX, 78028.

If you need special accommodations due to a disability, please notify Pharma Conference Inc., once you receive your registration confirmation so these needs can be passed on to the conference venue.

Dated: March 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6265 Filed 3–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0201] (formerly Docket No. 2007D–0118)

Guidance for Industry on the Content and Format of the Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format." This guidance is one of a series of guidance documents intended to assist applicants in drafting prescription drug labeling in which prescribing information is clear and accessible and in complying with the requirements in the final rule on the content and format of labeling for

prescription drug and biological products. This guidance is intended to help applicants select information for inclusion in the "Dosage and Administration" section of labeling and to help them organize that information.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: 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, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph P. Griffin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4204, Silver Spring, MD 20993–0002, 301–796–2270; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Dosage and Administration Section of Labeling for Human Prescription Drug and Biological Products—Content and Format." The guidance provides recommendations on how to select information for inclusion in the "Dosage and Administration" section of labeling and how to organize information within the section. This guidance is one of a series of guidances FDA is developing, or has developed, to assist applicants with the format and content of certain sections of the labeling for prescription drugs. In the **Federal Register** of January 24, 2006 (71 FR 3998), FDA issued final guidances on the format and content of the "Adverse Reactions" and "Clinical Studies" sections of labeling and draft guidances on implementing the new labeling requirements for prescription drugs and the format and content of the "Warnings and Precautions," "Contraindications," and "Boxed Warning" sections of labeling. In the **Federal Register** of March 3, 2009 (74 FR 9250), FDA issued a draft guidance on the format and content of the "Clinical Pharmacology" section of labeling. The labeling requirements (71 FR 3922) and these guidances are intended to make information in prescription drug labeling easier for health care practitioners to access, read, and use.

On April 9, 2007, FDA issued a draft of this guidance on the dosage and administration section of labeling to obtain public comment (72 FR 17561). FDA received 10 comments—9 from the pharmaceutical industry (individual companies, a trade association, and a consultant) and 1 from an academic medical center. The comments offered generally favorable impressions of the guidance and its goals. The bulk of the comments focused on clarifications and further illustrations of issues discussed in individual sections and subsections of the guidance. FDA made an effort to address as many of the identified concerns as possible. A recurring general concern in many industry comments was that the guidance should more clearly differentiate content that is required when relevant to a given drug from content that is recommended. FDA has attempted to make the distinction as clear as possible by using the word "must" and citing the relevant section of the regulation whenever the guidance is discussing required content and using the word "should" when discussing recommended content.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the content and format of the "Dosage and Administration" section of labeling for human prescription drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.57 have been approved under OMB control number 0910–0572.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: March 18, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6322 Filed 3–22–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small

Business: AIDS/HIV Small Business Innovative Research Applications.

Date: April 1, 2010.

Time: 11:59 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Insulin Signaling and Diabetes.

Date: April 6–7, 2010.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514, *jerkinsa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Exploratory Research in AIDS Immunology and Pathogenesis.

Date: April 7, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shiv A. Prasad, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Signaling.

Date: April 13, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6299 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Conference Grants (R13's).

Date: April 5–6, 2010.

Time: 11 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Robert T. Su, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924. 301–435–0297. *sur@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6301 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel R25 Initiative.

Date: April 1, 2010.

Time: 11:15 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Udall Centers.

Date: April 20–21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Ernest W Lyons, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529,Bethesda, MD 20892–9529, 301–496–4056, *lyonse@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6126 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Conflicted Applications.

Date: May 26, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Rockledge 1, 6705 Rockledge Drive, 301, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968. 301–594–4937. *huangz@mail.nih.gov.*

Name of Committee: National Library of Medicine Special Emphasis Panel, Scholarly Works G13.

Date: July 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968. (301) 594–4937. *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6134 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Natural Experiments and Effectiveness Studies To Identify the Best Policy and System Level Practices To Prevent Diabetes and Its Complications, Funding Opportunity Announcement (FOA) DP 10–002, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 10 a.m.–5 p.m., May 26, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of "Natural Experiments and Effectiveness Studies to Identify the Best Policy and System Level Practices to Prevent Diabetes and Its Complications, RFA DP 10–002."

Contact Person for More Information: Donald Blackman, PhD., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–6189 Filed 3–22–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, U01 R34 Review.

Date: April 16, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3140, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Tracy A. Shahan, PhD, MBA, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2606. *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, U01 R34 Review.

Date: April 21, 2010.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3140, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Tracy A. Shahan, PhD, MBA, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2606. *tshahan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6136 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; National Eye Institute SBIR Special Emphasis Panel.

Date: April 9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavillion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Eye Institute Special Emphasis Panel NEI Genetic Epidemiology Reviews.

Date: April 12, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300 301–451–2020, *rawlings@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6130 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 14, 2010, 2 p.m. to April 14, 2010, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 12, 2010, 75 FR 11895–11896.

The meeting time has been changed to 1 p.m. to 3 p.m. on April 14, 2010. The meeting date and location remain the same. The meeting is closed to the public.

Dated: March 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6302 Filed 3–22–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Columbia Inspection, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Columbia Inspection, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Columbia Inspection, Inc., 797 West Channel Street, San Pedro, CA 90731, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Columbia Inspection, Inc., as commercial gauger and laboratory became effective on July 21, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 16, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–6392 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 925 Corn Product Road, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on July 14, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 16, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–6393 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–102; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document; OMB Control No. 1615–0079.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 24, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–102. Should USCIS decide to revise Form I–102 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–102.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0079 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Nonimmigrants temporarily residing in the United States use this form to request a replacement of their arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,195 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,073 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: March 17, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–6282 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: File Number OMB 22; Extension of an Existing Information Collection: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: OMB 22, National Interest Waivers; Supplemental Evidence to I–140 and I–485; OMB Control No. 1615–0063.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 24, 2010.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0063 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at one (1) hour per response.

An estimate of the total public burden (in hours) associated with the collection: 16,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: March 17, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–6285 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0009–]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; Environmental and Historic Preservation Environmental Screening Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 024–0–1, Environmental and Historic Preservation Environmental Screening Form.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities required to administer the Environmental and Historic Preservation Environmental Screening Form.

DATES: Comments must be submitted on or before May 24, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2010–0009–. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, WASH, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2010–0009– in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy Notice link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Belkin, Program Analyst, Grant Programs Directorate, 202–786–9771 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) (Pub. L. 91–190) requires that the Federal government examine the impact of its actions on the environment, look at potential alternatives to that action, inform both decision-makers and the public of those impacts through a transparent process, and pursue mitigation if necessary. Environmental and Historic Preservation (EHP) compliance refers to the process by which the Federal government ensures that projects financed through Federal grant funding are compliant with NEPA and existing laws and regulations related to environment and historic preservation. Compliance under NEPA is required whenever Federal funds are expended as listed in Sec. 102(D) of the National Environmental Policy Act (42 U.S.C. 4332(D)). A NEPA compliance review process for FEMA grant programs incorporates compliance with Section 106 of the National Historic Preservation Act (NHPA) (Pub. L. 102–575, 16 U.S.C. 470f) which requires that a Federal official, having jurisdiction over awarding of Federal funds, will have to take into consideration the effect that the actions undertaken as a result of the awarded funds have on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.

Collection of Information

Title: Environmental and Historic Preservation Environmental Screening Form.

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: Environmental and Historic Preservation Environmental Screening Form, FEMA Form 024–0–1.

Abstract: In efforts to examine the impact of its actions on the environment, look at potential alternatives to that action, inform both

decision-makers and the public of those impacts through a transparent process, and pursue mitigation if necessary, grant recipients need to provide information that their actions will comply with all related laws and regulations.

Affected Public: State, Local or Tribal Government; Business or other for profit.

Estimated Total Annual Burden Hours: 52,920 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	Environmental and Historic Preservation Environmental Screening Form/ FEMA Form 024–0–1.	842	1	40	33,680	$36.15	$1,217,532
Business or other for-profit.	Environmental and Historic Preservation Environmental Screening Form/ FEMA Form 024–0–1.	481	1	40	19,240	27.01	519,672.40
Total	.....	1,323	.....	.....	52,920	.....	1,737,204.40

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: March 12, 2010.

Larry Gray,

Director, Records Management Division, Office of Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6354 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660-NEW; FEMA Preparedness Grants: Operation Stonegarden (OPSG)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–16, OPSG Operations Order Report; FEMA Form 089–20, Operations Order Prioritization.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 22, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Operation Stonegarden (OPSG).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–16, OPSG Operations Order Report; FEMA Form 089–20, Operations Order Prioritization. The form titles have changed since publication of the 60-day **Federal Register** Notice at 74 FR 59210, Nov. 17, 2009.

Abstract: The Operation Stonegarden grant is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/State/local planning, operations, and investments. The grant provides funding to designated localities to enhance cooperation and coordination between Federal, State, local, and Tribal law enforcement agencies in a joint mission to secure the U.S. borders along routes of ingress from International borders to include travel corridors in States bordering Mexico and Canada, as well as States and

territories with international water borders.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 39.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 642 hours.

Estimated Total Annual Burden Hours: 25,038 hours.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Dated: March 16, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6353 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–NEW; FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–25, NSGP Investment Justification and Selection Criteria; FEMA Form 089–24, NSGP State—UAWG Prioritization of Investment Justification.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 22, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–25, NSGP Investment Justification and Selection Criteria; FEMA Form 089–24, NSGP State—UAWG Prioritization of Investment Justification.

Abstract: The NSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/State/local planning, operations, and investments. Information collected provides narrative details on proposed activities (Investments) that will be accomplished with grant funds and prioritizes the list of applicants from each requesting State. This program is designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State and local government agencies, and Citizen Corps Councils.

Affected Public: Not-for-profit Institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 733.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 160 hours. The estimated average hour burden per respondent has changed since publication of the 60-day **Federal Register** Notice at 74 FR 59235, Nov. 17, 2009.

Estimated Total Annual Burden Hours: 61,525 hours. The estimated total average burden hours has changed since publication of the 60-day **Federal Register** Notice at 74 FR 59235, Nov. 17, 2009.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Dated: March 16, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6352 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–NEW; FEMA Preparedness Grants: Transit Security Grant Program (TSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–4, TSGP Investment Justification; FEMA Form 089–27, Fast Track Cost Training Matrix.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 22, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland

Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Office of Records Management, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–4, TSGP Investment Justification; FEMA Form 089–27, Fast Track Cost Training Matrix.

Abstract: The TSGP is an important component of the Department of Homeland Security's effort to enhance the security of the Nation's critical infrastructure. The program provides funds to owners and operators of transit systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 123. The estimated number of respondents has changed since publication of the 60-day **Federal Register** Notice at 74 FR 59214, Nov. 17, 2009.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 41.75 hours.

Estimated Total Annual Burden Hours: 5,135.25 hours.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Dated: March 16, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6351 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2010–0008-]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 091–0, Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP).

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the data collection activity required to prepare the Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP).

DATES: Comments must be submitted on or before May 24, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2010–0008–. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2010–0008- in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Robert Schweitzer, National Preparedness, (202) 646–3634 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Homeland Security Presidential Directive–8 (*HSPD–8: National Preparedness*) issued on December 17, 2003, establishes policies to strengthen the preparedness of the United States to prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies by requiring a National Preparedness Goal that establishes measurable priorities and targets, establishing mechanisms to improve delivery of Federal preparedness assistance to State, local, and tribal governments, and outlining actions to strengthen preparedness capabilities of Federal, State, local, and tribal governments and their private sector partners. HSPD–8 further directs that the Department of Homeland Security (DHS), in coordination with other appropriate Federal departments and agencies, establish a "national program and a multi-year planning system to conduct homeland security preparedness-related exercises that reinforces identified training standards, provides for evaluation of readiness, and supports the National Preparedness Goal." Section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)) also provides for these exercises and states the Administrator "shall carry out a national exercise program to test and evaluate the national preparedness goal, National Incident Management System, National Response Plan, and other related plans and strategies." The Homeland Security Exercise and Evaluation Program (HSEEP) provides the program structure, multi-year planning system, tools, and guidance necessary for entities to build and sustain exercise programs that enhance homeland security capabilities and, ultimately, preparedness. The Homeland Security Exercise and Evaluation (HSEEP) After Action Report

(AAR) Improvement Plan (IP) answers HSPD–8 requirements that a system be developed and maintained to collection, analyze and disseminate lessons learned and other information resulting from these exercises.

Collection of Information

Title: Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 091–0, Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP).

Abstract: The Homeland Security Exercise and Evaluation Program (HSEEP) After Action Report (AAR) Improvement Plan (IP) collection provides reporting on the results of preparedness exercises and provides assessments of the respondent's capabilities so that strengths and areas for improvement are identified, corrected, and shared as appropriate prior to a real incident. This information is also required to be submitted as part of certain FEMA grant applications.

Affected Public: State, Local or Tribal Government; Federal Government.

Estimated Total Annual Burden Hours: 44,800 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government; Federal Government	HSEEP/ AAR/IP/ FEMA Form 091–0.	56	5	280	160	44,800	$36.15	$1,619,520
Total		56		280		44,800		1,619,520

Estimated Cost: There is no annual reporting and recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: March 12, 2010.

Larry Gray,

Director, Records Management Division, Office of Mission of Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6350 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–300; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form N–300, Application to File Declaration of Intention; OMB Control No. 1615–0078.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 24, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form N–300. Should USCIS decide to revise Form N–300 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–300.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0078 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–300; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–300 will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: March 17, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–6287 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–824; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–824; Application for Action on an Approved Application; OMB Control No. 1615–0044.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 24, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–824. Should USCIS decide to revise Form I–824 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–824.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0044 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Action on an approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: March 17, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–6284 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0010]

Disaster Assistance Fact Sheet DAP9580.107, Child Care Services

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: In this document the Federal Emergency Management Agency (FEMA) is providing notice of the availability of the final Disaster Assistance Fact Sheet DAP9580.107, *Child Care Services.*

DATES: The fact sheet is effective March 5, 2010.

ADDRESSES: The fact sheet is available online at *http://www.regulations.gov* under docket ID FEMA–2010–0010 and on FEMA's Web site at *http://www.fema.gov.* You may also view a hard copy of the fact sheet at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Lu Juana Richardson, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–4014, or via e-mail at *LuJuana.Richardson@dhs.gov.*

SUPPLEMENTARY INFORMATION: The fact sheet identifies child care services provided during federally declared major disasters and emergencies that are eligible for reimbursement under FEMA's Public Assistance Program. The fact sheet identifies eligible applicants, addresses the provision of child care services in emergency sheltering and temporary relocation facilities, and addresses the repair, restoration, or replacement of child care facilities.

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

Dated: March 15, 2010.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–6349 Filed 3–22–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000L1320000.PP; OMB Control Number 1004–0073]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0073 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR parts 3400 through 3480, which cover management of Federal coal resources.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before April 21, 2010.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0073), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact John A. Lewis, Division of Solid Minerals at (202) 912–7117 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Mr. Lewis. You may also contact Mr. Lewis to obtain a copy, at no cost, of the regulations and forms that require this collection of information.

SUPPLEMENTARY INFORMATION: The following information is provided for the information collection:

Title: Coal Management (43 CFR 3400–3480).

Forms:

- Form 3400–12; Coal Lease.
- Form 3440–1; License to Mine.

OMB Control Number: 1004–0073.

Abstract: This notice pertains to the collection of information pertaining to the leasing and development of Federal coal. The BLM uses the information to determine if applicants and bidders are qualified to hold a lease, and to manage Federal coal resources. The information collections covered by this notice are found at 43 CFR parts 3400 through 3480 and in the forms listed above.

Frequency: On occasion for most of the collections. Annually for a few of the collections.

Estimated Number and Description of Respondents: Approximately 1,235 applicants, lessees, and interested parties.

Estimated Reporting and Recordkeeping "Hour" Burden: The following chart details the individual components and respective hour burden estimates of this information collection request:

A. Type of response	B. Number of responses annually	C. Hours per response	D. Annual hour burden (B × C)
43 CFR Part 3410—Application for an Exploration License	10	36	360
43 CFR Part 3410—Relinquishment of an Exploration License	5	12	60
43 CFR Part 3410—Modification of an Exploration Plan	1	1	1
43 CFR Part 3410—Collection and Submission of Data	5	18	90
43 CFR Part 3420, Subpart 3420—Response to Call for Coal Resource and Other Resource Information/Individuals	1	3	3
43 CFR Part 3420, Subpart 3420—Response to Call for Coal Resource and Other Resource Information/Private Sector	1	3	3
43 CFR Part 3420, Subpart 3420—Response to Call for Coal Resource and Other Resource Information/State, Local, and Tribal Governments	1	3	3
43 CFR Part 3420, Subpart 3420—Surface Owner Consultation/Individuals	1	1	1
43 CFR Part 3420, Subpart 3420—Surface Owner Consultation/Private Sector	1	1	1
43 CFR Part 3420, Subpart 3420—Surface Owner Consultation/State, Local, and Tribal Governments	1	1	1
43 CFR Part 3420, Subpart 3420—Expressions of Leasing Interest	1	7	7
43 CFR Part 3420, Subpart 3422—Fair Market Value and Maximum Economic Recovery	1	7	7
43 CFR Part 3420, Subpart 3422—Bids in Response to Notice of Sale	1	56	56
43 CFR Part 3420, Subpart 3422—Consultation with the Attorney General	1	4	4
43 CFR Part 3420, Subpart 3422—Award of Lease Form 3400–12	3	25	75

A. Type of response	B. Number of responses annually	C. Hours per response	D. Annual hour burden (B × C)
43 CFR Part 3420, Subpart 3425—Application Nominating a Tract for a Competitive Lease Sale	3	300	900
43 CFR Part 3420, Subpart 3427—Surface Owner Consent	1	1	1
43 CFR Part 3430, Subpart 3430—Preference Right Leases Form 3400–12 and non-form data	1	800	800
43 CFR Part 3430, Subpart 3432—Lease Modifications	8	12	96
43 CFR Part 3440—Licenses to Mine Form 3440–1	1	21	21
43 CFR Part 3450, Subpart 3452—Relinquishment of a Lease	2	18	36
43 CFR Part 3450, Subpart 3453—Transfers by Assignment, Sublease, or Otherwise	8	10	80
43 CFR Part 3470, Subpart 3471—Land Description Requirements	21	3	63
43 CFR Part 3470, Subpart 3471—Future Interest Lease Applications	1	16	16
43 CFR Part 3470, Subpart 3472—General Qualification Requirements	9	3	27
43 CFR Part 3470, Subpart 3472—Other Qualification Requirements/Private Sector	1	1	1
43 CFR Part 3470, Subpart 3472—Other Qualification Requirements/Public Bodies	1	1	1
43 CFR Part 3470, Subpart 3474—Bonds	147	8	1,176
43 CFR Part 3480, Subpart 3481—Accident/Unsafe Conditions Report	1	1	1
43 CFR Part 3480, Subpart 3482—Exploration Plans	460	16	7,360
43 CFR Part 3480, Subpart 3482—Resource Recovery and Protection Plans	980	20	19,600
43 CFR Part 3480, Subpart 3482—Modification of Exploration Plans and Resource Recovery and Protection Plans	79	16	1,264
43 CFR Part 3480, Subpart 3482—Mining Operations Maps	311	20	6,220
43 CFR Part 3480, Subpart 3483—Lease Suspensions	6	21	126
43 CFR Part 3480, Subpart 3483—Request for Payment of Advance Royalty in Lieu of Continued Operation	12	22	264
43 CFR Part 3480, Subpart 3484—Drill and Geophysical Logs	22	1	22
43 CFR Part 3480, Subpart 3484—Unexpected Wells or Drill Holes	6	1	6
43 CFR Part 3480, Subpart 3485—Waivers, Suspensions, and Reductions of Rents/Royalty Rate Reductions	6	24	144
43 CFR Part 3480, Subpart 3485—Exploration Reports	100	16	1,600
43 CFR Part 3480, Subpart 3485—Production Reports and Payments and Maintenance of and Access to Records	1,323	10	13,230
43 CFR Part 3480, Subpart 3486—Address of Responsible Party	2	1	2
43 CFR Part 3480, Subpart 3486—Correction Report	1	10	10
43 CFR Part 3480, Subpart 3487—Application for Formation or Modification of Logical Mining Unit	2	170	340
Totals	3,549	.....	54,079

60-Day Notice: As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on January 5, 2010 (75 FR 425), soliciting comments from the public and other interested parties. The comment period closed on March 8, 2010. The BLM did not receive any comments from the public in response to this notice, or unsolicited comments from respondents covered under these regulations.

Type of Review: Revision of a currently approved information collection.

Affected Public: Applicants, bidders, lessees, and operators seeking to obtain or maintain interests in Federal coal resources under the Mineral Leasing Act and other mining statutes.

Obligation to Respond: Most of the information collections are required to obtain or retain benefits. A few are mandatory in specific circumstances. A few are voluntary.

Annual Responses: 3,549.

Completion Time per Response: Varies from 1 hour to 800 hours.

Annual Burden Hours: 54,079 hours.

Annual Non-hour Burden Cost: $625,793 for document processing fees associated with some of these information collection requirements.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0073 in your correspondence. Before including your address, phone number, e-mail 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.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–6359 Filed 3–22–10; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070A (Review)]

Crepe Paper Products From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping

duty order on crepe paper products from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on crepe paper products from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy Meadors (202–205–3408) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 8, 2010, the Commission determined that the domestic interested party group response to its notice of institution (74 FR 62815, December 1, 2009) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on April 5, 2010, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before April 8, 2010, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by April 8, 2010. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 11, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–6296 Filed 3–22–10; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by Seaman Paper Company of Massachusetts, Inc., to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–699]

In the Matter of Certain Liquid Crystal Display Devices and Products Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 4) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 5, 2010, based on a complaint filed by Samsung Electronics Co., Ltd. ("Samsung") of Korea. 75 FR 445–46 (Jan. 5, 2010). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the

sale within the United States after importation of certain liquid crystal display modules, products containing the same, and methods for making the same by reason of infringement of certain claims of U.S. Patent Nos. 5,844,533; 6,888,555; and 7,436,479. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, New Jersey; and Sharp Electronics Manufacturing, Company of America, Inc. of San Diego, California (collectively "Sharp").

On February 12, 2010, Samsung and Sharp jointly moved to terminate the investigation on the basis of a settlement agreement. The Commission investigative attorney filed a response in support of the motion.

The ALJ issued the subject ID on February 23, 2010, granting the motion for termination. He found that the motion for termination satisfies Commission rule 210.21(b). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation by settlement agreement is in the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID, and the investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

Issued: March 11, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–6300 Filed 3–22–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on March 18, 2010, a proposed Consent Decree in *United States* v. *NuStar Pipeline Operating Partnership LP,* Civ. A. No. 10–106, was lodged with the United States Court for the District of Nebraska.

In this action, the United States sought the penalties pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1321, against Defendant NuStar Pipeline Operating Partnership LP. The Complaint alleges that Defendant failed to comply with regulations issued pursuant to Section 311(j)(5) of the CWA, 33 U.S.C. 1321(j)(5), that require owners and operators of above ground oil storage facilities to prepare plans for preventing and containing spills and for responding to a worst case discharge at eight above ground oil storage facilities located in the States of Nebraska, Iowa and Kansas.

Pursuant to the proposed Consent Decree, Defendant will pay to the United States a civil penalty of $450,000 and preform a Supplemental Environmental Project estimated to cost NuStar $762,000. The SEP consists of installing continuous level detection instruments at seven above ground oil storage facilities which will provide on-line real time tank level information directly to the NuStar's control system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *NuStar Pipeline Operating Partnership LP,* Civ. A. No. 10–106 (District of Nebraska), Department of Justice Case Number 90–5–1–1–09282.

During the public comment period, the Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, First National Bank Building, 1620 Dodge St., Suite 1400, Omaha, NE 68102. The Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief.

[FR Doc. 2010–6324 Filed 3–22–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 12, 2010, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hunan RunCore High-Tech Co., Ltd., YueLu District, ChangSha, Hunan, People's Republic of China; and Vector Informatik GmbH, Ingersheimer, Stuttgart, Germany have been added as parties to this venture. Also, JTAG Technologies B.V. has changed its address to Boschdijk, Eindhoven, The Netherlands.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on September 10, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 29, 2009 (74 FR 55858).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–6256 Filed 3–22–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 17, 2010.

The Department of Labor (DOL) hereby announces the submission of the

following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

• 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;

• 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;

• Enhance the quality, utility, and clarity of the information to be collected; and

• 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.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Trade Act Participant Report (TAPR).

OMB Control Number: 1205–0392.

Agency Form Number: N/A.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 50.

Total Estimated Annual Burden Hours: 9,500.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: The Trade Act Participant Report is a data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for its participants. This ICR requests OMB approval to extend the existing reporting and recordkeeping requirements for the Trade Adjustment Assistance program, a single integrated collection format that meets all reporting requirements listed in amendments to the Trade Act of 1974 (19 U.S.C. 2311) through the Trade and Globalization Adjustment Assistance Act of 2009, which is part of the American Recovery and Reinvestment Act. For additional information, see related notice published in the **Federal Register** on December 8, 2009 (74 FR 64712).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–6316 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 18, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number); e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

• 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;

• 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;

• Enhance the quality, utility, and clarity of the information to be collected; and

• 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.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title of Collection: Emergency Mine Evacuation.

OMB Control Number: 1219–0141.

Form Number: MSHA 2000–222.

Estimated Number of Respondents: 622.

Estimated Total Annual Burden Hours: 7,836.

Estimated Total Annual Cost Burden (does not include hourly wage costs): $68,528.

Affected Public: In support of 30 CFR parts 48, 50, & 75 to improve the emergency evacuation and rescue in underground coal mines, these regulations include requirements for immediate accident notification applicable to all mines. In addition, they contain reporting and recordkeeping requirements for new and expanded training, including evacuation drills; self-contained self-rescuer (SCSR) storage, training, and use; and the installation and maintenance of lifelines in underground coal mines. For additional information, see related

notice published in the **Federal Register** on December 4, 2009 (74 FR 63794).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–6348 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of the Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; announcement of OMB approval of information collection requirements.

SUMMARY: The Occupational Safety and Health Administration announces that OMB has extended its approval for a number of information collection requirements found in sections of 29 CFR parts 1910, 1915, and 1926. OSHA sought approval under the Paperwork Reduction Act of 1995 (PRA–95), and, as required by that Act, is announcing the approval numbers and expiration dates for those requirements.

DATES: This notice is effective March 23, 2010.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, *telephone:* (202) 693–2222.

SUPPLEMENTARY INFORMATION: In a series of **Federal Register** notices, the Agency announced its requests to OMB to renew its current extensions of approvals for various information collection (paperwork) requirements in its safety and health standards for general industry, shipyard employment, and the construction industry, (i.e., 29 CFR parts 1910, 1915, and 1926). In these **Federal Register** announcements, the Agency provided 60-day comment periods for the public to respond to OSHA's burden-hour and cost estimates.

In accordance with PRA–95 (44 U.S.C. 3501–3520), OMB renewed its approval for these information collection requirements and assigned OMB control numbers to these requirements. The table below provides the following information for each of these OMB-approved requirements: The title of the collection; the date of the **Federal Register** notice; the **Federal Register** reference (date, volume, and leading page); OMB's control number; and the new expiration date.

Title	Date of **Federal Register** Publication, **Federal Register** Reference, and OSHA Docket No.	OMB control no.	Expiration date
1,3–Butadiene (29 CFR 1910.1051)	03/20/2009, 74 FR 11974, Docket No. OSHA–2009–0004.	1218–0170	10/31/2012
Chromium (VI) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).	06/22/2009, 74 FR 29517, Docket No. OSHA–2009–0015.	1218–0252	01/31/2013
Lead in Construction Standard (29 CFR 1926.62)	05/18/2009, 74 FR 23210, Docket No. OSHA–2009–0008.	1218–0189	10/31/2012
Lead in General Industry (29 CFR 1910.1025)	05/18/2009, 74 FR 23209, Docket No. OSHA–2009–0009.	1218–0092	10/31/2012
Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).	03/26/2009, 74 FR 13266, Docket No. OSHA–2009–0006.	1218–0070	08/31/2012
Temporary Labor Camps (29 CFR 1910.142)	03/20/2009, 74 FR 11975, Docket No. OSHA–2009–0003.	1218–0096	10/31/2012

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 15th day of March 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–6398 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: MACOSH meeting; Notice.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established under Section 7 of the Occupational Safety and Health (OSH) Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the Committee and workgroup meetings scheduled for April 27, 2010 and April 29, 2010.

DATES: The Shipyard and Longshore workgroups will meet on Tuesday, April 27, 2010, 8:30 a.m. to 4:30 p.m., and the Committee will meet on Thursday, April 29, 2010, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The Committee and workgroups will meet at the Newport Marriott Hotel, 25 America's Cup Avenue, Newport, RI 02840, ((401) 849–1000). Mail comments, views, or statements in response to this notice to Vanessa Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–2080; fax (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting, contact: Joseph V. Daddura, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2067. Individuals with disabilities wishing to attend the meeting should contact Vanessa Welch at (202) 693–2080 no later than April 14, 2010, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: MACOSH meetings are open to the public. Interested persons are invited to attend the MACOSH meeting at the time and location listed above. The MACOSH agenda will include: An OSHA activities update; a review of the minutes from the previous meeting; and reports from each workgroup. MACOSH may also discuss the following topics based on the workgroup reports: Arc flash guidance; confined spaces and fall protection in commercial fishing; scaffolding and falls (29 CFR part 1915 subpart E); traffic lane and safety zone quick card; speed limits in marine terminals; container rail safety guidance; and stuck cone safety guidance.

Public Participation: Written data, views, or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Vanessa Welch at the address listed above. Submissions received by April 14, 2010 will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits.

Authority: This notice was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1912.

Signed at Washington, DC, this 17th day of March 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–6397 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of Public Webinar on the Changes to the Labor Certification Process for the Temporary Agricultural Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of webinar.

SUMMARY: On February 12, 2010, the Department of Labor (the Department or DOL) amended the H–2A regulations at 20 CFR part 655 governing the certification of temporary employment of nonimmigrant workers in temporary or seasonal agricultural employment. See Temporary Agricultural Employment of H–2A Aliens in the United States, Final Rule, 75 FR 6884, Feb. 12, 2010 (the Final Rule). The Department's Final Rule also amended the regulations at 29 CFR part 501 to provide for enhanced enforcement when employers fail to meet their obligations under the H–2A program. The Final Rule also made changes to the *Application for Temporary Employment Certification,* ETA Form 9142. All H–2A applications filed as of March 15, 2010, the effective date of the Final Rule, will be required to comply with the requirements set forth in the Final Rule.

The Department held three public briefings across the country to educate stakeholders, program users, and other interested members of the public on changes to the H–2A program made by the Final Rule and on applying for H–2A temporary labor certifications under the new regulations using the ETA Form 9142. The Department is issuing this notice to announce that it has scheduled a webinar briefing to educate stakeholders, program users, and other interested members of the public on applying for H–2A temporary labor certifications under the Final Rule, using the ETA Form 9142.

Time and Date: March 25, 2010, 10–11:30 a.m. Eastern Daylight time.

To Register: You must be a registered user of Workforce3One to register for the webinar. If you are not a user please go to *http://www.workforce3one.org/view/5001007444778993193/info* to register and to register for the webinar.

FOR FURTHER INFORMATION CONTACT: For further information, contact William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; *Telephone:* (202) 693–3010 (this is not a toll-free number). Please do not call this office to register as it cannot accept registrations.

SUPPLEMENTARY INFORMATION: The registration information should be used by any member of the public planning to participate in this webinar session.

Signed in Washington, DC, this 18th day of March 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–6367 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Singleteary Food Solutions, LLC/Wells, Minnesota.

Principal Product/Purpose: The loan, guarantee, or grant application is to allow a new business venture to acquire the facility, equipment, and working capital needed to process and produce poultry, beef, and pork. The NAICS industry codes for this enterprise are: 311615 Poultry Processing; and, 311612 Meat Processed from Carcasses.

DATES: All interested parties may submit comments in writing no later than April 6, 2010. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural

Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC, this 17th day of March 2010.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2010–6314 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Request for Nominations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations for persons to serve on MACOSH.

SUMMARY: OSHA intends to recharter the Maritime Advisory Committee for Occupational Safety and Health (MACOSH). The current charter expires on September 23, 2010. MACOSH advises the Secretary of Labor on matters relating to occupational safety and health programs, new initiatives, and standards for the maritime industries of the United States which include longshoring, marine terminals, and shipyard employment. The Committee will consist of 15 members and will be chosen from among a cross-section of individuals who represent the following interests: Employers; employees; Federal and State safety and health organizations; professional organizations specializing in occupational safety and health; national standards-setting groups; and academia. OSHA invites persons interested in serving on MACOSH to submit their names for consideration for committee membership.

DATES: Nominations for MACOSH membership should be postmarked by May 7, 2010.

ADDRESSES: Nominations for MACOSH membership should be sent to: Dorothy Dougherty, Director, Directorate of Standards and Guidance, Room N–3718, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Joseph V. Daddura, Director, Office of Maritime within the Directorate of Standards and Guidance, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2067.

SUPPLEMENTARY INFORMATION: OSHA intends to recharter MACOSH for another two years. MACOSH was established to advise the Secretary on various issues pertaining to providing safe and healthful employment in the maritime industries. The Secretary consults with MACOSH on various related subjects, including: Ways to increase the effectiveness of safety and health standards that apply to the maritime industries, injury and illness prevention, the use of stakeholder partnerships to improve training and outreach initiatives, and ways to increase the national dialogue on occupational safety and health. In addition, MACOSH provides advice on enforcement initiatives that will help improve the working conditions and the safety and health of men and women employed in the maritime industries.

Nominations: OSHA is looking for committed MACOSH members who have a strong interest in the safety and health of workers in the maritime industries. The Agency is looking for nominees to represent the following interests and categories: Workers; employers; State or Federal safety and health organizations; professional organizations; national standards-setting groups; and academia. The U.S. Department of Labor is committed to bringing greater diversity of thought, perspective and experience to its advisory committees. Nominees from all races, gender, age and disabilities are encouraged to apply. Nominations of new members or resubmissions of former or current members will be accepted in all categories of membership. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on MACOSH. Nominations may also be submitted by organizations from one of the categories listed previously. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to safety and health in maritime industries and the interest the candidate represents. In addition to listing the candidate's qualifications to serve on the committee, each nomination should state that the person consents to the nomination and acknowledges the commitment and responsibilities of serving on MACOSH. OSHA will conduct a basic background check of candidates before their appointment to MACOSH. The background check will involve accessing publicly available, Internet-based sources.

Authority: This notice was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)(1), 656(b)), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1912.

Signed at Washington, DC this 17th day of March 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–6396 Filed 3–22–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, April 6, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTER TO BE CONSIDERED 8061B Aircraft Accident Report: Runway Overrun During Rejected Takeoff, Global Exec Aviation, Bombardier Learjet 60, N999LJ, Columbia, South Carolina, September 19, 2008.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, April 2, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: March 19, 2010.

Candi R. Bing,

Alternate Federal Register Liaison Officer.

[FR Doc. 2010–6471 Filed 3–19–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0106]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 25, 2010, to March 10, 2010. The last biweekly notice was published on March 9, 2010 (75 FR 10823).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would 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 basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention

at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the

reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, *see* the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, *et al.,* Docket No. 50–400, Shearon Harris Nuclear Power

Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 27, 2010.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Section 3.6.2.2.a to incorporate an expanded range of eductor flow rates for the containment spray additive system. These changes are supported by the use of a new chemical model and new boric acid equilibrium data, revised sump hydrogen-ion concentration (pH) limits, and changes to the containment spray additive tank concentration and volume limits. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change provides revised requirements for an expanded range of eductor flow rates using a new chemical model and new boric acid equilibrium data, revised sump pH limits, and changes to CSAT concentration and volume limits. This ensures that the Spray Additive System remains operable within the TS requirements or appropriate actions be taken. The proposed changes do not affect the automatic shutdown capability of the reactor protection system and no accident analyses are impacted by the proposed changes.

Expanding the range of acceptable values of eductor flow rate does not increase the probability of occurrence of any accident. Analyzed events are initiated by the failure of plant structures, systems or components. The containment spray additive system is not considered as an initiator of any analyzed accident. The proposed changes ensure that the spray additive system and the associated containment spray system can perform the accident mitigation functions required during a LOCA [loss-of-coolant accident] or MSLB [main steam line break] event.

The proposed change does not have a detrimental impact on the integrity of any plant structure, system or component that initiates an analyzed event and will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Furthermore, this action does not affect the initiating frequency of a LOCA or MSLB event.

Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As described above, the proposed change provides revised requirements for an expanded range of eductor flow rates using a new chemical model and new boric acid equilibrium data, revised sump pH limits, and changes to CSAT concentration and volume limits. These proposed changes ensure that the spray additive system and the associated containment spray system can perform the required accident mitigation functions during a LOCA or MSLB event. There are no other types of accidents that can be postulated that would require the use of the spray additive system or the associated containment spray system for mitigation.

The proposed changes do not introduce any new association between the spray additive system and any radioactive system, including the RCS [reactor coolant system].

Emergency operation of the spray additive system, or postulated failures of the spray additive system, cannot initiate any type of accident. No new accident initiators are introduced by the proposed requirements and no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Bases of TS 3.6.2.2 state that the operability of the Spray Additive System ensures that sufficient NaOH [sodium hydroxide] is added to the containment spray in the event of a LOCA. The limits on NaOH volume and concentration ensure a pH value of between 7.0 and 11.0 for the solution that is recirculated within containment after a LOCA. The spray additive system adds NaOH to the containment spray water being supplied from the refueling water storage tank (RWST) to adjust the pH of the containment spray and containment recirculation sump solutions. This pH range minimizes both the evolution of iodine and the effect of chloride and caustic stress corrosion on mechanical systems and components. The proposed range of flow rate from the RWST through each eductor ensures that the original margin of safety is maintained through acceptable pH control following a LOCA or MSLB event. The initial conditions of the accident analyses are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Branch Chief: Douglas A. Broaddus (Acting).

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3 (Oconee 1, 2, and 3), Oconee County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2 (McGuire 1 and 2), Mecklenburg County, North Carolina; Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2 (Catawba 1 and 2), York County, South Carolina

Date of amendment request: December 15, 2009.

Description of amendment request: The proposed amendments would revise the Technical Specifications to replace the current limits on primary coolant gross specific activity with limits on primary coolant noble gas activity. The noble gas activity would be based on DOSE EQUIVALENT XE–133 and would take into account only the noble gas activity in the primary coolant. The changes are consistent with nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of no significant hazards. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis of the no significant hazards consideration is presented below:

Criterion 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The completion time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the licensee's current accident analyses for Catawba 1 and 2, McGuire 1 and 2 and Oconee 1, 2, and 3. The proposed change to the completion time has no impact on the consequences of any design-basis accident since the consequences of an accident during the extended completion time are the same as the consequences of an accident during the completion time. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously calculated.

Criterion 3: Does the proposed change involve a significant reduction in a margin of safety?

The proposed change revises the limits on noble gas radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the licensee's safety analysis and will ensure the monitored values protect the initial assumptions in the safety analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 3, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) to incorporate Standard Technical Specification 3.1.8 "Scram Discharge Volume (SDV) Vent and Drain Valves" and associated Bases of NUREG–1433, Revision 3, "Standard Technical Specifications General Electric Plants, BWR/4," modified to account for plant specific design details.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not impact the operability of any structure, system or component that affects the probability of an accident or that supports mitigation of an accident previously evaluated. The proposed amendment does not affect reactor operations or accident analysis and has no radiological consequences. The operability requirements for accident mitigation systems remain consistent with the licensing and design basis. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of VY in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of VY in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by valves in the vent and drain lines and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system ensures that an SDV will not be filled to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety. The proposed amendment does not change the design or function of any component or system. The proposed amendment does not impact any safety limits, safety settings or safety margins. Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy Salgado.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 14, 2009.

Description of amendment request: The proposed amendments would change the design basis and Final Safety Analysis Report Update (FSARU) to allow use of a damping value of 5 percent of critical damping for the structural dynamic qualification of the control rod drive mechanism (CRDM) pressure housings on the replacement reactor vessel head for the design earthquake (DE), double design earthquake (DDE), Hosgri earthquake (HE), and loss-of-coolant accident (LOCA) loading conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the design basis and Final Safety Analysis Report Update (FSARU) to reflect a damping value of 5 percent of critical damping for the structural dynamic qualification of the control rod drive mechanism (CRDM) pressure housings for the replacement reactor vessel head for the design earthquake (DE), double design earthquake (DDE), Hosgri earthquake (HE), and loss of coolant accident (LOCA). The 5 percent damping value has been accepted by the NRC staff at several other plants with equivalent CRDMs and seismic support structures.

The damping value is an element of the structural dynamic analysis performed to confirm the CRDMs' ability to function under a postulated seismic disturbance or LOCA while maintaining resulting stresses under ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Section III allowable values. Because the ASME Code requirements continue to be met, this proposed change to the damping value could not result in an increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change revises the design basis and FSARU to reflect a damping value of 5 percent of critical damping for the structural dynamic qualification of the CRDM pressure housings for the replacement reactor vessel head for the DE, DDE, HE, and LOCA. The 5 percent damping value has been accepted by the NRC staff at several other plants with equivalent CRDMs and seismic support structures and is a conservative value based on the testing performed by the OEM [original equipment manufacturer].

The damping value is an element of the structural dynamic analysis performed to confirm the CRDMs' ability to function under a postulated seismic disturbance or LOCA while maintaining resulting stresses under ASME Code Section III allowable values. Because the ASME Code requirements continue to be met, this proposed change to the damping value could not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change revises the design basis and FSARU to reflect a damping value of 5 percent of critical damping for the structural dynamic qualification of the CRDM pressure housings for the replacement reactor vessel head for the DE, DDE, HE, and LOCA. The 5 percent damping value for CRDMs has been accepted by the NRC staff at several other plants with equivalent CRDMs and seismic support structures.

The damping value is an element of a structural dynamic analysis performed to confirm the CRDMs' ability to function under a postulated seismic disturbance or LOCA while maintaining resulting stresses under ASME Code, Section III, allowable values. The margin of safety is maintained by meeting the ASME Code requirements.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

Pacific Gas and Electric Company (PG&E), Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 29, 2009.

Description of amendment request: The proposed amendments would revise the licensing basis as described in the Final Safety Analysis Report Update (FSARU) to discuss the conformance of the delayed access offsite power circuit (the 500-kV delayed access circuit) to the General Design Criterion 17 requirement that each of the offsite power circuits be designed to be available in sufficient time following a loss of all onsite alternating current power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. The proposed amendment will also add information related to reactor coolant pump seal performance during and after (1) a loss of seal injection (with continued thermal barrier cooling); (2) a loss of thermal barrier cooling (with continued seal injection); and (3) a loss of all seal cooling (both thermal barrier cooling and seal injection).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendments would revise the licensing basis as described in the Final Safety Analysis Report Update (FSARU) to discuss the conformance of the delayed access offsite alternating current (ac) power circuit (the 500-kV delayed access circuit) to the General Design Criterion (GDC) 17 requirement that "each of the offsite power circuits be designed to be available in sufficient time following a loss of all onsite alternating current power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded." It would also add information related to reactor coolant pump (RCP) seal performance during and after (1) a loss of seal injection (with continued thermal barrier cooling); (2) a loss of thermal barrier cooling (with continued seal injection); and (3) a loss of all seal cooling (both thermal barrier cooling and seal injection).

PG&E Calculation STA–274 demonstrates that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded following a loss of the 230-kV immediate access offsite power circuit and all onsite emergency ac power supplies until the 500-kV delayed access circuit can be aligned for backfeed. Alignment of the 500-kV delayed offsite circuit to backfeed, implementing RCP seal coping strategy actions to limit maximum RCP seal leakage to 21 gpm [gallons per minute] per pump, and restoring reactor coolant system (RCS) makeup flow to stabilize the plant can be completed within approximately 54 minutes to assure that specified acceptable fuel design limits and

design conditions of the reactor coolant pressure boundary are not exceeded.

The proposed changes will not add any accident initiators, or adversely affect how the plant safety-related structures, systems, or components (SSCs) are operated, maintained, modified, tested, or inspected. There is no increase in the probability of a GDC 17 loss of all ac event occurring, and since the same applicable GDC 17 acceptance criteria continue to be met with the increased RCP seal leakage, there is no change in the consequences associated with this event.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The RCP Seal coping strategy implemented in response to Westinghouse Technical Bulletin TB–04–22, Revision 1, ensures that RCP seal integrity is maintained following a loss of all seal cooling associated with the GDC 17 loss of all ac event. PG&E Calculation STA–274 demonstrates that the GDC 17 requirements for a delayed offsite ac power source are met for up to a one-hour time period for the operators to complete the necessary actions associated with establishing the 500-kV backfeed, implementing the RCP seal coping strategy to limit maximum RCS seal leakage to 21 gpm per pump, and restoring RCS makeup flow. This proposed change provides assurance that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. The proposed change does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The implementation of the RCP seal coping strategy ensures that RCP seal leakage is limited to 21 gpm per pump following a loss of all seal cooling such that there is no impact or reduction in the margin of safety associated with the GDC 17 loss of all ac event. The analysis associated with the change supports the ability to align the 500-kV delayed access circuit, implement the RCP seal coping strategy actions, and restore RCS makeup flow in sufficient time following a loss of all onsite ac power supplies and the other offsite electric power circuit, to assure that specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment demonstrates that the 500-kV backfeed, isolation of RCP seal cooling, and restoration of RCS makeup flow can be reliably completed within 54 minutes, and that there is considerable margin to the GDC 17 acceptance criteria for the 500-kV backfeed as a delayed offsite ac power source. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. Since the proposed amendment would have no impact on the structural integrity of the fuel cladding or reactor coolant pressure boundary, and maintains the RCP seal leakage within controllable limits, there is no impact on the containment structure. Based on the above considerations, the proposed amendment would not degrade the ability to safely shut down the plant in the event of a loss of all ac power.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 26, 2010 (TS 09–05).

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) Table 3.3–1, "Reactor Trip System Instrumentation," Functional Unit 5, "Intermediate Range, Neutron Flux," to resolve an oversight regarding the operability requirements for the intermediate range neutron flux channels. The amendments would add an action to TS Table 3.3–1 to define that the provisions of Specification 3.0.3 are not applicable above 10 percent of thermal rated power with the number of operable intermediate range neutron flux channels two less than the minimum channels operable requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The intermediate range neutron flux trip must be operable in Mode 1 below the P–10 setpoint and in Mode 2 when there is a potential for an uncontrolled rod withdrawal accident during reactor startup. Above the P–10 setpoint, the power range neutron flux high setpoint trip and the power range neutron flux high positive rate trip provide core protection for a rod withdrawal accident. The intermediate range channels have no protection function above the P–10 setpoint. The proposed change does not affect the design of structures, systems, or components (SSCs) credited in accident or transient analyses, the operational characteristics or function of SSCs, the interfaces between credited SSCs and other plant systems, or the reliability of SSCs. The proposed change does not impact the initiating frequency of any UFSAR accident or transient previously evaluated. In addition, the proposed change does not impact the capability of credited SSCs to perform their required safety functions. Thus, eliminating the requirement to apply Specification 3.0.3 provisions when two intermediate range channels are inoperable in Mode 1 with the thermal power above the P–10 setpoint does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The intermediate range neutron flux trip must be operable in Mode 1 below the P–10 setpoint and in Mode 2 when there is a potential for an uncontrolled rod withdrawal accident during reactor startup. Above the P–10 setpoint, the power range neutron flux high setpoint trip and the power range neutron flux high positive rate trip provide core protection for a rod withdrawal accident. The intermediate range channels have no protection function above the P–10 setpoint. The proposed change does not involve a change in design, configuration, or method of operation of the plant. The proposed change does not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The capability of credited SSCs to perform their required function will not be affected by the proposed change. In addition, the proposed change does not affect the interaction of plant SSCs with other plant SSCs whose failure or malfunction can initiate an accident or transient. As such, no new failure modes are being introduced. Thus, eliminating the requirement to apply Specification 3.0.3 provisions when two intermediate range channels are inoperable in Mode 1 with the thermal power above the P–10 setpoint does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change resolves an oversight regarding the operability requirements for the

intermediate range neutron flux channels. Currently, Specification 3.0.3 provisions apply when two intermediate range neutron flux channels are declared inoperable in Mode 1 when thermal power is above the P–10 setpoint. Above the P–10 setpoint, the power range neutron flux trip and the power range neutron flux high positive rate trip provide core protection for a rod withdrawal accident. The intermediate range channels have no protection function above the P–10 setpoint. The proposed change does not change the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analyses for accident or transient mitigation. The proposed change does not alter the plant design, including instrument setpoints, nor does it alter the assumptions contained in the safety analyses. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not impact the redundancy or availability of SSCs required to accident or transient mitigation, or the ability of the plant to cope with design basis events. In addition, no changes are proposed in the manner in which the credited SSCs provide plant protection or which create new modes of plant operation. Thus, eliminating the requirement to apply Specification 3.0.3 provisions when two intermediate range channels are inoperable in Mode 1 with thermal power above the P–10 setpoint does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus (Acting).

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 28, 2010.

Description of amendment request: The proposed amendment will revise the Limiting Condition for Operation (LCO) of Technical Specification (TS) 3.6.3, "Containment Isolation Valves," for Wolf Creek Generating Station. A note will be added to LCO 3.6.3 to allow the reactor coolant pump (RCP) seal injection valves to be considered OPERABLE with the valves open and power removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change affects the RCP seal cooling and the containment isolation system. The change allows the removal of power to the four RCP seal injection valves such that they will not close in response to a spurious signal. A spurious closure of one or more of the seal injection valves could lead to a loss of coolant from the RCP seal. Allowance for removal of power to the valve reduces the probability of this event. The RCP seal performance depends on the design, flow rates, pressures and temperatures. There are no changes to the RCP seal design, nor to the seal cooling flow rates, pressures or temperatures.

Therefore, the consequences of a loss of coolant from the RCP seal are not impacted.

The seal injection valves are containment isolation valves. The system design for RCP seal cooling does not require automatic closure of the seal injection valves or closure of the valve within a specified time frame. The design of the system is such that the cooling water pressure passing through these valves is higher than the operating pressure of the reactor coolant system. The cooling water is needed to prevent a loss of coolant from the pump seals and the cooling water is assured because it is provided by the safety related charging pumps. In addition, a check valve is installed inside the containment on each seal injection line to provide a second containment isolation valve on the line. The seal injection valves fail as-is upon loss of electrical power and are not designed to change position following an accident. The seal injection valves are remote manual valves that can be operated from the control room based on plant procedures. These valves are not modeled as containment isolation valves in any accident analysis. A failure in the open position has no consequence due to the normal inflow of the seal injection water.

Therefore, this change will not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed amendment does not change the method by which any safety related plant system, subsystem, or component performs its specified safety function. The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. Plant procedures will still provide for the appropriate closure of the seal injection valves when restoring seal injection. The proposed changes will not alter any assumptions made in the safety analyses regarding limits on RCP seal injection flow.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety related system as a result of this amendment. The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection function. Removing power from the RCP seal injection valves during normal operation does not impact the assumed ECCS [emergency core cooling system] flow that would be available for injection into the RCS following an accident.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, *see* the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

FirstEnergy Nuclear Operating Company, *et al.,* Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 28, 2009.

Brief description of amendment request: The proposed amendment would support application of optimized weld overlays or full structural weld overlays. Applying these weld overlays on the reactor coolant pump suction and discharge nozzle dissimilar metal welds requires an update to the DBNPS leak-before-break evaluation.

Date of publication of individual notice in ***Federal Register:*** February 22, 2010 (75 FR 7628)

Expiration date of individual notice: March 24, 2010 (Public comments) and April 22, 2010 (Hearing requests).

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 17, 2009, as supplemented by letter dated January 19, 2010.

Description of amendment request: On July 14, 2009, the Nuclear Regulatory Commission published a Notice of Consideration of Issuance, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in the **Federal Register** (74 FR 34048) for a proposed amendment that would change the legal name of the licensee and owner from "FPL Energy Point Beach, LLC" to "NextEra Energy Point Beach, LLC."

On January 19, 2010, the licensee submitted a supplement which expanded the original scope of work. The proposed revisions would correct an administrative error within a License Condition contained in Appendix C of the Renewed Facility Operating Licenses. The correction changes "FPLE Group Capital" to the appropriately titled "FPL Group Capital."

Date of publication of individual notice in ***Federal Register:*** March 3, 2010 (75 FR 9616)

Expiration date of individual notice: May 3, 2010, 60 days from publication of the individual notice.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, *et al.,* Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: February 19, 2009, as supplemented by letters dated December 22, 2009, and February 23, 2010.

Brief description of amendment: The amendments revised the Technical Specifications (TSs) to relocate the reactor coolant system pressure and temperature (P/T) limits and the low temperature overpressure protection (LTOP) enable temperatures to a licensee-controlled document outside of the TSs. The P/T limits and LTOP enable temperatures will be specified in a Pressure and Temperature Limits Report (PTLR) that will be located in the PVNGS Technical Requirements Manual and administratively controlled by a new TS 5.6.9. The proposed changes are in accordance with the guidance in NRC Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits," dated January 31, 1996.

Date of issuance: February 25, 2010.

Effective date: As of the date of issuance and shall be implemented within 150 days from the date of issuance.

Amendment No.: Unit 1–178; Unit 2–178; Unit 3–178.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23442). The supplemental letters dated December 22, 2009, and February 23, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 25, 2010.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 18, 2009, as supplemented on December 7, 2009.

Brief Description of amendments: The proposed license amendments revised Technical Specification 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," Surveillance Requirement 3.3.1.1.8, to increase the frequency interval between local power range monitor calibrations from 1100 megawatt-days per metric ton average core exposure (*i.e.,* equivalent to approximately 907 effective full-power hours (EFPH)) to 2000 EFPH.

Date of issuance: February 24, 2010.

Effective date: Date of issuance, to be implemented prior to start-up from the 2010 refueling outage (RFO) for Unit 1, and prior to start-up from the 2011 RFO for Unit 2.

Amendment Nos.: 254 and 282.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 2009 (74 FR 62833). The supplement letter dated December 7, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 2010.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 27, 2009.

Description of amendment request: This amendment request would change the Technical Specifications to provide revised values for the Safety Limit Minimum Critical Power Ratio for both single and dual recirculation loop operation.

Date of Issuance: March 8, 2010.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 243.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** January 5, 2010 (75 FR 461).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 8, 2010.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: February 16, 2009.

Brief description of amendments: To remove the structural integrity requirements contained in TS 3/4.4.10, and its associated Bases from the Technical Specifications. Also relocate the reactor coolant pump (RCP) motor flywheel inspection requirements from Surveillance Requirement (SR) 4.4.10 to SR 4.0.5 and revises the RCP motor flywheel inspection frequency from the currently approved 10-year inspection interval, to an interval not to exceed 20 years.

Date of issuance: February 23, 2010.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 242 and 328.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 21, 2009 (74 FR 18255).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 23, 2010.

No significant hazards consideration comments received: No.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: July 24, 2008, as supplemented by letters dated September 19, 2008, April 14, May 22, August 7, August 27, November 20, 2009, and February 2, 2010.

Brief description of amendments: These amendments revise the Point Beach Nuclear Plant licensing basis and Technical Specifications (TS) to reflect a revision to the spent fuel pool (SFP) criticality analysis methodology. The changes to TS 3.7.12, "Spent Fuel Pool Storage," and 4.3.1, "Criticality," imposes new storage requirements reflecting the new SFP criticality analysis.

Date of issuance: March 5, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 236, 240.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** December 9, 2008 (73 FR 74759).

The September 19, 2008, April 14, May 22, August 7, August 27, November 20, 2009, and February 2, 2010, supplements contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2010.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 11, 2009, as supplemented by letter dated February 1, 2010.

Brief description of amendments: The amendments (1) revise the operating licenses, Technical Specifications (TSs), and Appendix B, Environmental Protection Plan (Non Radiological), to change the plant name and its associated acronym from Comanche Peak Steam Electric Station (CPSES) to Comanche Peak Nuclear Power Plant (CPNPP); (2) remove the Table of Contents from the TSs to licensee control in accordance with plant administrative procedures; (3) delete TSs 3.2.1.1, 3.2.3.1, 5.5.9.1, and 5.6.10 and several footnotes from Tables 3.3.1–1, 3.3.2–1, and TS 3.4.10, since these TSs and footnotes are no longer applicable to the operation of CPSES, Units 1 and 2; (4) delete several topical reports from the list of approved analytical methods used to determine core operating limits in TS 5.6.5 which were no longer in use, since these topical reports have been replaced by standard Westinghouse methods and Westinghouse methods have been approved for use at CPSES, Units 1 and 2, under a separate amendment request; (5) make editorial corrections; and (6) reprint and reissue the TSs in their entirety due to adoption of FrameMaker software in place of Microsoft Word software.

Date of issuance: February 26, 2010.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1–150; Unit 2–150.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revise the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 2009 (74 FR 15772). The supplemental letter dated February 1, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on April 7, 2009 (74 FR 15772).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2010.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: March 5, 2009, as supplemented by letters dated April 13 and September 23, 2009.

Brief description of amendments: The amendments revise the Technical Specifications Surveillance Requirement (SR) 3.8.1.8 Frequency to allow the use of the SR 3.0.2 interval extension (1.25 times the interval specified in the Frequency).

Date of issuance: March 1, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 194, 183.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23448). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 2010.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 19, 2008, as supplemented by letters dated January 22, July 24, and November 23, 2009.

Brief description of amendment: The amendment revises Technical Specifications (TSs) to (1) correct an error in TS Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," Function 1.a, to reflect correct CONDITIONS for applicable Modes 1, 2, 3, and 4, (2) revise TS Limiting Condition for Operation 3.3.4 degraded voltage relay and loss of voltage relay Limiting Safety System Setting values to reflect the revised analysis, and (3) revise the load requirement of Surveillance Requirement 3.8.1.3 to reflect values supported by the diesel generator loading analysis.

Date of issuance: March 10, 2010.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 109.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 2009 (74 FR 15775).

The supplemental letters dated July 24, 2009, and November 23, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2010.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 17, 2008.

Brief description of amendment: The amendments revised Technical Specifications (TSs) 1.1, "Definitions," and 3.4.16, "RCS Specific Activity," and Surveillance Requirements 3.4.16.1 through 3.4.16.3. The amendments replaced the current TS 3.4.16 limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit is based on a new dose equivalent Xe–133 definition that would replace the current E-Bar average disintegration energy definition. The amendments are adopting TS Task Force (TSTF)–490.

Date of issuance: March 3, 2010.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 258 and 239.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** February 10, 2009 (74 FR 6669). The supplements dated January 26, May 26, and November 23, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 2010.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, *et al.,* Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: April 13, 2009.

Brief Description of amendments: These amendments revised the technical specifications (TSs). The proposed change revised TS Table 3.7.1, Operator Action 3.b, and provides direction for the actions to be taken if the operating condition of fewer than the required minimum channels for the neutron flux intermediate range occurs between 7 percent and 11 percent of rated power.

Date of issuance: February 26, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 268 and 267.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** July 14, 2009 (74 FR 34049).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2010.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—Primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

2. *Environmental*—Primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. *Miscellaneous*—Does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://*

ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 3, 2010, as supplemented by letter dated March 4, 2010.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," Condition J, Required Action J.1, and associated Note for the start of the motor-driven auxiliary feedwater pumps on the trip of all main feedwater (MFW) pumps. Wolf Creek Nuclear Operating Corporation has determined that the design and normal operation of the MFW pumps at Wolf Creek Generating Station could result in a condition that does not conform to TS Table 3.3.2–1, Function 6.g and the proposed TS changes are needed to address this condition.

Date of issuance: March 5, 2010.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented within 10 days of the date of issuance.

Amendment No.: 187.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated March 5, 2010.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Dated at Rockville, Maryland this 12th day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–6052 Filed 3–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0110; 50–382]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR part 73, "Physical protection of plants and materials," for Facility Operating License No. NPF–38, issued to Entergy Operations, Inc. (Entergy, the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana. Therefore, as required by 10 CFR 51.21, the NRC prepared an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Entergy from the required implementation date of March 31, 2010, for one new requirement of 10 CFR PART 73 for Waterford 3. Specifically, Entergy would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. Entergy has proposed an alternate compliance date to November 15, 2010, for one of the provisions, approximately 7½ months beyond the date required by 10 CFR part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the Waterford 3 site.

The proposed action is in accordance with the licensee's application dated January 19, 2010, as supplemented by letter dated February 17, 2010. Portions of the letters dated January 19 and February 17, 2010, contain security-related information and, accordingly, are withheld from public disclosure. Redacted versions of the letters dated January 19 and February 17, 2010, are available to the public in the Agencywide Documents Access and Management System (ADAMS) in ADAMS Accession Nos. ML100210193 and ML100500999, respectively.

The Need for the Proposed Action

The proposed action is needed to provide the licensee with additional time based on the delayed delivery of critical security equipment caused by limited vendor resources and subsequent installation and testing time requirements.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for Waterford 3, dated September 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on February 18, 2010, the NRC staff consulted with the Louisiana State official, Ms. Cheryl Chubb of the Radiological Emergency Preparedness & Response offices of the Louisiana Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 19, 2010, as supplemented by letter dated February 17, 2010. Portions of the letters dated January 14, 2010, and February 17, 2010, contain Security-Related information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of March 2010.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch LPL4, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–6323 Filed 3–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on April 8–10, 2010, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 14, 2009, (74 FR 52829–52830).

Thursday, April 8, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Draft Final Interim Staff Guidance (ISG) DC/COL–ISG–016, "*Compliance with 10 CFR 50.54(hh)(2) and 10 CFR 52.80(d)*" (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Final DC/COL–ISG–016, "Compliance with 10 CFR 50.54(hh)(2) and 10 CFR 52.80(d)," and the NRC staff's resolution of public comments. [**Note:** A portion of this session may be closed to protect unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(3).]

10:15 a.m.–12 p.m.: Selected Chapters of the Safety Evaluation Report (SER) with Open Items Associated with the Review of the U.S. Evolutionary Power Reactor (USEPR) Design Certification Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AREVA NP regarding Chapters 2, 4, 5, 8, 10, 12, and 17 of the SER with Open Items associated with the review of the USEPR Design Certification Application.

[**Note:** A portion of this session may be closed to protect information that is proprietary to AREVA NP and its contractors pursuant to 5 U.S.C. 552b(c)(4).]

1 p.m.–4 p.m.: Supplement 3 to General Electric (GE) Topical Report NEDC–33173PA, "*Applicability of GE Methods to Expanded Operating Domains*" (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and GE regarding Supplement 3 to GE Topical Report NEDC–33173PA, "Applicability of GE Methods to Expanded Operating Domains." [**Note:** A portion of this session may be closed to protect information that is proprietary to GE and its contractors pursuant to 5 U.S.C. 552b(c)(4).]

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed to protect unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(3).]

Friday, April 9, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Final ISG ESP/DC/COL–ISG–015, "*Post-Combined License Commitments*" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Final ESP/DC/COL–ISG–015, "Post-Combined License Commitments" and the NRC staff's resolution of public comments.

9:45 a.m.–11:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss

the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, including anticipated workload and member assignments. [**Note:** A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

11:15 a.m.–11:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

12:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss the proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed to protect unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(3).]

Saturday, April 10, 2010, Conference Room T2–B1, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed to protect unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(3).]

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Mr. Derek Widmayer, Cognizant ACRS Staff (Telephone: 301–415–7366, E-mail: *Derek.Widmayer@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: March 17, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–6325 Filed 3–22–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 22, 29, April 5, 12, 19, 26, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 22, 2010

There are no meetings scheduled for the week of March 22, 2010.

Week of March 29, 2010—Tentative

Tuesday, March 30, 2010

9:30 a.m. Briefing on Safety Culture (Public Meeting) (Contact: Jose Ibarra, 301–415–2581).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 5, 2010—Tentative

Tuesday, April 6, 2010

9 a.m. Periodic Briefing on New Reactor Issues—Design Certifications (Public Meeting) (Contact: Amy Snyder, 301–415–6822).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 8, 2010

9:30 a.m. Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting) (Contact: Richard Barkley, 610–337–5065).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 12, 2010—Tentative

Thursday, April 15, 2010

9:30 a.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting) (Contact: Michael Scott, 301–415–0565).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 19, 2010—Tentative

There are no meetings scheduled for the week of April 19, 2010.

Week of April 26, 2010—Tentative

Thursday, April 29, 2010

9:30 a.m. Briefing on the Fuel Cycle Oversight Process Revisions (Public Meeting) (Contact: Michael Raddatz, 301–492–3108).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: March 18, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–6468 Filed 3–19–10; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0285; Docket Nos. 50–295 and 50–304; License Nos. DPR–39 and DPR–48]

Exelon Generation Company, LLC; Zion Nuclear Power Station, Units 1 and 2; Order Extending the Effectiveness of the Approval of the Transfer of License and Conforming Amendment

I

Exelon Generation Company, LLC (Exelon) is the holder of licenses DPR–39 and DPR–48, for the Zion Nuclear Power Station, Units 1 and 2 (Zion facilities). Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) section 50.82(a)(2), operation of the Zion facilities is no longer authorized under the Part 50 licenses. Exelon is licensed to possess, but not use or operate the Zion facilities, which are located in Lake County, Illinois.

II

By Order dated May 4, 2009 (Transfer Order), the Commission consented to the direct transfer of control of Zion's license to Zion*Solutions* LLC, pursuant to 10 CFR 50.80. By its terms, the Transfer Order becomes null and void if the license transfer is not completed within 1 year, unless upon application and for good cause shown, the Commission extends the Transfer Order's May 4, 2010, expiration date.

III

By letter dated January 26, 2010, Exelon and Zion*Solutions,* LLC (ZS) (collectively, "the applicants") submitted a request to extend the effectiveness of the Transfer Order by 6 months, until November 4, 2010. According to the letter, past fluctuations in the financial markets caused the license transfers to be delayed. Upon transfer, Zion*Solutions* must receive assets with sufficient market value to assure that Zion*Solutions* will have adequate resources to complete the decommissioning project. As of December 31, 2009, the market value of the combined Zion trust funds recovered to approximately $888 million. The applicants stated that improvement in financial market performance needs to continue for only a few more months for the value to reach a level adequate to complete the project. The applicants further state that considerable progress has been made toward the acquisition of an irrevocable Letter of Credit in the amount of at least $200 million, which is a condition of the Transfer Order. This additional financial assurance instrument was unavailable for several months during the recent financial market fluctuations, and the applicants further state that the Letter of Credit will become available within a few months. While the applicants believe that the extra 6 months may later not be needed, they consider it prudent to request an extension to accommodate possible further delays that financial market fluctuations could cause. Therefore, the applicants requested an extension of the Transfer Order by 6 months to permit completion of the Zion license transfers. In their January 26, 2010, letter the applicants stated that the technical qualifications of the new organization and other bases for approving the transfers remain intact, and the contractual and financial arrangements, as described in the application and supplemental information, remain valid.

Based on the above representations, the NRC staff has determined that the applicants have shown good cause for extending the effectiveness of the Order by 6 months, as requested.

IV

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Transfer Order's expiration date is extended until November 4, 2010. If the subject license transfer from Exelon to Zion*Solutions,* LLC referenced above is not completed by November 4, 2010, the Transfer Order of May 4, 2009, shall become null and void, unless upon application and for good cause shown, the Commission further extends the effectiveness of the Transfer Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the submittal dated January 26, 2010 (ML100261739), which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Room O–1 F21 (First Floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of March 2010.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–6321 Filed 3–22–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0121]

Firstenergy Nuclear Operating Company and Firstenergy Nuclear Generation Corp.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has

granted the request of FirstEnergy Nuclear Operating Company and FirstEnergy Nuclear Generation Corp. to withdraw its June 2, 2009, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have excluded the source range neutron flux instrument channel preamplifier from the Channel Calibration requirements of Technical Specification (TS) 3.3.9, "Source Range Neutron Flux," and TS 3.9.2, "Nuclear Instrumentation."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 28, 2009 (74 FR 37248). However, by letter dated February 16, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 2, 2009, and the licensee's letter dated February 16, 2010, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of March 2010.

For the Nuclear Regulatory Commission.

Michael Mahoney,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–6320 Filed 3–22–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Partial Transfer of Post Office Box Service Product to Competitive Product List

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to transfer a portion of Post Office® box service from the Mail Classification Schedule's Market Dominant Product List to its Competitive Product List.

DATES: March 23, 2010.

FOR FURTHER INFORMATION CONTACT: David Rubin, 202–268–2986.

SUPPLEMENTARY INFORMATION: On March 12, 2010, the United States Postal Service filed with the Postal Regulatory Commission a *Request of the United States Postal Service* to transfer selected Post Office box service locations from the Mail Classification Schedule's Market Dominant Product List to its Competitive Product List, pursuant to 39 U.S.C. 3642. Documents pertinent to this request are available at *http://www.prc.gov,* Docket No. MC2010–20.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–6399 Filed 3–22–10; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Emergence Capital Partners SBIC, L.P. License No. 09/79–0454; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, *Financings which Constitute Conflicts of Interest,* of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to InsideView Technologies, Inc., 444 DeHaro Street, Suite 210, San Francisco, CA 94107 ("InsideView"). The financing is contemplated for general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own in aggregate more than ten percent of InsideView. Therefore, InsideView is considered an Associate of Emergence Capital Partners SBIC, L.P. and the transaction is considered as financing an Associate, requiring prior written exemption from SBA.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

March 12, 2010.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2010–6366 Filed 3–22–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Liquid Propane Gas (LPG).

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a class waiver of the Nonmanufacturer Rule for Liquid Propane Gas (LPG). On December 10, 2009, SBA received a request that a class waiver be granted for liquid propane gas (LPG), Product Service Code (PSC) 6830 (Compressed and Liquefied Gases), under the North American Industry Classification System (NAICS) code 325120 (Industrial Gases Manufacturing). According to the request, no small business manufacturers supply these class of products to the Federal government. On January 12, 2010, SBA issued a notice of intent to waive the Nonmanufacturer Rule for Compressed and Liquefied Gases. 75 FR 1662 (2010). After reviewing the responses to the notice SBA has concluded that the January 12, 2010, notice should have been more specific. Thus, SBA is seeking information on whether there are small business LPG manufacturers. If granted, the waiver would allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses or Participants in the SBA's 8(a) Business Development (BD) program.

DATES: Comments and source information must be submitted April 7, 2010.

ADDRESSES: You may submit comments and source information to Amy Garcia, Program Analyst, Small Business

Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Program Analyst, by telephone at (202) 205–6842; by FAX at (202) 481–1630; or by e-mail at *amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal contracts set aside for small businesses, SDVO small businesses, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS. In addition, SBA uses PSCs to further identify particular products within the NAICS code to which a waiver would apply. The SBA may then identify a specific item within a PSC and NAICS to which a class waiver would apply.

The SBA is currently processing a request to waive the Nonmanufacturer Rule for LPG, PSC 6830 (Compressed and Liquefied Gases), under NAICS code 325120 (Industrial Gases Manufacturing). The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this product within 15 days after date of publication in the **Federal Register**. In addition, SBA received several responses to the January 12, 2010, notice from dealers who believe that NAICS code 454312 (Liquefied Petroleum Gas (Bottled Gas) Dealers) is the appropriate NAICS code for this industry. However, wholesale and retail NAICS codes are not applicable to government procurements. 13 CFR 121.201. A procurement for supplies should be classified under the appropriate manufacturing or supply NAICS code. 13 CFR 121.402(b). A firm can qualify as a non-manufacturer on such a procurement if it meets the requirements of 13 CFR 121.406.

Karen Hontz,

Director, Office of Government Contracting.

[FR Doc. 2010–6355 Filed 3–22–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29176; File No. 812–13753]

SeaCo Ltd.; Notice of Application

March 17, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 ("Act").

SUMMARY: *Summary of Application:* SeaCo Ltd. ("SeaCo") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. SeaCo is primarily engaged in the shipping container business.

Applicant: SeaCo.

DATES: *Filing Dates:* The application was filed on Feb 9, 2009 and amended on March 4, 2010 and March 16, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2010, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant: Jonathan Adams, SeaCo Ltd., 22 Victoria Street, P.O. Box HM 1179, Hamilton HM EX, Bermuda.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. SeaCo, a Bermuda company, was formed on August 22, 2008, to own, operate and manage a shipping container business throughout the world. SeaCo acquired its businesses from Sea Containers Limited ("SCL") through a chapter 11 bankruptcy proceeding.[1] SeaCo states that in addition to directly owning a fleet of shipping containers (and, to a lesser degree, land containers), it also conducts its business through its wholly-owned subsidiaries and through a controlled company, GE SeaCo SRL ("GE SeaCo"), in a joint venture with General Electric Capital Corporation ("GECC").[2]

2. GE SeaCo is an operating company engaged in the business of leasing marine containers to ocean carriers and shippers, leasing land containers, and disposing of containers at the end of their useful economic life. SeaCo directly owns approximately 50% of the outstanding voting securities of GE SeaCo, which entitles it to appoint four members of GE SeaCo's board of managers ("GE SeaCo Board"). Since April 2006, GECC, which owns the remaining 50% of the outstanding voting securities of GE SeaCo, has held the right to appoint five of the nine members of the GE SeaCo Board. SeaCo states that by virtue of its ownership stake, SeaCo controls GE SeaCo as defined in section 2(a)(9) of the Act.[3]

3. SeaCo represents that it actively participates in the management and affairs of GE SeaCo. SeaCo states that it conducts its shipping container business through GE SeaCo by making decisions with GE SeaCo about the repair, positioning, re-leasing or sale of

[1] United States Bankruptcy Court for the District of Delaware, Case No. 06–11156 (KJC).

[2] As described more fully in the application, SeaCo finances the activities of, and collects revenues from, its other subsidiaries through its direct, wholly-owned subsidiary, SeaCo Finance Ltd. ("SC Finance"). While SeaCo owns its voting interest in GE SeaCo directly, it owns its economic interest in GE SeaCo indirectly through SC Finance and certain other intermediate, wholly-owned subsidiaries.

[3] Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

its containers. SeaCo also states that, working in partnership with GECC, it provides strategic direction to management; provides policies for retaining, recruiting and incentivizing GE SeaCo management; makes container asset purchase decisions; reviews and sets marketing and credit review policies; oversees information technology development and corporate restructuring; and reviews internal control systems and reviews and approves financial statements. SeaCo further states that its representation on the GE SeaCo Board permits SeaCo to block certain actions that require the approval of seven out of the nine managers (such as the selection of auditors, the seconding of employees to GE SeaCo from GECC and its affiliates and the conversion of GE SeaCo to a new corporate form). Finally, SeaCo states that it has maintained strong shareholder rights, which include the power to block various transactions that require a super-majority vote of shareholders (including certain sales transactions, amending the articles of organization and increasing or decreasing the number of managers or the maximum or minimum number of managers).

Applicant's Legal Analysis

1. SeaCo requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act ("Investment Securities").

3. SeaCo states that its only assets on an unconsolidated basis are its investment in its direct, wholly-owned subsidiary, SC Finance, and its holdings of the outstanding voting securities of GE SeaCo and another operating company, GE SeaCo America.[4] SC Finance may rely on section 3(c)(1) of the Act because it indirectly holds the economic interest in GE SeaCo, and such interest may be deemed to be Investment Securities. Therefore, SeaCo's assets on an unconsolidated basis could be deemed to consist almost entirely of Investment Securities. Because more than 40% of SeaCo's total unconsolidated assets may consist of Investment Securities, SeaCo may be deemed an investment company within the meaning of section 3(a)(1)(C) of the Act.

4. Rule 3a–1 under the Act provides an exemption from the definition of investment company if, on a consolidated basis with wholly-owned subsidiaries, no more than 45% of an issuer's total assets (exclusive of Government securities and cash items) consist of, and no more than 45% of its net income after taxes over the last four fiscal quarters combined is derived from, securities other than: Government securities, securities issued by employees' securities companies, and securities of certain majority-owned subsidiaries and companies controlled primarily by the issuer. SeaCo states that due to GECC's right to appoint an additional manager to the GE SeaCo Board, SeaCo is unable to rely on rule 3a–1 because it does not primarily control GE SeaCo.

5. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. SeaCo submits that it qualifies for an order under section 3(b)(2) of the Act because it is primarily engaged in the shipping container business through its wholly-owned subsidiaries and through its controlled company, GE SeaCo. In determining whether an issuer is "primarily engaged" in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) The company's historical development, (b) its public representation of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[5]

a. *Historical Development.* SeaCo states that it is a Bermuda company formed on August 22, 2008 specifically for the primary purpose of engaging in the shipping container business through GE SeaCo. SeaCo states that it does not treat its ownership of GE SeaCo's outstanding voting securities as investment assets but as the mechanism through which SeaCo operates, conducts and controls its shipping container business. SeaCo's interest in GE SeaCo arose from SCL's historical interest in GE SeaCo, which was transferred to SeaCo as part of a chapter 11 plan of reorganization. SeaCo does not intend to invest in any entity as a passive investment or in portfolio securities for short-term profits and will not be a "special situation investment company."[6]

b. *Public Representations of Policy.* SeaCo states that it has never held itself out as an investment company within the meaning of the Act, and has not made any public representations that would indicate that it is in any business other than that of operating a shipping container business. With respect to GE SeaCo, SeaCo has and intends to consistently report its strategy as participating actively in its operations through its GE SeaCo Board representatives, shareholder rights, and substantial information rights.

c. *Activities of Officers and Directors.* SeaCo states that the majority of its board of directors and executive management team has significant experience in the shipping container industry and/or managing turnarounds in the operations of companies emerging from bankruptcy. SeaCo states that none of these individuals spends, or proposes to spend, any material amount of time on behalf of SeaCo or GE SeaCo in activities which involve investing, reinvesting, owning, holding, or trading in securities, directly or indirectly through others. SeaCo anticipates that any time spent on such activities by these individuals would be de minimis. SeaCo further states that the members of its board of directors (which include four directors who also serve on the GE SeaCo Board), spend between 20–40% of their time on monitoring the performance of GE SeaCo operations, 7–10% of their time making decisions regarding the owned container fleet, 20–30% of their time on investor communications, 13–15% of their time

[4] GE SeaCo America employs United States staff that handle operations, leasing and end-of-useful-life disposal of certain United States based containers for GE SeaCo. SeaCo directly holds 40% of GE SeaCo America's outstanding voting securities and operates less than 3% of its shipping container business through GE SeaCo America.

[5] Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

[6] SCL also is not and was not a "special situation investment company."

on management oversight and 20–25% of their time providing strategic direction. SeaCo states that its only executive officer, the Chief Executive Officer, does not spend his time on activities which involve investing, reinvesting, owning, holding or trading in securities, and its three employees split their time between accountancy, contract management, billing and collections, investor communications and office administration. SeaCo does not, directly or indirectly, employ securities analysts or engage in the trading of securities for speculative or other purposes.

d. *Nature of Assets.* As a holding company, SeaCo asserts that its financial data consolidated with its wholly-owned subsidiaries provides a more accurate picture of its business. SeaCo states that, as of June 30, 2009, its interests in GE SeaCo represented 50% of its total assets, consolidated with its wholly-owned subsidiaries. Of SeaCo's remaining total assets, consolidated with its wholly-owned subsidiaries, SeaCo's owned container fleet represented 26%, amounts receivable from container leasing represented 7%, and other assets consisting mainly of deferred finance charges represented 2%. Treating the interests in GE SeaCo as an operating asset, SeaCo's remaining Investment Securities constituted less than 15% of SeaCo's total assets, consolidated with its wholly-owned subsidiaries.[7]

e. *Sources of Income.* SeaCo states that on an unconsolidated basis it has no or minimal income from its ownership of SC Finance, which receives revenues from SeaCo's other subsidiaries. Applicant states that revenues constitute the primary source of its income. On a consolidated basis with its wholly-owned subsidiaries, SeaCo states that, for the period ending June 30, 2009, its proportionate share of the revenues of GE SeaCo represented 32%, revenues on the owned container fleet managed by GE SeaCo represented 67%, and interest income represented 1%, of its total income.

6. SeaCo thus submits that it qualifies for an order under section 3(b)(2) of the Act.

[7] Of SeaCo's remaining Investment Securities, consolidated with its wholly-owned subsidiaries, restricted cash to service the SeaCo Group's loan facilities represented 10%, cash and cash equivalents for operational purposes represented 2%, securities issued by GE SeaCo America represented 2%, and the amount due from SCL arising out of bankruptcy process represented 1%.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6303 Filed 3–22–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Aspen Group Resources Corp., Commercial Concepts, Inc., Desert Health Products, Inc., Equalnet Communications Corp., Geneva Steel Holdings Corp., Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.), and Sepragen Corp.; Order of Suspension of Trading

March 19, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aspen Group Resources Corp. because it has not filed any periodic reports since the period ended December 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Commercial Concepts, Inc. because it has not filed any periodic reports since the period ended November 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Desert Health Products, Inc. because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Equalnet Communications Corp. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Geneva Steel Holdings Corp. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Orderpro Logistics, Inc. (n/k/a Securus Renewable Energy, Inc.) because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sepragen Corp. because it has not filed any periodic reports since the period ended September 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 19, 2010, through 11:59 p.m. EDT on April 1, 2010.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6447 Filed 3–19–10; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6925]

Culturally Significant Objects Imported for Exhibition Determinations: "Race to the End of the Earth"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Race to the End of the Earth," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, NY, from on or about May 25, 2010, until on or about January 3, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD,

Fifth Floor, Washington, DC 20522–0505.

Dated: March 16, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–6345 Filed 3–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6926]

Culturally Significant Objects Imported for Exhibition Determinations: "Loan From the Aura Collection of a Winged Figure Pendant"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "Loan from the Aura Collection of a Winged Figure Pendant," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about May 15, 2010, until on or about May 15, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 17, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–6346 Filed 3–22–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 13, 2009, vol. 74, no. 218, page 58676. This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application.

DATES: Please submit comments by April 21, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Competition Plans, Passenger Facility Charges.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0661.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 40 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 136 hours per response.

Estimated Annual Burden Hours: An estimated 680 hours annually.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. The affected public includes public agencies controlling medium or large hub airports.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 16, 2010.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2010–6275 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2010–0027]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 24, 2010.

ADDRESSES: You may submit comments (identified by DOT Docket No. NHTSA–2010–0027) to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at *http://dms.dot.gov.* Click on "Help" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the docket number of this document. You may call the docket at (202) 647–5527. Docket hours are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the on-line instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Tamara Webster, NHTSA, 1200 New Jersey Avenue, SE., W46–490, NTI 200, Washington, DC 20590. Ms. Webster's telephone number is (202) 366–2701. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 23 CFR part 1350 Certificate Requirements for Section 2010 Motorcyclist Safety Grant Program.

OMB Control Number: 2127–0650.

Affected Public: 50 States, the District of Columbia and Puerto Rico.

Form Number: NA.

Abstract: A motorcyclist safety incentive grant is available to help States enhance motorcyclist safety training and motorcyclist awareness programs. To qualify for a first year grant under the grant program, a State must demonstrate that it has satisfied one of six criteria: (1) Statewide motorcycle rider training course, (2) statewide motorcyclists awareness program, (3) reduction of fatalities and crashes involving motorcycles, (4) statewide impaired driving program, (5) reduction of fatalities and accidents involving impaired motorcyclists, and (6) use of fees collected from motorcyclists for motorcycle programs. In second and subsequent fiscal years, a State must demonstrate that it has satisfied at least two of six criteria.

Estimated Annual Burden: 1560 hours.

Number of Respondents: 50 States, the District of Columbia and Puerto Rico.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marlene Markison,

Associate Administrator, Regional Operations and Program Delivery.

[FR Doc. 2010–6317 Filed 3–22–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0088]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on an information collection under Office of Management and Budget (OMB) Control No. 2137–0614, titled: Pipeline Safety: New Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report. PHMSA will request approval from OMB for a renewal of the current information collection with no revisions.

DATES: Interested persons are invited to submit comments on or before May 24, 2010.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov Web Site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: Identify the docket number, PHMSA–2010–0088 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2010–0088." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Cameron Satterthwaite by telephone at 202–366–1319, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. This information collection is contained in the pipeline safety regulations at 49 CFR parts 190–199. The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) type of request; (4) abstract of the information collection activity; (5) description of affected public; (6) estimate of total annual reporting and recordkeeping burden; and (7) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity.

PHMSA requests comments on the following information collection:

Title: Pipeline Safety: New Reporting Requirements for Hazardous Liquid Pipeline Operators: Hazardous Liquid Annual Report.

OMB Control Number: 2137–0614.

Type of Request: Renewal of a currently approved information collection.

Abstract: Operators of hazardous liquid pipelines must prepare and file annual reports regarding the condition of their systems. The data provides the basis for more efficient and meaningful analyses of the safety status of hazardous liquid pipelines. PHMSA uses the information to compile a national pipeline inventory, identify and determine the scope of safety problems, and target inspections.

Affected Public: Operators of hazardous liquid pipelines.

Estimated number of responses: 447.

Estimated annual burden hours: 5,364 hours.

Frequency of collection: Annually.

It should be noted that this information collection, which includes the Hazardous Liquid Annual Report (PHMSA F 7000–1), is being revised in a rulemaking titled: Pipeline Safety: Updates to Pipeline and Liquefied Natural Gas Reporting Requirements (One Rule). The Notice of Proposed Rulemaking for the One Rule was published in the **Federal Register** on July 2, 2009 (74 FR 31675) and comments were submitted to Docket No. PHMSA–2008–0291. The purpose of this notice is only for an extension of the currently approved referenced information collection with no revisions.

Issued in Washington, DC, on March 18, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–6360 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1057X]

Missouri & Valley Park Railroad Corporation—Discontinuance of Service Exemption—in St Louis County, MO

On March 3, 2010, Missouri & Valley Park Railroad Corporation (MVPR) [1] filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over 3.5 miles of rail lines owned by BNSF located on the south side of BNSF's Cuba Subdivision between milepost 18.36 and milepost 20.50, near West Valley Park, St. Louis County, MO.[2] The lines traverse U.S. Postal Service Zip Code 63088, and include no stations.[3]

According to MVPR, the lines do not contain any Federally granted rights-of-way. Any documentation in MVPR's possession will be made available promptly to those requesting it.

MVPR proposes to discontinue service over these lines, which constitute its entire operations. When issuing discontinuance authority for railroad lines that constitute the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment,* 354.I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 21, 2010.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to

[1] MVPR leased the lines from BNSF Railway Company (BNSF) in 2002. *See Missouri & Valley Park Railroad Corporation—Lease Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34231 (STB served Aug. 5, 2002) (*MVPR lease*). According to MVPR, upon the expiration of MVPR's lease, BNSF leased the lines to Burlington Shortline Railroad, Inc. d/b/a Burlington Junction Railway, which commenced operations on the lines on January 30, 2010. *See Burlington Shortline Railroad, Inc. d/b/a Burlington Junction Railway—Lease and Operation Exemption—BNSF Railway Company,* STB Finance Docket No. 35333 (STB served Dec. 31, 2009).

[2] In *MVPR lease,* the length of the lines was described as 2.14 miles. According to MVPR, the lines are actually 3.5 miles in length.

[3] On March 12, 2010, MVPR supplemented its petition with station information.

subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[4]

All filings in response to this notice must refer to STB Docket No. AB–1057X, and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before April 12, 2010.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–6380 Filed 3–22–10; 8:45 am]

BILLING CODE 4915–01–P

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2010–0010]

Reclassification of Motorcycles (Two and Three Wheeled Vehicles) in the Guide to Reporting Highway Statistics

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice, request for comments.

SUMMARY: This Notice proposes to update FHWA's guidance regarding State reporting of motorcycle registration information disseminated to the public in FHWA's annual publication *Guide to Reporting Highway Statistics.* The intent of these actions is to improve FHWA's motorcycle registration data to assist in the analysis of crash data relating to these vehicles. Thus, it is critical that the motorcycle registration data collected and published by FHWA is accurate, comprehensive, and timely. FHWA's *Guide to Reporting Highway Statistics (Guide)* is the guide by which FHWA instructs States on selected data required by FHWA to perform its mission of informing Congress, the highway community, and the general public on a wide variety of highway extent, condition, use, and performance measures.

DATES: Comments must be received on or before 90 days after date of publication in the **Federal Register**.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ralph Erickson, Highway Funding and Motor Fuels Team Leader, Office of Policy, HPPI–10, (202) 366–9235, or Adam Sleeter, Office of the Chief Counsel, (202) 366–8839, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal Docket Management System at: *http://www.regulations.gov.* Regulations.gov is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register**'s home page at: *http://www.gpoaccess.gov/fr/index.html* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material.

Background

FHWA has collected motorcycle registration data since 1914. In the last few years, however, the population of motorcycles and related vehicle types has risen dramatically. Additionally, there has been an increase in motorcycle crashes due to factors including, but not limited to, rider inexperience, rider impairment, decreased use of helmets, and increased motorcycle use.

Data from the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) [1] indicates that in 2008, motorcycle rider fatalities increased for the eleventh consecutive year: From 2,116 in 1997 to 5,290 in 2008, an increase of 150 percent. Other trends include a dramatic rise in motorcycle ownership and changes in other factors such as motorcycle size and new designs for these vehicles. However, this increase in fatality data is disproportionate to reported increases in motorcycle registration and in reported miles traveled. Due to this disconnect, safety advocates have encouraged improving the data collection process in order to better analyze and identify rider exposure and crash causality.

On October 3, 2007, the National Transportation Safety Board (NTSB) sent a letter to FHWA containing an NTSB Safety Recommendation H–07–34, which States:

> Following the 2007 Motorcycle Travel Symposium, develop guidelines for the States to use to gather accurate motorcycle registrations and motorcycle vehicle miles of travel data. The guidelines should include information on the various methods to collect registrations and vehicle miles traveled data and how these methods can be put into practice.

FHWA is committed to improving both sets of data. This notice addresses the NTSB recommendation to gather

[1] FARS data can be viewed on the following Web site: *http://www-fars.nhtsa.dot.gov/Main/index.aspx.*

more accurate motorcycle registration data. Specifically, related to vehicle registrations, FHWA has established an interagency review team consisting of experts from FHWA's Offices of Safety and Research, and various NHTSA offices, to assist in the following activities:

1. Review State laws to determine the State of practice for motorcycle registrations by documenting State laws and practices;

2. Improve the definition of motorcycles in the *Guide to Reporting Highway Statistics;*

3. Develop guidelines for the States to use to gather and report more accurate motorcycle registration data;

4. Include information on the various methods to collect and report registrations in the guidelines; and

5. Initiate actions to bring the best methods in wider practice.

Current Status

FHWA's current definition of a motorcycle is two-fold: (1) motorcycles and (2) motor bicycles and scooters. The current language for defining motorcycles is provided in FHWA's *Guide* [2] as follows:

Item I.E.2. Motorcycles: This item includes two-wheeled and three-wheeled motorcycles. Sidecars are not regarded as separate vehicles—a motorcycle and sidecar are reported as a single unit.

Item I.E.3. Motor bicycles and scooters: Mopeds should be included with motor-driven cycles (motor bicycles) in the States that require their registration.

The *Guide* has approval from the Office of Management and Budget (OMB) under the control number 2125–0032. The information collected in accordance with the *Guide* is authorized under 23 U.S.C. 315, which authorizes the Secretary of Transportation to prescribe and promulgate rules and regulations to carry out the requirements of Title 23 of the U.S. Code. Under that authority, 23 CFR 1.5 provides FHWA with the ability to request information deemed necessary to administer the Federal-aid highway program. Data is used to relate highway system performance to investment under FHWA's strategic planning and performance reporting process in accordance with the requirements of the *Government Performance and Results Act* [3]. Additionally, 23 CFR 420.105(b) requires States to provide data that support FHWA's responsibilities to the Congress and the public.

States annually report data to FHWA from their motor vehicle registration systems. As a result, such data is based on the definitions developed by States which may or may not approximate FHWA's definition of motorcycles, motor bicycles, or scooters.

FHWA researched State legislation (including the District of Columbia, but not Puerto Rico) for definitions of motorcycles and similar vehicles. We found several characteristics that specifically differentiated motorcycle-type vehicles from other vehicle types. Several States further defined the difference between motorcycles and mopeds, or in a few States, motor scooters. The characteristics for defining motorcycles included vehicles: with two to three wheels in contact with the ground (48 States), with a seat or saddle for the passenger(s) (36 States), with a sidecar or trailer (4 States), and with a steering handlebar (2 States). Additionally, one State defined motorcycles as having no enclosure on the vehicle for the operator (driver) or passenger.

The following characteristics were used by some States to define the difference between motorcycles, mopeds, and in a few cases, motor scooters: speeds not in excess of 25 to 45 miles per hour (MPH) (3 States mention 25 MPH, 13 mention 30 MPH, 1 State each mentions 35 or 45 MPH); engine displacement of not greater than 50 to 150 cubic centimeters (cc) (21 States mention 50 cc, 1 State mentions 55 cc, and 1 State mentions 150 cc). Some States used brake horsepower (HP) instead of, or in addition to, displacement to identify vehicle power (4 States mention 1.5 HP, 12 mention 2.0 HP, 1 State mentions 2.7 HP, and 1 State mentions 5 HP). Wheel diameter for differentiating motorcycles and mopeds from motor scooters is mentioned by 5 States (2 States mention wheel diameter greater than 10 inches, 1 State mentions wheel diameter greater than 14 inches, and 2 States mention wheel diameter greater than 16 inches); and 4 States mentioned a platform or deck for a standing driver as a characteristic of a motor scooter.

Another identifier for vehicle type is provided by the Vehicle Identification Number (VIN) which is recorded by States when vehicles are registered for highway use. The VIN is a unique 17 digit standardized serial number used by the motor vehicle industry to identify individual motor vehicles. The standards are set by the International Organization for Standardization (ISO) 3779 (1979) and 3780 (1980). These standards are due for major revision in 2010.

The United States uses a compatible but somewhat different implementation of these ISO standards for domestic use. Title 49, Code of Federal Regulations, Transportation, *Part 565, Vehicle Identification Number Requirements,* 565.15 Content, describes VIN characteristics as follows: The VIN consists of four sections of characters which are grouped according to given specifications. The first section consists of three characters that occupy positions one through three in the VIN. These numbers uniquely identify the manufacturer, make, and type of the motor vehicle. The second section consists of five characters, which occupy positions four through eight in the VIN. This section identifies attributes of the vehicle. For motorcycles, this would typically include the manufacturer's brand, model designation, engine type (displacement for liquid fueled engines), net brake horsepower (less than or greater than 2 HP), and vehicle weight. All motorcycles would fall in the grouping of vehicles weighing less than 3,000 pounds. The placement of characters within this section is determined by the manufacturer, but the specified attributes must be decipherable with information supplied by the manufacturer in accordance with 49 CFR 565.15. In addition, the model year, in place 10 of the 17 digit VIN code, may also be useful for motorcycle registration information for identifying vehicle age. The remaining sections of the VIN would not provide the type of information needed to identify motorcycle vehicle types.

Reference Material

The *Guide to Reporting Highway Statistics* is FHWA's guidance to the States for reporting a variety of data items, including two categories of motorcycles: motorcycles and motorized bicycles.

The *American National Standards Institute (ANSI) D 16.1* [4] defines a motorcycle as any motor vehicle having a seat or saddle for the use of its operator and designed to travel on not more than three wheels in contact with the ground. This includes large motorcycles, motor-driven cycles, speed limited motor-driven cycles, mopeds, motor scooters, and motorized or motor assisted bicycles.

The definitions of motorcycle type vehicles found in 49 CFR 571.3 state that:

[2] *Guide,* Chapter 3, Report Identifying Motor-Vehicle Registrations and Taxation, page 3–2.

[3] Government Performance and Results Act of 1993 (GPRA), Sec. 3 and 4, Public Law 103–62.

[4] American National Standards Institute, *http://webstore.ansi.org/?source=google&adgroup=ansi&keyword=ansi&gclid=CPCrrZm5jJwCFQtN5QodnzkVXg.*

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motor-driven cycle means a motorcycle with a motor that produces 5-brake horsepower or less.

The *Model Minimum Uniform Crash Criteria* (MMUCC) [5] defines a motorcycle as a two or three-wheeled motor vehicle designed to transport one or two people. Included are motor scooters, mini-bikes, and mopeds.

The FARS and National Automotive Sampling System (NASS) General Estimates System (GES) follows the ANSI D 16.1 definition. The FARS and GES data are used in traffic safety analyses by NHTSA as well as other public and private entities. The information is used to estimate how many motor vehicle crashes of different kinds take place, and is also used in the analyses by researchers and highway safety professionals in order to determine the factors involved in the crashes.

Discussion of the Proposal

FHWA is seeking to provide improved registration data to agencies and the public to assist in the analysis of crash data relating to these vehicles. For FHWA, the issue is two-fold: FHWA must provide the States complete and comprehensive instructions on the data FHWA needs to collect to perform its responsibilities, and FHWA must work with the States to assure that they are providing accurate data to the extent that they can in accordance with FHWA instructions. A corollary to both issues is that FHWA must provide instructions that allow the States to provide accurate and collectable data.

FHWA proposes to revise its definition of motorcycles and two-and-three-wheeled vehicles to better differentiate motorcycles, mopeds, and motor scooters. Further, FHWA proposes to build on the various existing State definitions and to work with the States to build consensus towards a uniform definition of these types of vehicles. An example of potential revised definitions include the following:

Item i.e.2. Motorcycles: This item includes vehicles with the following characteristics:

1. Two or three wheels in contact with the ground (excluding trailers suitable for motorcycle hauling).
2. A seat or saddle for rider (operator) and passengers (if any).
3. A steering handle bar.
4. Motor capacity exceeding 5 Horsepower.
5. Wheel rim diameters exceeding 10 inches.
6. Do not include a full enclosure for the rider (operator) or passengers.
7. Sidecars and trailers are not regarded as separate vehicles—a motorcycle and sidecar or trailer is reported as a single unit.

Item i.e.3. Mopeds or motor bicycles: this item includes vehicles with the following characteristics:

1. Two wheels in contact with the ground.
2. A seat or saddle for rider (operator) and passengers (if any).
3. A steering handle bar.
4. Pedals for operation without motor assistance.
5. Do not include a full enclosure for the rider (operator) or passengers.
6. Have a brake horsepower not exceeding 5 Horsepower.

Item i.e.4 Motor scooters: this item includes vehicles with the following characteristics:

1. Two wheels in contact with the ground.
2. Has a platform or deck for the use of a standing rider (operator).
3. A steering handle bar.
4. Do not include a full enclosure for the rider (operator) or passengers (if any).
5. Have a brake horsepower not exceeding 5 Horsepower.
6. Have a direct drive energy transmission from the engine to the drive wheel(s) (no transmission).

In addition, FHWA seeks comments on the issues of identifying vehicles with the following characteristics:

1. Two or three wheels in contact with the ground (excluding trailers suitable for motorcycle hauling).
2. A seat for driver and passengers.
3. Wheel diameters exceeding 10 inches.
4. An enclosure for the driver or passengers.
5. Sidecars and trailers are not regarded as separate vehicles—a motorcycle and sidecar or trailer is reported as a single unit.

FHWA also seeks comment regarding the types of three-wheeled vehicles that are small and lightweight, with a minimal chassis and body that may or may not be fully enclosed by doors and/or windows. Examples include commercial vehicles such as the Zapcar and T-Rex. FHWA seeks comments on all revised definitions above and on any other definitions that would provide value.

Another approach would be for FHWA to request the States to report additional information on the relevant sections of the VIN of every motorcycle type vehicle registered with the States. FHWA could request States to report the relevant digits of the VIN of the registered motorcycle to gather additional details on the motorcycle characteristics and avoid digits that indicate a specific vehicle. By only asking for the characteristic-relevant digits, FHWA would avoid gathering any unique identifier of the vehicle (and the owner of the vehicle). FHWA seeks comments on whether the collection of this information would raise privacy concerns.

Discussion with experts in the field indicates that motorcycle attributes contained in the VIN are less standardized than those for auto or truck type vehicles. This implies that VIN data may not be as helpful in classifying motorcycle type vehicles as some may believe. The VIN approach also adds considerable cost to FHWA's data collection and analysis program and may not provide significantly new or additional information. FHWA seeks comments on whether the collection of information contained in the VIN would provide useful or valuable information and if that information is useful, whether that information could be collected in another way.

FHWA seeks comments on these proposed revisions and methods of reporting.

Issued on: March 8, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–6361 Filed 3–22–10; 8:45 am]

BILLING CODE 4910–22–P

[5] Model Minimum Uniform Crash Criteria: *http://www.mmucc.us/.*

Federal Register

Tuesday,
March 23, 2010

Part II

Department of Education

34 CFR Parts 206, 642, 643, et al.
High School Equivalency Program and College Assistance Migrant Program, the Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

RIN 1840–AD01

[Docket ID ED–2010–OPE–0002]

High School Equivalency Program and College Assistance Migrant Program, the Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program

AGENCIES: Office of Postsecondary Education and Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend current regulations, and establish new regulations, for the High School Equivalency Program and College Assistance Migrant Program (HEP and CAMP); the Federal TRIO programs (TRIO Programs—Training Program for Federal TRIO Programs (Training), Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB), Student Support Services (SSS), and the Ronald E. McNair Postbaccalaureate Achievement (McNair) Programs; and the Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) program.

The purpose of HEP is to help migrant and seasonal farmworkers and their immediate family members obtain a general educational development (GED) credential, while CAMP assists students from this background to complete their first academic year of college and continue in postsecondary education. The Federal TRIO programs consist of five postsecondary educational opportunity outreach and support programs designed to motivate and assist low-income individuals, first-generation college students, and individuals with disabilities to enter and complete secondary and postsecondary programs of study and enroll in graduate programs, and a training program for project staff working in one or more of the Federal TRIO programs. The purpose of the GEAR UP program is to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

These proposed regulations are needed to implement provisions of the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA) that relate to the HEP and CAMP, Federal TRIO, and GEAR UP programs.

DATES: We must receive your comments on or before April 22, 2010.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Pamela Maimer, U.S. Department of Education, 1990 K Street, NW., Room 8014, Washington, DC 20006–8014.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For general information, Pamela J. Maimer, U.S. Department of Education, 1990 K Street, NW., Room 8014, Washington, DC 20006–8014. Telephone: (202) 502–7704 or via the Internet at: *Pamela.Maimer@ed.gov.*

For information related to HEP and CAMP issues, Nathan Weiss, U.S. Department of Education, Office of Migrant Education, 400 Maryland Ave. SW., Room 3E–321, Washington, DC 20202–6135. Telephone: (202) 260–7496 or via the Internet at: *Nathan.Weiss@ed.gov.*

For information related to Federal TRIO issues, Frances Bergeron, U.S. Department of Education, 1990 K Street, NW., room 7059, Washington, DC 20006–7059. Telephone: (202) 502–7528 or via the Internet at *Frances.Bergeron@ed.gov.*

For information related to GEAR UP issues, James Davis, U.S. Department of Education, 1990 K Street, NW., Room 6109, Washington, DC 20006–6109. Telephone: (202) 502–7802 or via the Internet at: *James.Davis@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to any of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled *Negotiated Rulemaking,* significant public participation, through six public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before April 22, 2010. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in Room 8033, 1990 K Street, NW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment

for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the discretionary grant programs authorized under title IV of the HEA, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

On December 31, 2008, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to lender and general loan issues (Team I—Loans-Lender General Loan Issues). A second committee would focus on school-based loan issues (Team II—Loans-School-based Loan Issues). A third committee would focus on accreditation (Team III—Accreditation). A fourth committee would focus on discretionary grants (Team IV—Discretionary Grants). A fifth committee would focus on general and non-loan programmatic issues (Team V—General and Non-Loan Programmatic Issues). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

This NPRM reflects the work of Team IV—Discretionary Grants (Team IV) which met to develop proposed regulations during the months of February through April, 2009. This NPRM proposes regulations relating to the administration of the HEP and CAMP, TRIO, and GEAR UP discretionary grants programs.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA and from advice and recommendations submitted by individuals and organizations as testimony to the Department in a series of six public hearings held on—

- September 19, 2008, at the Texas Christian University, in Fort Worth, Texas;
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island;
- October 2, 2008, at the Pepperdine University, in Malibu, California;
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina;
- October 8, 2008, at the U.S. Department of Education, in Washington DC; and
- October 15, 2008, at Cuyahoga Community College, in Warrensville Heights, Ohio.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/leg/hea08/index.html.*

Staff within the Department also identified additional issues for discussion and negotiation.

At its first meeting, Team IV reached agreement on its protocols. These protocols provided that for each community of interest identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

The Discretionary Grant Team IV Negotiated Rulemaking Committee included the following members:

Representing the TRIO Programs

- David Megquier and Maureen Hoyler (alternate), Council for Opportunity in Education.
- Charlene Manco and Larry Letourneau (alternate), National Educational Opportunities Association.
- Laura Qaissaunee and R. Renee Hampton (alternate), American Association of Community Colleges.
- Jon Westby, Minneapolis Community and Technical College and Mike Henry, Southwest Virginia Community College (alternate), representing TRIO two-year institutions.
- Deltha Q. Colvin, The Wichita State University and Troy Johnson, University of North Texas (alternate), representing TRIO four-year institutions.
- Brenda Dann-Messier, Dorcas Place Adult & Family Learning Center, representing TRIO community organizations.

Representing the GEAR UP Program

- Teena L. Olszewski, Northern Arizona University, Allison G. Jones, The California State University, and Weiya Liang, Washington Higher Education Coordinating Board (alternate), representing GEAR UP four-year institutions.
- Louis Niro, Cuyahoga Community College, representing GEAR UP two-year institutions.
- Jennifer Martin and Karen McCarthy (alternate), National Association of Student Financial Aid Administrators.
- Linda Shiller, Vermont Student Assistance Corporation representing GEAR UP State grantees.

Representing the HEP and CAMP Programs

- Arturo Martinez and Javier Gonzalez (alternate), The National HEP/CAMP Association.

Representing Students

- Cedric Lawson, United Council of University of Wisconsin, and Gregory A. Cendana (alternate), United States Student Association.

Representing the Federal Government

- Lynn Mahaffie, U.S. Department of Education.

Team IV's protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team IV reviewed and discussed drafts of proposed regulations. At the final meeting in April 2009, the team reached tentative agreement on the proposed regulations for the HEP, CAMP and GEAR UP programs as well as on many of the proposed TRIO program regulations. However, some non-Federal negotiators did not agree to the Department's proposed regulations relating to the use of Talent Search grants to pay tuition for students to take courses and the proposed regulations to implement the new statutory requirement for a second review of unsuccessful applications for TRIO grants. Because the committee did not agree on the proposed regulations for the TRIO programs, Team IV did not reach consensus on the proposed regulations in this NPRM.

We propose to accept changes that reflect the tentative agreements made in the negotiation sessions for the HEP, CAMP, and GEAR UP programs in their entirety. In the TRIO proposed regulations, we accepted many of the changes tentatively agreed to in the negotiation sessions.

More information on the work of Team IV can be found at *http://www.ed.gov/policy/highered/reg/hearulemaking/2009/grants.html.*

Summary of Proposed Changes

These proposed regulations would implement changes made by the HEOA to discretionary grant programs authorized by title IV of the HEA, including:

HEP and CAMP Programs

- Expanding eligibility for HEP and CAMP to allow students to qualify for the program through their own qualifying work, or that of an immediate family member, rather than only through their own work or that of a parent, as the statute previously held (*see* section 418A(b)(B)(i) of the HEA).
- Defining the term *immediate family member* to include only individuals who are dependent upon a migrant or seasonal farmworker (*see* section 418A(b)(B)(i) of the HEA).
- Revising the definition of the term *seasonal farmworker* to clarify that the individual's primary employment in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months (*see* section 418A(b)(1)(B)(i) of the HEA).
- Amending the authorized HEP services section to (1) Provide that permissible HEP services include preparation for college entrance examinations; (2) provide that permissible HEP services include all stipends—not only weekly stipends—for HEP participants; (3) add transportation and child care as examples of essential supportive services; and (4) specify that HEP services include other activities to improve persistence and retention in postsecondary education (*see* section 418A(b) of the HEA).
- Amending the authorized CAMP services section to specify that (1) Permissible CAMP services include supportive and instructional services to improve placement, persistence, and retention in postsecondary education; (2) these supportive services include personal, academic, career, economic education, or personal finance counseling as an ongoing part of the program, and (3)permissible CAMP services include internships (*see* section 418A(c)(1) of the HEA).
- Amending the follow-up CAMP services section to include (1) referring CAMP students to on-campus or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of these students (*see* section 418A(c)(2) of the HEA).
- Amending the minimum allocation for HEP and CAMP grants to provide that the Secretary must not allocate an amount less than $180,000 (*see* section 418A(e) of the HEA).
- Adding to the HEP and CAMP program regulations the criteria the Department considers in evaluating prior experience (*see* section 418A(f) of the HEA).

Federal TRIO Programs

The HEOA made a number of significant changes to the Federal TRIO programs that necessitate changes to the current regulations. The statutory changes to the TRIO programs include:

- Amending or adding definitions for *different campus* and *different population,* which change current regulatory definitions of these terms for the SSS program and current practice with regard to the number of applications an eligible entity may submit under each of the TRIO programs (*see* section 402A(h)(1) and (h)(2) of the HEA).
- Amending the services or activities that projects funded under the Federal TRIO programs must provide and services or activities that these projects may provide (*see* section 402B(b) and (c) (TS); section 402C(b), (c) and (d) (UB); section 402D(b) and (c) (SSS); section 402E(b) and (c) (McNair); section 402F(b) (EOC); and section 402G(b) (Training) of the HEA).
- Adding new categories of participants (foster care youth and homeless children and youth) for whom projects funded under these programs are to provide services (*see* section 402A(e)(3) of the HEA).
- Adding new outcome criteria for most of the TRIO programs (except for the Training program) which the Secretary must use for prior experience determinations: TS (*see* section 402A(f)(3)(A) of the HEA); UB (*see* section 402A(f)(3)(B) of the HEA); SSS (*see* section 402A(f)(3)(C) of the HEA); McNair (*see* section 402A(f)(3)(D) of the HEA); and EOC (*see* section 402A(f)(3)(E) of the HEA).
- Specifying a new procedure for handling unsuccessful applications using a two-stage process (*see* section 402A(c)(8)(C) of the HEA).
- Revising definitions for some terms and adding new regulatory definitions to implement amendments to the HEA by the HEOA:
- *Financial and economic literacy* (*see* section 402B(b)(6) of the HEA (TS), section 402C(b)(6) of the HEA (UB), section 402D(b)(4) of the HEA (SSS), section 402E(c)(1) of the HEA (McNair)), and section 402F(b)(5) of the HEA (EOC));
- *Foster care youth* and *homeless children and youth* (*see* sections 402A(e)(3), 402B(c)(7) (TS), 402C(d)(7) (UB), 402D(a)(3) and (c)(6) (SSS), 402F(b)(11) (EOC), and 402G(b)(5) of the HEA (Training)).
- *Graduate center* (*see* sections 101 and 102 of the HEA and section 402E(d)(2)of the HEA); *groups underrepresented in graduate school* (*see* section 402E(d)(2) of the HEA); and *research and scholarly activities* (*see* section 402E(b)of the HEA (McNair)).
- *Individual with disabilities* (*see* sections 402B(c)(7) (TS), 402C(d)(7) (UB), 402D(a)(3) and (c)(6) (SSS), 402F(b)(11) (EOC), and 402G(b)(5) of the HEA (Training)).
- *Individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure* (*see* sections 402A(f)(3)(B)(iii) and (iv) and 402C(e)(2) of the HEA).
- *Institution of higher education* (*see* sections 101 and 102 of the HEA (All Federal TRIO programs)).
- *Regular secondary school diploma* and *rigorous secondary school program of study* (*see* sections 402A(f)(3)(A)(iii) and (iv) and 402A(f)(3)(B) of the HEA (TS and UB)).
- *Veteran* (*see* section 402A(h)(5) of the HEA (TS, EOC, and UB)).

Additionally, the regulations for the TRIO programs need to be amended to reflect other changes made by the HEOA, other amendments to the HEA, and established administrative practices. These changes include the following:

- Amending the project period for the TRIO programs. The proposed regulations would define the project period as five years for TS, UB, SSS, McNair, and two years for TRIO Training (*see* section 402A(b)(2)(B) and (C) of the HEA).
- Revising the selection criteria related to "Objectives" for the following TRIO pre-college and college programs:

TS (*see* section 402A(f)(3)(A) of the HEA); UB (*see* section 402A(f)(3)(B) of the HEA); SSS (*see* section 402A(f)(3)(C) of the HEA); McNair (*see* section 402A(f)(3)(D) of the HEA); and EOC (*see* section 402A(f)(3)(E) of the HEA).

• Removing the minimum number of participants in the regulations for TS, EOC, UB, Upward Bound Math and Science, and Veterans Upward Bound projects (*see* sections 402A(f), 402A (b)(3), 402B, 402C, 402F of the HEA). For each grant competition, the Department will establish minimum numbers of participants to be served by a grantee through the **Federal Register** notice inviting application.

• Revising sections of the TRIO Training regulations to reflect current law and practice regarding: (1) The need for the project selection criteria and the process for ranking applications by priority; (2) the use of prior experience points in the ranking of applications for funding; and (3) the number of prior experience points that can be earned (*see* section 402G(2) of the HEA).

GEAR UP

• Providing that the Secretary award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies; and specifying how the Department determines whether a State GEAR UP grant has been "successful" (*see* section 404A(b)(3) of the HEA).

• Explaining when a GEAR UP grantee is allowed to provide services to students attending an institution of higher education (*see* section 404A(b)(2) of the HEA).

• Requiring grantees that continue to provide services to students through their first year of attendance at an institution of higher education, to the extent practicable, to coordinate with other campus programs in order not to duplicate services (*see* section 404A(b)(2) of the HEA).

• Revising the matching requirement to require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. Grantees would no longer be required to meet the matching requirement each year of the project period (section 404C(b)(1) of the HEA).

• Revising the regulations concerning the matching requirement for Partnerships by: (1) Providing authority for the Secretary to waive up to 50 to 75 percent of the matching requirement for up to two years under certain circumstances; and (2) creating a multiple-tiered system for different types of waiver requests (*see* section 404C(b)(2) of the HEA).

• Providing for tentative approval of a Partnership applicant's request for a 50-percent waiver for the entire project period so that a Partnership applicant that meets the conditions for such a waiver has an opportunity to apply for a grant without needing to identify additional sources of match funding in the later years of the project period (*see* section 404C(b)(2) of the HEA).

• Adding a list of required and allowable activities and separating these required and allowable activities into multiple regulatory sections (*see* section 404D of the HEA).

• Specifying that GEAR UP grantees may provide activities that support participating students to develop graduation and career plans and that these graduation and career plans may include career awareness and planning activities as they relate to a rigorous academic curriculum (*see* section 404D(b)(5)(D) of the HEA).

• Clarifying that GEAR UP funds may be used to support the costs of administering a scholarship program as well as the costs of the scholarships themselves (*see* sections 404E(a)(1) and 404D(b)(7) of the HEA).

• Describing the types of services that a grantee may provide to students in their first year of attendance at an institution of higher education and listing examples of these services (*see* section 404D of the HEA).

• Specifying the minimum amount of scholarship funding for an eligible student, and providing that the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount if an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year (*see* section 404E(d) of the HEA).

• Incorporating the statutory definition of the term *eligible student* (from section 404E(g) of the HEA) in the program regulations.

• Specifying the amount of funds that State grantees that do not receive a waiver of the requirement that States must expend at least 50 percent of their GEAR UP funding on scholarships must hold in reserve for scholarships and how States must use these funds (*see* section 404E(e) of the HEA).

• Clarifying that scholarships must be made to all students who are eligible under the definition in § 694.12(b) and that a grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student (*see* section 404E(e) and (g) of the HEA).

• Requiring States awarding scholarships to provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program (*see* section 404E(c) of the HEA).

• Requiring States to provide scholarship funds to all eligible students who attend an institution of higher education in the State, and allowing States to provide these scholarship funds to eligible students who attend institutions of higher education outside the State (*see* section 404E(e) and (g) of the HEA).

• Specifying that a State or Partnership may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education (*see* section 404E of the HEA).

• Providing that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education using non-Federal funds obtained to comply with the program's matching requirement (*see* section 404C(b) of the HEA).

• Specifying the requirements for the return of scholarship funds. Specifically, (1) Providing that scholarship funds held in reserve by States under §§ 694.12 (b)(1) or 694.12(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by an eligible student within six years of the student's scheduled completion of secondary school may be redistributed by the grantee to other eligible students; (2) requiring the return of remaining Federal funds within 45 days after the six-year period for expending the scholarship funds expires; (3) requiring grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary; and (4) providing that a scholarship fund under the GEAR UP program is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund (*see* section 404E(e)(4) of the HEA).

• Requiring grantees that receive initial grant awards after the passage of

the HEOA must continue to serve students from a previous grant received by the grantee (*see* sec 404A(b)(3)(B) of the HEA).

• Clarifying whom a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services (*see* section 404B(d) of the HEA).

• Specifying that 21st Century Scholarship Certificates are to be provided by the grantees (rather than by the Secretary to the grantees), and must indicate the estimated amount.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses.

Part 206—Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

HEP and CAMP Eligibility

Statute: Sections 408(1)(A) and 408(2)(A)(i)(I) of the HEOA amend sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA, respectively, to expand the pool of individuals who may receive HEP and CAMP services from persons who themselves, or whose parents, have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, to persons who themselves or whose immediate family have performed such work. The statute does not define the term "immediate family."

Current Regulations: Current § 206.3 specifies who is eligible to participate in a HEP or CAMP project. It does not reflect the changes made by the HEOA to the HEP and CAMP eligibility requirements.

Proposed Regulations: We are proposing to revise current § 206.3(a)(1) to specify that in order to be eligible to participate in a HEP or CAMP project a person, or his or her immediate family member, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. Current § 206.3(a)(2), regarding alternative eligibility for HEP and CAMP on the basis of eligibility under the Migrant Education Program authorized under subpart C of Title I of the Elementary and Secondary Education Act (MEP) or the National Farmworkers Jobs Program authorized in section 167 of the Workforce Investment Act of 1998 (NFJP), would remain unchanged except for updating the reference to the MEP regulations to 34 CFR part 200.

We also are proposing to add to the list of definitions in current § 206.5 (What definitions apply to these programs?) a definition of the term *immediate family member.* Specifically, we would redesignate current § 206.5(c)(5), (c)(6), and (c)(7) as proposed § 206.5(c)(6), (c)(7), and (c)(8), respectively, and then add a new paragraph (c)(5) to define the term *immediate family member* as one or more of the following: a spouse; a parent, step-parent, adoptive parent, foster parent, or anyone with guardianship; or any person who (1) claims the individual as a dependent on a Federal income tax return for either of the previous two years, or (2) resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

Reasons: We are proposing to revise current § 206.3(a) to specify that in order to be eligible to participate in a HEP or CAMP project a person, or his or her immediate family member, must have spent a minimum of 75 days during the past 24 months as a migrant or seasonal farmworker. This proposed regulatory change would reflect the changes made to sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA by sections 408(1)(A) and 408(2)(A)(i)(I) of the HEOA, respectively. We propose to use the term *immediate family member* in § 206.3(a), rather than the statutory term "immediate family," for clarity.

During our negotiated rulemaking sessions, the Department and non-Federal negotiators agreed that defining the term *immediate family member* in these regulations would help ensure consistency in the application of this term across HEP and CAMP projects. In developing a proposed definition for this term, the Department considered examples of similar definitions used by other government programs, as well as the comments of the non-Federal negotiators and previous discussions with stakeholders in the HEP and CAMP community. Most importantly, the Department agreed with the non-Federal negotiators that it is important to ensure that eligibility for the HEP and CAMP programs extends only to an individual who is, or is dependent upon, a migrant or seasonal farmworker, and defined the term *immediate family member* accordingly.

Finally, we are proposing to revise current § 206.3(a)(2) to update the regulatory cross-reference regarding the MEP, which appears in 34 CFR part 200, subpart C, not 34 CFR part 201.

HEP and CAMP Definition of Seasonal Farmworker

Statute: Sections 418A(b)(1)(B)(i) and 418A(c)(1)(A) of the HEA provide that the services authorized for HEP and CAMP include services to reach persons who themselves have spent, or whose immediate family have spent, a minimum of 75 days during the past 24 months in migrant and seasonal farmwork.

Current Regulations: Current § 206.5(c)(7) defines *seasonal farmworker* as a person who, within the past 24 months, was employed for at least 75 days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity). This definition does not define when and for how long the "primary employment" must occur.

Proposed Regulations: We are proposing to amend newly redesignated § 206.5(c)(8) (current § 206.5(c)(7)) to clarify that the term *seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

Reasons: The Department believes that the current definition of *seasonal farmworker* should be revised to clarify that the "primary employment" in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months. While this was the intended meaning of the term in current § 206.5(c)(7), the Department is concerned that some have interpreted or may interpret the current definition to require that a seasonal worker not only have been employed for at least 75 days over the past 24 months in farmwork, but that the person's primary employment over that entire 24 months have been in farmwork. Because we do not believe this to be required, we propose to clarify the term seasonal farmworker and to ensure consistency in its application across HEP and CAMP projects.

Regulations That Apply to HEP and CAMP

Statute: None.

Current Regulations: Current § 206.4 lists the regulations that apply to HEP and CAMP. The list of applicable regulations in this section was last updated in 1993.

Proposed Regulations: We are proposing to amend § 206.4 to add four regulations to the list of regulations that apply to HEP and CAMP. Specifically, we are proposing to (1) add 34 CFR part

84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)); 34 CFR part 97 (Protection of Human Subjects); 34 CFR part 98 (Student Rights in Research Experimental Programs, and Testing) for HEP only; and 34 CFR part 99 (Family Educational Rights and Privacy) to this list, and (2) redesignate two paragraphs in this section.

Reasons: We are proposing to add these four regulations to the list of applicable regulations so that the list of regulations that apply to HEP and CAMP is complete and accurate. In order to maintain this list of applicable regulations in numerical order, we propose to redesignate § 206.4(a)(6) and (a)(7) as § 206.4(a)(7) and § 206.4(a)(8), respectively.

HEP Services

Statute: Section 408(1)(B) through (1)(F) of the HEOA amended section 418A(b) of the HEA to (1) authorize as a HEP service preparation for college entrance examinations, and activities beyond those otherwise identified to improve persistence and retention in postsecondary education (*see* sections 418A(b)(3)(B) and 418A(b)(9) of the HEA, respectively); (2) add transportation and child care as examples of essential supportive services (*see* section 418A(b)(8) of the HEA); and (3) remove the limitation that stipends provided to HEP participants be "weekly" (*see* section 418A(b)(5) of the HEA).

Current Regulations: Current § 206.10(b)(1) specifies the types of services that HEP projects may provide. It does not reflect the changes made to the HEA by the HEOA.

Proposed Regulations: Consistent with the statutory changes made to section 418A(b) of the HEA, we are proposing to amend (1) § 206.10(b)(1)(iii)(B) to provide that permissible HEP services include preparation for college entrance examinations; (2) § 206.10(b)(1)(v) to provide that permissible HEP services include stipends—not only weekly stipends—for HEP participants; (3) § 206.10(b)(1)(viii) to add transportation and child care as examples of essential supportive services; and (4) § 206.10(b)(1)(ix) to specify that HEP services include other activities to improve persistence and retention in postsecondary education.

Reasons: We are proposing to revise current § 206.10(b)(1) to reflect the changes in the HEP services authorized under the HEA, as amended by section 408(1) of the HEOA.

CAMP Services

Statute: Section 408(2) of the HEOA amended section 418A(c) of the HEA to provide that CAMP supportive and instructional services are to improve placement, persistence, and retention in postsecondary education (*see* section 418A(c)(1)(B) of the HEA) and that these supportive services include, as an ongoing part of the program, not only personal, academic, and career counseling, but economic education or personal finance counseling as well (*see* section 418A(c)(1)(B)(i) of the HEA). Section 408(2) of the HEOA also amended section 418A(c) of the HEA to authorize internships as a CAMP service (*see* section 418A(c)(1)(F) of the HEA), and to provide both that other supportive services provided as necessary to ensure the success of eligible students must be "essential", and that examples of such essential supportive services are transportation and child care (*see* section 418A(c)(1)(G) of the HEA).

Current Regulations: Current § 206.10(b)(2) specifies the types of services that CAMP projects may provide. It does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: Consistent with the statutory changes made to section 418A(c) of the HEA, we are proposing to amend (1) § 206.10(b)(2)(ii) to specify that the permissible CAMP supportive and instructional services are to improve placement, persistence, and retention in postsecondary education; and (2) § 206.10(b)(2)(ii)(A) to specify that these supportive services include, as an ongoing part of the program, economic education, or personal finance counseling as well as the previously authorized personal, academic, and career services. We also propose to redesignate § 206.10(b)(2)(vi) as § 206.10(b)(2)(vii), and to add a new § 206.10(b)(2)(vi) to clarify that permissible CAMP services include internships. We propose to amend newly redesignated § 206.10(b)(2)(vii) to add transportation and child care as examples of what now must be "essential" supportive service.

Reasons: We are proposing to revise current § 206.10(b)(2) to reflect the changes made to permissible CAMP services in section 418A(c) of the HEA by section 408A(2) of the HEOA.

Follow-Up CAMP Services

Statute: Section 408A(2)(B) of the HEOA amended section 418A(c)(2) of the HEA to provide that in addition to previously authorized referrals of CAMP students to on- or off-campus providers of counseling services, academic assistance, or financial aid, follow-up services to CAMP students may include (1) the coordination of such services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and (2) for students attending two-year IHEs, encouraging the students to transfer to four-year IHEs where appropriate, and monitoring the rate of transfer of these students.

Current Regulations: Current § 206.11 specifies the types of services that CAMP projects must provide. Under current § 206.11(a), CAMP projects must provide "follow-up services" for project participants after they have completed their first year of college. Current § 206.11(b) provides a list of what "follow-up services" may include.

Proposed Regulations: Consistent with the statutory changes made to section 418A(c)(2) of the HEA, we are proposing to amend § 206.11 to provide that follow-up CAMP services may include (1) in addition to the previously authorized referrals of CAMP students to on- or off-campus providers of counseling services, academic assistance, or financial aid, the coordination of those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year IHEs, encouraging the students to transfer to four-year IHEs, where appropriate, and monitoring the rate of transfer of these students.

Reasons: We are proposing to revise current § 206.11 to reflect the changes made to mandatory CAMP services in section 418A(c)(2)(B) and (c)(2)(C) of the HEA by section 408A(2)(B) of the HEOA.

Minimum Allocations

Statute: Section 418A(f) of the HEA, as amended by section 408A(4) of the HEOA, increases from $150,000 to $180,000 the minimum amount of any allocation the Secretary makes for any HEP or CAMP project.

Current Regulations: Consistent with prior law, current § 206.20(b)(2) requires each applicant for a HEP or CAMP award to include an annual budget of no less than $150,000.

Proposed Regulations: We are proposing to amend § 206.20(b)(2) to provide that in applying for a HEP or CAMP grant, an applicant's grant

application must include an annual budget of not less than $180,000.

Reasons: We are proposing to revise current § 206.20(b)(2) to reflect the changes made to minimum allocations for HEP and CAMP in section 418A(f) of the HEA by section 408A(4) of the HEOA.

Prior Experience Points for HEP and CAMP Service Delivery

Statute: Section 418A(e) of the HEA, as amended by section 408A(3) of the HEOA, provides that in making HEP and CAMP grants, the Department must consider an applicant's prior experience of service delivery under the particular project for which it seeks further funding, and must give this prior experience the same level of consideration it gives to the prior experience of applicants for TRIO grants.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add a new § 206.31(a) to provide that in the case of an applicant for a HEP award, the Secretary considers the applicant's experience in implementing an expiring HEP project with respect to (1) whether the applicant served the number of participants described in its approved application; (2) the extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of (i) participants who received a general educational development (GED) credential; and (ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and (3) the extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

We also are proposing to add a new § 206.31(b) to provide that in the case of an applicant for a CAMP award, the Secretary considers the applicant's experience in implementing an expiring CAMP project with respect to (1) Whether the applicant served the number of participants described in its approved application; (2) the extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who (i) successfully completed the first year of college; and (ii) continued to be enrolled in postsecondary education after completing their first year of college; and (3) the extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

Reasons: The Department proposes adding to the HEP and CAMP program regulations the specific criteria we would consider in evaluating prior experience in order to be consistent with the Department's approach in TRIO. The criteria for evaluating prior experience that we specify in proposed § 206.31 is based on the language in previously approved application packages for HEP and CAMP. The non-Federal negotiators agreed with this approach and reached tentative agreement on this issue.

Note: The TRIO programs have had a longstanding requirement that only applicants with an expiring TRIO project are eligible for the priority for prior experience. Consequently, in providing the same degree of consideration for prior experience as provided under the Federal TRIO programs, we view this aspect of proposed § 206.31(a) to be statutorily required.

Federal TRIO Programs—34 CFR Parts 642 (Training Program for Federal TRIO Programs), 643 (Talent Search), 644 (Educational Opportunity Centers), 645 (Upward Bound Program), 646 (Student Support Services Program), 647 (Ronald E. McNair Postbaccalaureate Achievement Program)

Section 403(a) of the HEOA has amended section 402A of the HEA to include a number of new requirements that apply across the Federal TRIO programs (*i.e.,* the Talent Search (TS), Upward Bound (UB), Student Support Services (SSS), Ronald E. McNair Postbaccalaureate Achievement (McNair), Educational Opportunity Centers (EOC), and Staff Development Activities (Training) programs). Additionally, section 403(b) through (g) of the HEOA amended sections 402B, 402C, 402D, 402E, 402F, and 402G, to make specific changes to the TS, UB, SSS, McNair, EOC, and Training programs, respectively.

Because a number of the statutory changes made to the HEA by the HEOA affect multiple Federal TRIO programs similarly, we have organized the discussion of proposed changes to the Federal TRIO program regulations by first addressing crosscutting issues by subject matter and then discussing program-specific issues on a program-by-program basis. We group the crosscutting issues as follows:

- Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations.
- Definitions Applicable to More Than One Federal TRIO program.
- Evaluating Prior Experience—Outcome Criteria.
- Review Process for Unsuccessful Federal TRIO Program Applicants.

Our discussion of issues applicable to specific programs follows the order of the Department's regulations for those programs (*i.e.,* 34 CFR parts 642 (Training), 643 (TS), 644 (EOC), 645 (UB), 646 (SSS), and 647 (McNair)).

Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations

Statute: Section 402A(c)(5) of the HEA, as amended by section 403(a)(2)(C) of the HEOA, provides that the Secretary may not limit the number of applications submitted by an eligible entity under any Federal TRIO program if the additional applications describe programs serving different populations or different campuses. The HEOA changed section 402A(c)(5) of the HEA by replacing the term "campuses" with the term "different campuses".

More significantly, section 403(a)(6) of the HEOA amended section 402A(h) of the HEA by adding definitions for the terms "different campus" and "different population". Section 402A(h)(1) of the HEA defines the term "different campus" as a site of an institution of higher education that is geographically apart from the main campus, is permanent in nature, and offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Section 402A(h)(2) of the HEA defines the term "different population" as a group of individuals that an eligible entity desires to serve using a Federal TRIO grant and that is separate and distinct from any other population that the entity has applied to serve, or a population that, while sharing some of the same needs as another population, has distinct needs for specialized services.

Current Regulations: Only two of the Federal TRIO programs, the UB and SSS programs, have regulations that address the number of grant applications an eligible entity may submit.

For the UB program, current § 645.20(a) provides that the Secretary will accept more than one application from an eligible entity as long as any additional application describes a project that serves a different participant population. The current regulations for the UB program do not define the term "different participant population".

For the SSS program, current § 646.10 provides that the Secretary accepts more than one application from an eligible

applicant so long as each additional application describes a project that serves a different campus, or a different population of participants who cannot readily be served by a single project.

Current § 646.7 defines the terms *different campus* and *different population of participants* for purposes of the SSS program. Current § 646.7 defines *different campus* as an institutional site that is geographically apart from and independent of the main campus of the institution. The location of an institution is "independent of the main campus" if it is: Permanent in nature; offers courses in educational programs leading to a degree, certificate, or other recognized credential; has its own faculty and administrative or supervisory organization; or has its own budgetary authority. Current § 646.7 defines *different population of participants* as a group of (1) low-income, first-generation college students, or (2) disabled students.

While the current regulations for the TS, EOC, and UB programs do not specifically address the number of applications an eligible entity may submit or define the terms "different population" or "different campus", these regulations do provide that the Secretary will consider the "target area" (for the TS, EOC, and UB programs) or "target school" (for the TS and UB programs) proposed to be served by the project when selecting applications (*see* current §§ 643.21, 644.21, 645.30 and 645.31). Current §§ 643.7(b) (TS), 644.7(b) (EOC), and 645.6(b) (UB) generally define the term *target area* as a geographic area served by a project. Current §§ 643.7(b) (TS) and 645.6(b) (UB) define the term *target school* as "a school designated by the applicant as a focus of project services".

Proposed Regulations: To reflect the new statutory definitions for the terms *different campus* and *different population* in section 402A(h) of the HEA, we are proposing to amend the definitions sections of the applicable Federal TRIO program regulations to incorporate the statutory definitions of these terms. Specifically, we propose to add the definition of *different population* to current §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 647.7(b) (McNair). We also propose to add the definition of *different campus* to § 647.7 (McNair). For the SSS program, we propose to amend § 646.7 by revising the definition of the term *different campus* and by replacing the definition of the term *different population of participants* with the statutory term *different population.*

To implement section 402A(c)(5) of the HEA, which provides that the Secretary may not limit the number of applications submitted by an eligible entity if the additional applications describe programs serving different populations or different campuses, we propose to amend each of the Federal TRIO program regulations to clarify when an eligible applicant may submit more than one application. *Specifically:* For the Training program, we propose to add a new § 642.7 to provide that an eligible applicant may submit more than one application for a Training grant as long as each application describes a project that addresses a different absolute priority that is designated in the **Federal Register** notice inviting applications.

For the TS program, we propose to add a new § 643.10(a) to provide that an eligible applicant may submit more than one application for TS grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

For the EOC program, we propose to add a new § 644.10(a) to provide that an eligible applicant may submit more than one application for EOC grants as long as each application describes a project that serves a different target area or another designated different population.

For the UB program, we propose to revise § 645.20(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different target area or target school or another designated different population.

For the SSS program, we propose to revise § 646.10(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

For the McNair program, we propose to add a new § 647.10(a) to provide that an eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

In addition, for the TS, EOC, UB, SSS, and McNair programs, we propose to add regulatory language that provides that, for each competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application (*see* proposed §§ 643.10(b), 644.10(b), 645.20(b), 646.10(b), and 647.10(b), respectively).

Reasons: During the negotiated rulemaking sessions, the negotiators discussed whether the new definitions of the terms *different campus* and *different population* should apply only to the SSS program (where these terms are currently used) or to all of the Federal TRIO programs. The current regulations for the Federal TRIO programs are reflect the fact that the concept of a different campus is only relevant for the SSS and McNair programs, which serve college students. The TS, EOC, and UB programs are pre-college programs that do not necessarily target different campuses. In addition, for the TS, EOC, and UB programs, the traditional administrative practice has been to focus on different populations of students by identifying where those students live (target area) or where they attend school (target schools).

Some non-Federal negotiators recommended that the Department continue its current practice and only apply the new definitions of *different campus* and *different population* to the SSS program. Other non-Federal negotiators disagreed, noting that the HEA now allows applicants applying under both the pre-college programs (TS, EOC, and UB) and the college programs (SSS and McNair) to submit separate applications to serve different populations of students. We agree that the HEA allows applicants under the TS, EOC, UB, SSS and McNair programs to submit more than one application as long as each application proposes to serve a different population.

For this reason, we are proposing to amend the regulations for the TS, EOC, UB, SSS and McNair programs to incorporate the statutorily defined term *different population.* We propose to use this term in conjunction with the terms *target area* and *target school* from the current regulations for TS, EOC, and UB. By clarifying that applicants can submit more than one application if each application proposes to serve a "different target area or target schools or another designated different population" and incorporating the statutory definition of the term *different population,* we would retain the current practice of funding separate projects to serve different target areas and target schools. We would also ensure that the regulations are consistent with the statutory definition of the term *different population* in the HEA.

In determining how to reflect the definition for the term *different population* in the proposed regulations, we also considered how we would manage applications proposing to serve different populations. While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations (as

defined in 402A(h) of the HEA), it is necessary for the Department to establish some limitations on the number of separate applications an eligible entity may submit for each competition to serve different populations. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and ensure fairness and consistency in the application process, the Department proposes to amend the regulations for each of the TRIO programs. The proposed regulations would provide that the Department will define, for each competition, the different populations of participants for which an eligible entity can submit separate applications in the **Federal Register** notice inviting applications and other published application materials for the competition.

This approach would give the Department the flexibility to designate the different populations for each competition based on changing national needs. It also would permit the Department to manage more effectively the program competitions within the available resources.

For these reasons, under the proposed regulations, an entity applying for more than one grant under the TS, EOC, and UB programs would be able to submit separate applications to serve different target areas and different target schools, and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs would be able to submit separate applications to serve different campuses and also would be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications for the competition.

Finally, we are proposing to amend the Training program regulations by adding a new § 642.7 to provide that an eligible applicant may submit more than one application for grants as long as each application describes a project that addresses a different absolute priority. This proposed change reflects the amendments made by the HEOA as well as the Department's current practices.

Definitions Applicable to More Than One Federal TRIO Program (Newly Redesignated § 642.6 and §§ 643.7, 644.7, 645.6, 646.7, and 647.7)

As a result of the changes made by the HEOA to sections 402A, 402B, 402C, 402D, 402E, 402F, and 402G of the HEA, the Department proposes to add new definitions to the Federal TRIO program regulations and to revise other definitions in those regulations. We also propose to add to the TRIO Program regulations certain terms and their definitions that are in other portions of the HEA and the Department's regulations. In the following section, we discuss those proposed changes to definitions used in more than one of the Federal TRIO program regulations. For proposed changes to definitions that apply to only one or two programs, we address those proposed changes under the specific programs.

Disconnected Students

The HEOA amended the HEA to provide that each of the TRIO programs may provide services to "disconnected students," but the term "disconnected students" is never defined in the statute. "Disconnected students" is a broad term that could apply to a broad spectrum of students, and could vary depending on the goals of the particular project. In these circumstances, we do not believe it is useful to define the term in these proposed regulations. Instead, we believe it is more appropriate for an applicant proposing to provide programs and activities specifically designed for "disconnected students" to define the term for its proposed project and to identify and describe in its application the specific needs of the "disconnected students" to be served by the project.

Different Campus and Different Population

Refer to the discussion of these terms earlier in this preamble, under the heading *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations.*

Financial and Economic Literacy

Statute: Section 402 of the HEOA amended the HEA to include education and counseling services designed to improve the financial and economic literacy of students as (1) a required service for TS grantees (*see* section 402B(b)(6) of the HEA), UB grantees (*see* section 402C(b)(6) of the HEA), and SSS grantees (*see* section 402D(b)(4) of the HEA), and (2) a permissible service for McNair grantees (*see* section 402E(c)(1) of the HEA) and EOC projects (*see* section 402F(b)(5) of the HEA). Section 402A(f)(1) of the HEOA also amended section 402F(a)(3) of the HEA to provide that a purpose of the EOC program is to improve the financial and economic literacy of students. The HEA does not define the term "financial and economic literacy."

Current Regulations: None.

Proposed Regulations: We propose to define the term *financial and economic literacy* as knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (including loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for secondary education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (*e.g.,* searches, application processes, and the differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

We propose to include this definition in § 643.7 (TS); § 644.7 (EOC); § 645.6 (UB); § 646.7 (SSS); and § 647.7 (McNair).

Reasons: The proposed definition of the term *financial and economic literacy* is needed to implement the statutory requirement that TS, EOC, UB, SSS, and McNair grantees teach and counsel participants and, as appropriate, their families, about personal financial decision making, including financial planning for postsecondary education.

Foster Care and Homeless Youth

Statute: Section 403(a)(3)(B) of the HEOA amended section 402A(e)(3) of the HEA by adding the following two groups of students that grantees are encouraged to serve under the Federal TRIO programs: foster care youth and homeless children and youth, as defined in section 725 of the McKinney-Vento Homeless Assistance Act. Sections 402B(c)(7), 402C(d)(7), 402D(a)(3) and (c)(6), 402F(b)(11), and 402G(b)(5) of the HEA, as amended by the HEOA, include, among the permissible services that TRIO projects may provide, programs and activities that are specifically designed for homeless children and youth and students who are in foster care or are aging out of the foster care system.

Current Regulations: None.

Proposed Regulations: We propose to add definitions of the terms *foster care youth* and *homeless children and youth* to the following Federal TRIO program regulations: newly redesignated § 642.6 (Training); § 643.7 (TS); § 644.7 (EOC); § 645.6 (UB); and § 646.7 (SSS). We propose to define *foster care youth* as youth who are in foster care or are aging out of the foster care system. For the definition of *homeless children and youth,* we propose to add a cross-reference to the definition of that term in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Reasons: The HEOA requires projects funded under the Federal TRIO programs to make services available to youth in or aging out of foster care and to homeless children and youth. Providing definitions of the terms *foster care youth* and *homeless children and youth* helps ensure that these groups are appropriately served under each of the Federal TRIO programs. The definition of *foster care youth* is based on the use of the term in sections 402A(e)(3), 402B(c)(7), 402C(d)(7), 402D(c)(7), and 402F(b)(11), and 402G(b)(5) of the HEA. Consistent with sections 402A(e)(3), 402B(c)(7), 402C(d)(7), 402D(c)(7), and 402F(b)(11), and 402G(b)(5) of the HEA, the proposed definition of *homeless children and youth* would reference the definition in the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

We do not propose to include the definitions of *foster care youth* and *homeless children and youth* in the regulations for the McNair program because section 402E of the HEA, which authorizes the McNair program, does not include these two terms.

Individual With Disabilities

Statute: Sections 402B(c)(7), 402C(d)(7), 402D(a)(3) and (c)(6), 402F(b)(11), and 402G(b)(5) of the HEA, as amended by the HEOA, include among the permissible services that TRIO projects may provide programs and activities that are specifically designed for students with disabilities. Other sections of the HEA relating to the TRIO programs refer to "individuals with disabilities" (*e.g.,* 402A(f)(2) and 402D(e)(1)(A), (e)(2), and (e)(3) of the HEA).

Current Regulations: Current § 646.7 (SSS) defines the term *individual with disabilities* as a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in the educational experiences and opportunities offered by the grantee institution. None of the Department's current regulations for the other Federal TRIO programs define the terms *individual with disabilities* or *students with disabilities.*

Proposed Regulations: We are proposing to use a slightly modified version of the definition of the term *individual with disabilities* that is in current § 646.7 (for the SSS program) for all Federal TRIO programs, except for the McNair program, which does not use that term. Under the proposed definition, an *individual with disabilities* would be a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities. We would no longer provide that the impairment must limit the person's ability to participate in "educational experiences and opportunities offered at the grantee institution." We propose to incorporate this definition in newly redesignated § 642.6 (Training), § 643.7 (TS), § 644.7 (EOC), § 645.6 (UB), and § 646.7 (SSS).

Proposed § 642.11(b)(5), newly redesignated § 642.24(a)(21), and proposed §§ 643.4(b)(7), 644.4(k), 645.12(f), and 646.4(b)(6) would be amended to refer to students or participants who are individuals with disabilities.

Reasons: For consistency across the Federal TRIO programs, we propose to use the same definition of the term *individual with disabilities* for the Training, TS, EOC, UB, and SSS program regulations. As noted earlier in this discussion, we are proposing to use the definition of *individual with disabilities* from the current SSS regulations except to drop the phrase "offered at the grantee institution" so that the definition would be applicable to the other Federal TRIO programs, some of which serve individuals not enrolled at the grantee institution. This proposed definition would help ensure that the services and activities that TRIO projects provide for individuals with disabilities address the educational needs of individuals with a diagnosed physical or mental impairment so that they are able to benefit from the educational services provided by the projects.

Institution of Higher Education

Statute: Sections 101 and 102 of the HEA define the term institution of higher education.

Current Regulations: The definition of the term *institution of higher education* in current §§ 642.5(b), 643.7(b), 644.7(b), 645.6(b), 646.7(a), and 647.7(b) refers to sections 481 and 1201(a) of the HEA.

Proposed Regulations: We are proposing to correct the cross-references in the definition of the term *institution of higher education* to reference the definitions provided in sections 101 and 102 of the HEA (*see* newly redesignated § 642.6 (Training) and proposed §§ 643.7 (TS), 644.7 (EOC), 645.6 (UB), 646.7 (SSS), and 647.7 (McNair)).

Reasons: To correct obsolete cross-references, we propose to amend the current regulatory definition of the term *institution of higher education* for each of the Federal TRIO program regulations.

Veteran

Statute: Section 403(a)(7)(C)(iii) of the HEOA amended section 402A(h)(5) of the HEA, which defines the term "veteran eligibility" for purposes of the Federal TRIO programs. The amended definition of veteran eligibility provides that veterans of the Armed Forces Reserves will not be deemed ineligible to participate in the Federal TRIO programs because of age if they served on active duty for a period of more than 30 days (*see* section 402A(h)(5)(C) of the HEA) or in support of a contingency operation on or after September 11, 2001 (*see* section 402A(h)(5)(D) of the HEA).

Current Regulations: The term *veteran* is defined in current §§ 643.7 (TS), 644.7 (EOC), and 645.6 (UB) as a person who served on active duty as a member of the Armed Forces of the United States (1) for a period of more than 180 days, any part of which occurred after January 31, 1955, and who was discharged or released from active duty under conditions other than dishonorable or (2) after January 31, 1955, and who was discharged or released from active duty because of a service-connected disability. This definition was based on the statutory definition of the term "veteran eligibility" prior to the enactment of the HEOA. The definition is not included in § 642.6 (Training), § 646.7 (SSS), and § 647.7 (McNair).

Proposed Regulations: We propose to replace the current definition of the term *veteran* in §§ 643.7(b), 644.7(b), and 645.6(b) with the following definition, which tracks the language in section 402A(h)(5) of the HEA: A *veteran* means a person who: (a) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable; (b) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability; (c) Was a member of a reserve component of the

Armed Forces of the United States and was called to active duty for a period of more than 30 days; or (d) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Reasons: These changes are made to reflect the changes made to the definition of the term veteran eligibility in section 402A(h)(5) of the HEA. This provision only affects TS, EOC, and UB grants that have otherwise applicable statutory age requirements.

Evaluating Prior Experience—Outcome Criteria

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience of high quality service delivery (PE) under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the TS (*see* section 402A(f)(3)(A) of the HEA), UB (*see* section 402A(f)(3)(B) of the HEA), SSS (*see* section 402A(f)(3)(C) of the HEA), McNair (*see* section 402A(f)(3)(D) of the HEA), and EOC (*see* section 402A(f)(3)(E) of the HEA) programs. These are the same outcome criteria that the Secretary must use for reporting annually to Congress on the performance of each of the Federal TRIO programs (*see* 402A(f)(4) of the HEA). The HEA does not establish specific outcome criteria for the Training program and does not specify the distribution of the PE points among the outcome criteria for any of the Federal TRIO programs.

Current Regulations: Current §§ 642.32 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) explain how the Secretary evaluates PE and awards PE points to applicants in grant competitions for each program. These regulations include the specific criteria (measurements) the Secretary uses to evaluate an applicant's performance and the maximum number of points the applicant may earn for each PE criterion.

Proposed Regulations: We are proposing to revise the outcome criteria for awarding PE points in §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)) to incorporate the statutorily required outcome measures in section 402A(f)(3) of the HEA, and to distribute the PE points among the new outcome criteria for these programs.

With regard to the Training program's outcome criteria for awarding PE points, we are proposing to make minor changes to the outcome criteria as well as changes to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of PE points in the Training program would change from 8 to 15 (*see* proposed § 642.22(b)(1)).

The following is a list of the proposed outcome criteria for evaluating PE, organized by regulatory provision, and the point distribution among the outcome criteria for evaluating PE under each of the Federal TRIO programs.

Training (§ 642.22(e))

Number of participants (4 points).
Training objectives (8 points).
Administrative requirements (3 points).

Talent Search (§ 643.22(d))

Number of participants (3 points).
Secondary school persistence (3 points).
Secondary school graduation (regular secondary school diploma) (3 points).
Secondary school graduation (rigorous secondary school program of study) (1.5 points).
Postsecondary enrollment (3 points).
Postsecondary completion (1.5 points).

Educational Opportunity Centers (§ 644.22(d))

Number of participants (3 points).
Secondary school diploma (3 points).
Postsecondary enrollment (6 points).
Financial aid assistance (1.5 points).
College admission assistance (1.5 points).

Upward Bound (§ 645.32(e))

Regular Upward Bound and Upward Bound Math and Science Centers

Number of participants (3 points).
Academic Performance (3 points).
Secondary school retention and graduation (3 points).
Rigorous secondary school program of study (1.5 points).
Postsecondary enrollment (3 points).
Postsecondary completion (1.5 points).

Veterans Upward Bound

Number of participants (3 points).
Academic improvement on standardized test (3 points).
Education program retention and completion (3 points).
Postsecondary enrollment (3 points).
Postsecondary completion (3 points).

Student Support Services (§ 646.22(e))

Number of participants (3 points).
Postsecondary retention (4 points).
Good academic standing (4 points).
Degree completion (4 points) (for an applicant institution of higher education offering primarily a baccalaureate or higher degree) or
Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree) (4 points).

McNair (§ 647.22(e))

Number of participants (3 points).
Research and scholarly activities (3 points).
Graduate school enrollment (3 points).
Continued enrollment in graduate school (4 points).
Doctoral degree attainment (2 points).

Under the proposed regulations, we would award PE points for each outcome criterion by determining whether the grantee met or exceeded the applicable project objectives. This determination would be based on the information in the grantee's annual performance report (*see* proposed §§ 642.22(a)(2) (Training), 643.22(a)(2) (TS), 644.22(a)(2) (EOC), 645.32(a)(2) (UB), 646.22(a)(2) (SSS), and 647.22(a)(2) (McNair)).

Proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) also would describe the process the Secretary uses to award PE points. For example, a grantee that does not serve at least 90 percent of the approved number of participants to be served in a given project year would not be eligible to receive any PE points for that year (*see* proposed §§ 642.22(c) (Training), 643.22(b) (TS), 644.22(b) (EOC), 645.32(b) (UB), 646.22(b) (SSS), and 647.22(b) (McNair)).

Under proposed §§ 642.22(d) (Training), 643.22(c) (TS), 644.22(c) (EOC), 645.32(c) (UB), 646.22(c) (SSS), and 647.22(c) (McNair), a grantee that does not serve its approved number of participants in a given year would not receive any PE points for the number of participants criterion for that year.

For any PE outcome criterion that measures the performance of all participants served in a given project year (*e.g.,* academic improvement and secondary school retention and graduation for UB), the Secretary would use the actual number of participants served in a given year or the approved number of participants to be served, whichever is greater, as the denominator for calculating whether the applicant has met its approved objectives (*see*

proposed §§ 645.32(d), 646.22(d), and 647.22(d)).

For a grantee that served less than the approved number of participants but at least 90 percent of the approved number to be served in a given year, the approved number to be served, not the actual number served, would be used as the denominator in calculating whether the applicant met its approved objectives (*see* proposed §§ 645.32(d), 646.22(d), and 647.22(d)).

For any PE outcome criterion related to measuring outcomes based on a cohort of students (*see* proposed §§ 643.22(d)(3) through (d)(6); 644.22(d)(3); 645.32(e)(1)(ii) through (e)(1)(vi) and 645.32(e)(2)(iii) through (e)(2)(v); 646.22(e)(2), (4), and (5); 647.22(e)(3) through (e)(5)), the grantee would be required to report on all the participants in the cohort. To report on these participants, the grantee would need to track the academic progress of these participants for the time period specified in the approved objectives.

Consistent with section 402A(f)(1) of the HEA, we are proposing to specify in §§ 643.22(d); 644.22(d); 645.32(e); 646.22(e); and 647.22(e) that the new outcome criteria for evaluating PE would be used to evaluate the performance of a grantee on any new grant that is awarded after January 1, 2009. We also propose to modify the PE outcome criteria to make them consistent across all Federal TRIO programs (*see* proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

Reasons: We are proposing to revise the outcome criteria in §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) and to redistribute the 15 PE points among the new criteria in each of these TRIO programs to reflect the new outcome criteria in section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA.

First, we propose to make technical changes to the PE criteria in the current regulations so that the criteria align with section 402A(f)(3) of the HEA and are consistent (to the extent possible) across programs.

Second, we are proposing to change the maximum number of PE points a Training program grantee may earn from 8 points to 15 points to be consistent with the maximum PE points for the other Federal TRIO programs. Section 402A(c)(2) of the HEA provides that the Secretary must give the PE factor for the TS, UB, SSS, McNair and EOC programs the same level of consideration given to the PE factor for those programs during fiscal years 1994 through 1997. The Department's regulations for the TS, UB, SSS, McNair, and EOC programs already specify that the maximum number of PE points is 15 and this is the amount used for the period of time referenced in section 402A(c)(2). Therefore, the Department believes it is appropriate to use the 15 point maximum for all programs.

We are proposing to provide that PE points be awarded by determining whether the grantee met or exceeded applicable project objectives that have been agreed upon by the grantee and the Department, to: (1) Be consistent with section 402A(f)(3) of the HEA; (2) establish clear performance standards; (3) promote accountability; and (4) reward the performance of a grantee that meets or exceeds its approved objectives (*see* proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

To ensure that PE points are awarded only to grantees that have met high performance standards, we propose to establish an annual performance threshold that a grantee must meet to receive any PE points for that year. A grantee that does not serve at least 90 percent of the approved number of participants to be served in a given year will not be eligible for any PE points for that year (*see* proposed §§ 642.22(c) (Training), 643.22(b) (TS), 644.22(b) (EOC), 645.32(b) (UB), 646.22(b) (SSS), and 647.22(b) (McNair)).

In addition, we believe that in specifying when the actual number of participants and when the approved number of participants are used to calculate a grantee's PE points (as reflected in proposed §§ 645.32(d) (UB); § 646.22(d) (SSS); and § 647.22(d) (McNair), the Department can clearly identify the performance standards and help to ensure that PE points are awarded in a fair and equitable manner. These regulatory changes also would help ensure that all grantees are held to the same high standards and that applicants and grantees understand these standards.

The new statutorily required PE outcome criteria will be used to evaluate the performance of a grantee under its expiring grant if that expiring grant was awarded after January 1, 2009.

In reviewing the PE sections of the current regulations, we noted some differences in the format and regulatory language used among the six programs. For consistency and to improve clarity, we propose standardizing the regulatory language and the format for the PE outcome criteria (*e.g.,* we propose using the same language to describe the number of participant criterion and to put this criterion as the first PE criterion for all programs). We also propose to revise the PE criteria to clarify how each of the criteria would be measured (*e.g.,* for the UB program, we explain that postsecondary enrollment criterion is measured by the percentage of current and prior-year participants with an expected high school graduation date in the project year) to assist applicants in understanding the process so they can set project objectives that are both ambitious and attainable (*see* proposed §§ 642.22 (Training), 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair)).

TRIO Outcome Criteria—Tracking Participants for Talent Search and Upward Bound Programs

Statute: Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides that the outcome criteria for the TS and UB programs must include, to the extent practicable, the postsecondary education completion of students served by the TS and UB programs, respectively.

Current Regulations: Current § 643.22 specifies how the Secretary evaluates PE for the TS program. Current § 645.32 specifies how the Secretary evaluates PE for the UB program. These provisions do not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend the regulations to address the postsecondary education completion of students served. The proposed regulations would provide that one and one-half PE points would be awarded for postsecondary completion under the TS program in proposed § 643.22(d)(6) and under the regular UB and UB Math and Science Centers programs in proposed § 645.32(e)(1)(vi). Three PE points will be awarded for postsecondary completion under the Veterans UB program in proposed § 645.32(e)(2)(v).

For regular UB and Upward Bound Math and Science (UBMS), under proposed § 645.32(e)(1)(vi), and for Veterans UB, under proposed § 645.32(e)(2)(v), grantees would be required to track the academic progress of all project participants that enrolled in postsecondary education for the number of years specified in the approved objectives to determine if the applicant met or exceeded its objective regarding the completion by its students of a program of postsecondary education.

For the TS program, under proposed § 643.22(d)(6), we would determine whether an applicant met or exceeded its objective regarding the completion of a program of postsecondary education within the number of years specified in

the approved objective by requiring the grantee to track the postsecondary degree completion of a randomly selected sample of participants in accordance with parameters established by the Secretary in the notice inviting applications published in the **Federal Register**. TS grantees would not be required to track all project participants through completion of postsecondary degrees.

Reasons: Section 402A(f)(3)(B)(vii) of the HEA requires that a grantee, to the extent practicable, report on the postsecondary completion of project participants. Based on the relatively small number of students served each year by each UB grantee and the availability of a variety of databases and other means for tracking a participant's postsecondary progress, we believe it is practicable for UB grantees to track participants through completion of a postsecondary degree.

Section 402A(f)(3)(A)(vi) of the HEA also requires that a grantee, to the extent practicable, report on the postsecondary completion of project participants. Unlike UB, however, we do not believe that tracking all TS project participants through postsecondary completion is practicable due to the large number of participants in TS grant projects. Historically, TS projects have served large numbers of participants and we expect that TS will continue to do so. We believe it would be very difficult for TS grantees to track all of their project participants. Therefore, we are proposing to permit TS grantees to track and report on the postsecondary completion of a randomly selected sample of project participants. To ensure consistency in the methodology used among projects to select the sample, we would issue guidance to TS projects on sample selection.

Review Process for Unsuccessful Federal TRIO Program Applicants

Statute: Section 402A(c)(8)(C) of the HEA, as amended by section 403(a)(2) of the HEOA, requires the Department to establish a formal process for reviewing unsuccessful applications for TRIO program grants. Section 402A(c)(8)(C)(i) of the HEA provides that with respect to any competition for a grant under the Federal TRIO program, an applicant which has otherwise met all of the requirements for submission of the application may request a review by the Secretary if the applicant has evidence of a specific technical, administrative, or scoring error made by the Department, an agent of the Department, or a peer reviewer, with respect to the scoring or processing of a submitted application.

Section 402A(c)(8)(C)(ii) of the HEA provides that in the case of evidence of a technical or administrative error, the Secretary must review the evidence and provide a timely response to the applicant. If the Secretary determines that a technical or administrative error was made by the Department or an agent of the Department, the application must be reconsidered in the peer review process for the applicable grant competition.

Section 402A(c)(8)(C)(iii) of the HEA provides that in the case of evidence of a scoring error, when the error relates to either the calculation of PE points or to the calculation of the final score of an application, the Secretary must review the evidence and provide a timely response to the applicant. If the Secretary determines that a scoring error was made by the Department or a peer reviewer, the Secretary will adjust the PE points or the final score of the application appropriately and quickly, so as not to interfere with the timely awarding of grants for the applicable grant competition.

Section 402A(c)(8)(C)(iv)(I) of the HEA states that in the case of a peer review process error, if the Secretary determines that points were withheld for criteria not required in a Federal statute, regulation, guidance governing the Federal TRIO programs, or the application for a grant from the Federal TRIO programs, or determines that information pertaining to the selection criteria was wrongly determined missing from an application by a peer reviewer, then the Secretary must refer the application to a secondary review panel.

Section 402A(c)(8)(C)(iv)(II) of the HEA provides that the secondary review panel must conduct its review in a timely fashion, and the score resulting from the secondary review must replace the score from the initial peer review.

Section 402A(c)(8)(C)(iv)(III) of the HEA states that the secondary review panel must be composed of reviewers, each of whom: Did not review the application in the original peer review; is a member of the cohort of peer reviewers for the grant program that is the subject of the secondary review; and, to the extent practicable, has conducted peer reviews in not less than two previous competitions for the grant program that is the subject of the secondary review.

Section 402A(c)(8)(C)(iv)(IV) of the HEA provides that the final peer review score of an application subject to a secondary review must be adjusted appropriately and quickly using the score awarded by the secondary review panel, so as not to interfere with the timely awarding of grants.

Section 402A(c)(8)(C)(iv)(V) of the HEA states that to qualify for a secondary review under section 402A(c)(8)(C)(iv) of the HEA, an applicant must have evidence of a scoring error and must demonstrate that (1) points were withheld for criteria not required in any statute, regulation, or guidance governing the Federal TRIO programs or the application for a grant for these programs; or (2) information pertaining to the selection criteria was wrongly determined to be missing from the application.

Section 402A(c)(8)(C)(v)(I) of the HEA states that a determination by the Secretary under section 402A(c)(8)(C)(i), (c)(8)(C)(ii), or (c)(8)(C)(iii) of the HEA is not reviewable by any officer or employee of the Department.

Section 402A(c)(8)(C)(v)(II) of the HEA provides that the score awarded by a secondary review panel under 402A(c)(8)(C)(iv) of the HEA is not reviewable by any officer or employee of the Department other than the Secretary.

Section 402A(c)(8)(C)(vi) states that to the extent feasible based on the availability of appropriations, the Secretary will fund applications with scores that are adjusted upward under 402A(c)(8)(C)(ii), (c)(8)(C)(iii), or (c)(8)(C)(iv) of the HEA to equal or exceed the minimum cut off score for the applicable grant competition.

Current Regulations: None.

Proposed Regulations: The Secretary proposes to add new §§ 642.25 (Training); 643.24 (TS); 644.24 (EOC); 645.35 (UB); 646.24 (SSS); and 647.24 (McNair) to implement the new review process for unsuccessful applicants. Specifically, proposed §§ 642.25(a)(1) (Training); 643.24(a)(1) (TS); 644.24(a)(1) (EOC); 645.35(a)(1) (UB); 646.24(a)(1) (SSS); and 647.24(a)(1) (McNair) would provide that an applicant whose grant application was not evaluated during a competition may request that the Secretary review the application if the applicant had met all of the application submission requirements in the **Federal Register** notice inviting applications and the other published application materials for the competition, and the applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

Proposed §§ 642.25(a)(2) (Training); 643.24(a)(2) (TS); 644.24(a)(2) (EOC); 645.35(a)(2) (UB); 646.24(a)(2) (SSS); and 647.24(a)(2) (McNair) specify what is considered a technical or

administrative error in the processing of an application.

Proposed §§ 642.25(a)(3) (Training); 643.24(a)(3) (TS); 644.24(a)(3) (EOC); 645.35(a)(3) (UB); 646.24(a)(3) (SSS); and 647.24(a)(3) (McNair) would provide that if the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary will have the application reconsidered and scored, and if the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary will fund the application prior to the re-ranking of applications based on the second peer review of applications described in proposed §§ 642.25(c) (Training); 643.24(c) (TS); 644.24(c) (EOC); 645.35(c) (UB); 646.24(c) (SSS); and 647.24(c) (McNair).

Proposed §§ 642.25(b)(1) (Training); 643.24(b)(1) (TS); 644.24(b)(1) (EOC); 645.35(b)(1) (UB); 646.24(b)(1) (SSS); and 647.24(b)(1) (McNair) would provide that an applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if the applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application, and the final score assigned to the application is within the funding band described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair).

Proposed §§ 642.25(b)(2) (Training); 643.24(b)(2) (TS); 644.24(b)(2) (EOC); 645.35(b) (UB); 646.24(b)(2) (SSS); and 647.24(b)(2) (McNair) would provide that an administrative error that would require a second review has to be an error that relates to either the determination of PE points for the application or the determination of the scores assigned to the application by the peer reviewers. These regulations specify that an administrative error relating to the determination of PE points includes (1) mathematical errors made by the Department or by the Department's agent in the calculation of the PE points or (2) a failure to correctly add the earned PE points to the peer review score. An administrative error relating to the determination of the peer review score would include an error made by applying the wrong peer reviewer scores to an application.

Proposed §§ 642.25(b)(3) (Training); 643.24(b)(3) (TS); 644.24(b)(3) (EOC); 645.35(b)(3) (UB); 646.24(b)(3) (SSS); and 647.24(b)(3) (McNair) would provide that a scoring error would require a second review if it relates to the peer review process. A scoring error includes errors caused by a reviewer who, in assigning points (1) uses criteria not required by the applicable law or regulations, the **Federal Register** notice inviting applications, other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary, or (2) does not consider relevant information included in the appropriate section of the application.

Proposed §§ 642.25(c) (Training); 643.24(c) (TS); 644.24(c) (EOC); 645.35(c) (UB); 646.24(c) (SSS); and 647.24(c) (McNair) would establish the following procedures for the second review of applications:

(1) After the peer review of applications, the Secretary sets aside a percentage of the total funds allotted for the competition to be awarded after the second review is completed and establishes a funding band. The funding band for each competition includes the applications with a rank-order score after the first review that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the amount of funds that were set aside for the second review of applications.

(2) The Secretary makes new awards in rank order as described in proposed §§ 642.20 (Training); 643.20 (TS); 644.20 (EOC); 645.30 (UB); 646.20 (SSS); and 647.20 (McNair) based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants after the first review, the Secretary notifies in writing each unsuccessful applicant whose rank-order score is within the funding band as to the status of its application and provides the applicant with copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding during the competition as described in proposed §§ 642.25(c)(2) (Training); 643.24(c)(2) (TS); 644.24(c)(2) (EOC); 645.35(c)(2) (UB); 646.24(c)(2) (SSS); and 647.24(c)(2) (McNair) and whose application received a score within the funding band as described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair), may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error.

(5) An applicant whose application was not funded during the competition as described in proposed §§ 642.25(c)(2) (Training); 643.24(c)(2) (TS); 644.24(c)(2) (EOC); 645.35(c)(2) (UB); 646.24(c)(2) (SSS); and 647.24(c)(2) (McNair) and whose application received a score within the funding band as described in proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair) would have fifteen (15) calendar days after receiving the written notification that its application was not funded to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to PE points, as described in proposed §§ 642.25(b)(2)(i) (Training); 643.24(b)(2)(i) (TS); 644.24(b)(2)(i) (EOC); 645.35(b)(2)(i) (UB); 646.24(b)(2)(i) (SSS); and 647.24(b)(2)(i) (McNair), the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in proposed §§ 642.25(c)(9) (Training); 643.24(c)(9) (TS); 644.24(c)(9) (EOC); 645.35(c)(9) (UB); 646.24(c)(9) (SSS); and 647.24(c)(9) (McNair).

(8) If the Secretary determines that the Department, the Department's agent or a peer reviewer made an administrative error that relates to the peer review score, as described in proposed §§ 642.25(b)(2)(ii) (Training); 643.24(b)(2)(ii) (TS); 644.24(b)(2)(ii) (EOC); 645.35(b)(2)(ii) (UB); 646.24(b)(2)(ii) (SSS); and 647.24(b)(2)(ii) (McNair), the Secretary would adjust the applicant's peer review score to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer

review of applications described in proposed §§ 642.25(c)(9) (Training); 643.24(c)(9) (TS); 644.24(c)(9) (EOC); 645.35(c)(9) (UB); 646.24(c)(9) (SSS); and 647.24(c)(9) (McNair).

(9) If the Secretary determines that a peer reviewer made a scoring error, the Secretary would convene a second panel of peer reviewers in accordance with section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review would be used in the second ranking of applications. The average score obtained from the second peer review panel would be the final peer review score for the application and will be used even if it is a lower score than the score in the initial review).

(11) The Secretary would fund applications in the funding band in rank order based on any adjusted scores and the amount of funds that have been set aside for the second review of applications.

Proposed §§ 642.25(d) (Training); 643.24(d) (TS); 644.24(d) (EOC); 645.35(d) (UB); 646.24(d) (SSS); and 647.24(d) (McNair) would provide that (1) for each competition, the Secretary would establish a funding band for the second review of applications; (2) the Secretary would establish the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications; (3) the funding band would include those applications with a rank-order score before the second review that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the amount of funds that were set aside for the second review of applications for the competition.

Proposed §§ 642.25(e) (Training); 643.24(e) (TS); 644.24(e) (EOC); 645.35(e) (UB); 646.24(e) (SSS); and 647.24(e) (McNair) would provide that: (1) the Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application would be final and not subject to further appeal or challenge; and (2) an application that scored below the established funding band for the competition would not be eligible for any further review.

Reasons: Section 402A(c)(8)(C) of the HEA, as amended by section 403(a)(2) of the HEOA, requires the Department to establish a formal process for reviewing unsuccessful grant applications in the TRIO programs. Proposed §§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24 (McNair) would implement this requirement and ensure that the review process is clear, understandable, and transparent.

We are proposing the funding band approach to the review process to ensure that we can meet our fiduciary responsibility to the taxpayers to manage the grant programs based on the appropriated resources available at the time of each competition. This approach would also minimize the impact of the second review on our ability to provide timely notice of grant awards.

We believe that the process we are proposing will provide fair, equitable, specific, clear, and understandable procedures for applicants to be notified about the status of their application, eligibility for a second review, how to request a second review, and other information regarding a second review.

We decided to propose a funding band and determined the specific parameters for the funding band based on the Department's experience and historical information. In past competitions, adjustments for administrative and scoring errors have increased scores no more than two or three points; therefore, the funding band has been designed to include only those applications that would have a reasonable chance of being funded if the second review of the application results in an adjustment to the score. By selecting only those applications most likely to have a chance of being funded after a second review, we would be better able to effectively manage the grant competition and make timely funding decisions to ensure that the funds for the competition are obligated within the fiscal year.

One of the non-Federal negotiators objected to the Department's proposal to set aside a small portion of the appropriation for the second review. This negotiator stated that the Department should commit the full amount of appropriated funds for the program prior to the second review of applications and then request that Congress appropriate additional funds in the current or next fiscal year to support any applications that score in the funding range following the second review. This negotiator objected to the fact that the Department's proposal to re-rank applications in the funding band after the second review might result in an application that would have been funded if there was not a second review process not being funded after the second review. To avoid creating a contentious situation, the negotiator recommended that any application that received a second review and whose new score would have resulted in funding during the competition should only be funded if the Congress provided additional funds for the program. The negotiator asserted that this approach would be consistent with the HEA, as amended by the HEOA.

We do not agree with this recommendation. Congress specifically chose to require the Secretary to develop a review process for unsuccessful applications. In doing so, Congress clearly intended that applicants whose scores increased to within the funding range should be funded. Otherwise, the review process would provide no significant benefit to an applicant whose scores were increased since there would be no assurance of increased funding from Congress. Furthermore, we have a fiduciary responsibility to manage the grant competitions using the limited funds appropriated by Congress for the competition year. The Department cannot incur costs or make financial commitments from potential subsequent appropriations.

Training Program for Federal TRIO Programs, 34 CFR Part 642

Project Period (Proposed § 642.4)

Statute: Section 402A(b)(2)(B) of the HEA provides that Training program grants must be awarded for a period of two years.

Current Regulations: None.

Proposed Regulations: We are proposing to add § 642.4 to provide that a project period under the Training program is two years.

Reasons: We are proposing to add § 642.4 to the Training program regulations to be consistent with section 402A(b)(2)(B) of the HEA.

Applicable Regulations (Current § 642.4, Proposed § 642.5)

Statute: None.

Current Regulations: Current § 642.4 contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to amend the list of regulations that apply to the Training program. We also propose to exclude section 34 CFR 75.215 through 75.221 from the list of regulations that apply.

Reasons: We are proposing these changes so that the list of regulations that apply to the program is comprehensive and accurate. We are proposing to exclude the regulations in 34 CFR 75.215 to 75.221 that include general rules for handling applications and specific rules for handling applications that are not funded through a regular competition. The proposed new rules governing the process for a

second review of unsuccessful TRIO applications would make the process outlined in these regulations unnecessary.

Definitions (Current § 642.5, Proposed § 642.6)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for the proposed regulations with regard to the definitions of *foster care youth, homeless children and youth, individual with disabilities, institution of higher education,* and *veteran* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble.

Number of Applications (Proposed § 642.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes regarding the number of applications an eligible entity may submit to apply for a grant under the Training program in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Required and Permissible Services

Statute: Section 402G(b) of the HEA, as amended by section 403(g) of the HEOA, expands the types of training that grantees are required to provide under the Training program.

Current Regulations: Current § 642.10 specifies the types of training that a grantee is required to provide and the types of training that a grantee is permitted to provide under the Training program.

Proposed Regulations: Proposed § 642.11 would identify the training that Training program grantees must provide and would reflect the training requirements in section 402G(b)(5) of the HEA, as amended by section 403(g) of the HEOA. Specifically, in proposed § 642.11, we would add the following to the list of topics that Training program grantees must provide for new project directors: (1) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs; and (2) strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

Proposed § 642.12 would describe the types of training that Training program grantees may provide. This section would include all permissible Training program services listed under current § 642.10 and add the following two services to that list: On-site training and on-line training.

Reasons: Currently we address both required and permissible training that Training program grantees provide in § 642.10. We propose to describe the required training and permissible training in two separate regulations for greater clarity. We are also proposing to modify the regulations to reflect the changes in required and permissible training made by section 403(g) of the HEOA.

We also propose to add on-site and on-line training as permissible activities to reflect our current administrative practice and recognize current educational practices.

Ranking Applications by Priority (Current § 642.30, Proposed § 642.20(c) and (d))

Statute: Section 402A(c)(3) exempts the Training program from the requirement that the Secretary must award Federal TRIO program grants in the order of the scores received by applications in the peer review process and adjusted for PE.

Current Regulations: Current § 642.30 does not address how the Secretary ranks applications for the Training program grants.

Proposed Regulations: We propose to redesignate current § 642.30 as § 642.20 and modify it to allow in proposed § 642.20(c) the Secretary to select Training program applications for funding by absolute priority in rank order on the basis of the average peer review score. Under proposed § 642.20(d), for each absolute priority, if there are insufficient funds to fund all applications at a particular peer review score, we will add each application's PE score to its peer review score to determine an adjusted total score for each application. Under this proposed regulation, for applications with the same peer review score at the funding cut-off level, we would then use the adjusted total score to determine which of the tied applicants will receive funding. If a tie score still exists, the Secretary would select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the nation.

Reasons: We are proposing § 642.20 to reflect the Department's current practice and provide a specific, understandable, and fair method for funding new awards under the Training program. Specifically, we are proposing to establish regulations to fund applications by absolute priority to ensure that one or more training grants will be funded under each published priority. In addition, in proposed § 642.20 we would specify how we would handle a tie score.

Evaluation of an Application for a New Award (Current §§ 642.30 and 642.31, Proposed §§ 642.20 and 642.21)

Statute: None.

Current Regulations: Current § 642.30(a)(1) provides that, in evaluating applications for Training program grants, the Secretary awards up to 100 points based on the selection criteria in § 642.31. Section 642.31(f) specifies a selection criterion worth 25 points that requires an applicant to show the need for its proposed Training program project.

Proposed Regulations: Proposed §§ 642.20 and 642.21 would change the total number of points that may be awarded in a Training program competition to 75 instead of 100 points. Specifically, we are proposing to remove the selection criteria in current § 642.31(f), which is worth 25 points.

Reasons: Current § 642.31(f) provides that we award up to 25 points to an applicant that shows a need for its Training program project. However, every applicant is required to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department establishes the need for the proposed training. Thus, a selection criterion that requires an applicant to show the need for its proposed training is no longer necessary.

Prior Experience (Current § 642.32, Proposed § 642.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes regarding PE for the Training program in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 642.25)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for adding new § 642.25 in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Amount of a Grant (§ 642.26)

Statute: Section 402A(b)(3) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, sets the minimum Training grant amount at $170,000.

Current Regulations: None.

Proposed Regulations: We are proposing to amend the regulations to add a new section that explains how the Secretary sets the amount of a grant. This section will specify that the Secretary uses the available funds to set the amount of the grant at the lesser of $170,000 or the amount requested by the applicant.

Reasons: We are proposing this change to reflect the change to section 402A(b)(3) of the HEA by the HEOA.

Talent Search (TS) Program, 34 CFR Part 643

Sections 403(a) and (b) of the HEOA amended sections 402A and 402B of the HEA.

Changes to the Purpose of Talent Search (§ 643.1)

Statute: Section 403(b) of the HEOA amended Section 402B of the HEA to reflect changes to the purposes of the TS program.

Current Regulations: Current § 643.1 does not reflect the changes made to the purposes of the TS program by the HEOA.

Proposed Regulations: We propose to amend § 643.1 to provide that one of the purposes of the TS program is to have grantees publicize the availability of, and facilitate the application for, student financial assistance and to encourage persons who have not completed secondary or postsecondary education to enter, or reenter, and complete such programs.

Reasons: The proposed amendment would conform current § 643.1 to the changes made to section 402B of the HEA, by the HEOA.

Applicant Eligibility (§ 643.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section 403(a)(1)(A)(ii) of the HEOA, lists the types of entities that are eligible for TS grants. Prior to enactment of the HEOA, a secondary school could apply for a TS grant under "exceptional circumstances." The HEOA eliminates this restriction on the eligibility of a secondary school. Further, the HEOA modified the definition of the public and private agencies and organizations that are eligible for grants to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 643.2 specifies who is eligible to apply for a TS grant. This provision does not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 643.2 to reflect the statutory changes to the rules on applicant eligibility. Under the revised regulations, a secondary school would be eligible to apply for a TS grant without having to demonstrate "exceptional circumstances." In addition, a community-based organization with experience in serving disadvantaged youth may apply for a TS grant.

Reasons: We are proposing to revise current § 643.2 to reflect the changes made to the applicant eligibility provisions for the TS program in section 402A(b)(1) of the HEA, as amended by the HEOA.

Participant Eligibility (§ 643.3)

Statute: Section 403(b)(1)(B) of the HEOA amended section 402B(a)(3) of the HEA by deleting the requirement that a participant must have the ability to complete a program of secondary or postsecondary education.

Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study. The statute does not specify eligibility criteria for participants enrolled in a rigorous secondary school program of study.

Current Regulations: Current § 643.3(a)(3)(i) requires that a participant in a TS program have potential for a program of postsecondary education. Current § 643.3(a)(3)(ii) requires that a participant have the ability to complete a program of postsecondary education. The current regulations do not include eligibility requirements for participants receiving support to complete a rigorous secondary school program of study.

Proposed Regulations: We are proposing to amend the TS participant eligibility regulations in § 643.3(a)(3)(i) by removing the requirement that a participant have the potential for a program of postsecondary education. We are also proposing to amend § 643.3(a)(3)(ii) by removing the requirement that a participant who has undertaken, but is not presently enrolled in, a program of postsecondary education have the ability to complete such a program.

We are proposing to add participant eligibility requirements for TS participants who receive support from a TS grantee to complete a rigorous secondary school program of study. Those participants must be accepted into the TS program by the end of the first term of the tenth grade, be enrolled in or be preparing to enroll in a rigorous secondary school program of study as defined by his or her State of residence, and be designated as enrolled in a rigorous secondary school program of study on the grantee's reports to the Secretary.

Reasons: To reflect the changes made to section 402B(a)(3) of the HEA and in response to comments made by the non-Federal negotiators during the negotiated rulemaking sessions, we are proposing: (1) To remove the current regulatory language that requires potential participants who have not entered into postsecondary education to have potential for a program of postsecondary education; and (2) to remove regulatory language that requires potential participants who have previously dropped out of postsecondary education to have the ability to complete such a program.

We are also proposing to add eligibility requirements for participants receiving support to complete a rigorous secondary school program of study to help ensure that they receive sufficient services from the TS project to achieve at the level needed to be eligible for grants under the Academic Competitiveness Grant (ACG) program. This change would be consistent with the new HEOA outcome criteria in section 402A(f)(3)(A)(4) of the HEA for the TS program, which measures the extent to which project participants complete a rigorous secondary school program of study that would make these students eligible for programs such as the ACG program.

Required and Permissible Services (§ 643.4)

Statute: The HEA lists certain services or activities that projects funded under the TS program must provide and services or activities that these projects may provide. Section 403(b) and (c) of the HEOA amended section 402B(b) and (c) of the HEA relating to required and permissible services or activities for TS program grantees.

Current Regulations: Current § 643.4 specifies what services a TS project may provide. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend § 643.4 to revise the list of required and permissible services or activities to be provided by projects funded under the TS program to reflect changes made by the HEOA. The proposed regulations would list the services or activities that projects must provide and the services or activities that projects may provide.

We are proposing to amend the TS program regulations to require that projects provide the following services: (1) Connecting participants to high

quality academic tutoring services to enable participants to complete secondary or postsecondary courses; (2) providing advice and assistance to participants in secondary school course selection and, if applicable, initial postsecondary course selection; (3) providing assistance to participants in preparing for college entrance examinations and completing college admission applications; (4) providing (i) information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid; (5) providing participants with guidance on and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into general educational development (GED) programs, or entry into postsecondary education; and (6) connecting participants to education or counseling services designed to improve the financial literacy and economic literacy of participants or the participants' parents, including financial planning for postsecondary education.

We are proposing to specify that the following are permissible services for TS projects: (1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) personal and career counseling or activities; (3) information and activities designed to acquaint youth with the range of career options available to them; (4) exposure to the campuses of institutions of higher education, as well as cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth; (5) workshops and counseling for families of participants served; (6) mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons; and (7) the programs and activities described in items (1) through (6) that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

Reasons: The proposed amendments would conform the regulations to the statutory amendments made by the HEOA to section 402B of the HEA. Prior to enactment of the HEOA projects funded under the TS program could choose from a number of permissible activities and services to provide participants. Section 403(b) of the HEOA amended section 402B of the HEA to require grantees to provide certain services and give grantees the option of providing other services. The proposed amendments reflect these statutory changes.

Project Period (§ 643.5)

Statute: Prior to enactment of the HEOA, TS grants were generally awarded for four years. Grantees whose peer-review scores were in the highest ten percent of the scores of all applicants, received five year grants. The HEOA amended the HEA so that all TS grants are for five years.

Current Regulations: Current § 643.5 specifies the length of a TS project period. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to define the project period as five years for all grantees.

Reasons: The change is made to conform the regulations to section 402A(b)(2) of the HEA.

Applicable Regulations (§ 643.6)

Statute: None.

Current Regulations: Section 643.6 contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the TS program. We also propose to exclude 34 CFR 75.215 through 221 from the list of regulations that apply.

Reasons: We discuss the reasons for the proposed amendments in the discussion of *Applicable Regulations* for the Training Program for Federal TRIO Programs section of this preamble (current § 642.4, proposed § 642.5).

Definitions (§ 643.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of *different population, financial and economic literacy, foster care youth, homeless children and youth,* and *individual with disabilities* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. We are also proposing to define two additional terms applicable to the TS program in these regulations: *regular secondary school diploma* and *rigorous secondary school program of study.*

Regular Secondary School Diploma

Statute: Section 402A(f)(3)(A)(iii) of the HEA was amended by section 403(a)(5) of the HEOA to include a new outcome criterion for TS that requires grantees to report on the graduation of participants who complete secondary school with a regular secondary school diploma in the standard number of years.

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 643.7(b) to define *regular secondary school diploma* to mean a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Reasons: We are proposing the addition of the definition of *regular secondary school diploma* to ensure that there is a clear and consistent understanding of the term in the TS program.

Rigorous Secondary School Program of Study

Statute: Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study. The term rigorous secondary school program of study is not defined in the statute.

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 643.7(b) to include a definition of *rigorous secondary school program of study.* The proposed regulations would define *rigorous secondary school program of study* to mean a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level

class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

Reasons: We are proposing the addition of a definition of *rigorous secondary school program of study* to ensure a clear and consistent understanding of the term for the TS program and with other Department programs.

Number of Applications (§ 643.10)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 643.10, Number of applications, in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (Current § 643.10; Proposed § 643.11)

Statute: Section 402B(d)(1) of the HEA requires that, as part of its application, a TS grantee provide an assurance that two-thirds of the participants it will serve in its project will be low-income individuals who are first generation college students. Section 402B(d)(3) of the HEA requires that a TS grantees provide an assurance that individuals participating in the project will not have access to services from another TS grantee or an EOC project.

Current Regulations: Current § 643.10 specifies what assurances an applicant must include in an application. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to re-number the regulations establishing the required assurances as § 643.11 and to amend paragraph (a) to require that a TS grantee provide an assurance that at least two-thirds of the subset of participants selected for the rigorous academic component of the grant project will be low-income individuals who are potential first-generation college students.

We are also proposing to amend paragraph (b) to require TS grantees to provide an assurance that they will not provide the same services to participants as projects funded by programs serving similar populations, such as GEAR UP, UB, UBMS, or EOC.

Reasons: We are proposing to amend the TS project assurances to reflect the requirements of section 402B(d) of the HEA. Specifically, we are proposing to modify the regulations to require that at least two-thirds of the participants selected for the rigorous secondary school program of study component of the project must be low-income individuals who are potential first-generation college students. This assurance would require projects, in selecting participants for the rigorous secondary school program of study component, to apply the statutory requirement that at least two-thirds of the project participants be both low-income individuals and potential first-generation college students to ensure an equitable and appropriate approach to participant selection.

We are also proposing to amend the TS project assurances to require a grantee to provide an assurance that it will not provide the same services to participants that they would receive under other programs serving similar populations, such as GEAR UP, UB, UBMS, or EOC to avoid the duplication of services between a TS project and similar projects.

Making New Grants (§ 643.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the TS (*see* section 402A(f)(3)(A) of the HEA). The HEA does not establish specific procedures for awarding PE points.

The HEA, as amended, no longer includes provisions for awarding additional points to an application for a project in designated territories of the United States.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 643.20 specifies the procedures the Secretary uses to award new grants.

Proposed Regulations: We propose that the Secretary evaluate the PE of an applicant for each of three project years, as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that the Secretary may award an applicant up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years would be the final PE score for the applicant.

We also propose to remove § 643.20(a)(3) and to amend the wording in § 643.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 643.20(a)(2). We also are proposing to remove § 643.20(a)(3) because there is no longer any statutory authority for this provision. We also are proposing to amend § 643.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 643.21)

Statute: Section 402A(f)(3)(A) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the TS program. Specifically, pursuant to section 402A(f)(3)(A) of the HEA, the Secretary must measure the performance of TS grants by examining the extent to which the entity met or exceeded the entity's objectives (as established in the entity's approved application) regarding—

(1) Delivery of service to a total number of students served by the program;

(2) Continued secondary school enrollment of such students;

(3) Graduation of such students from secondary school with a regular secondary school diploma in the standard number of years;

(4) Completion by such students of a rigorous secondary school program of study that will make such students eligible for grants under programs such as the ACG program;

(5) Enrollment of such students in an institution of higher education; and

(6) To the extent practicable, the postsecondary education completion of such students.

These statutory changes necessitate changes in the grant selection criteria regarding "Need for the project" (§ 643.21(a)), "Objectives" (§ 643.21(b)), and "Plan of operation" (§ 643.21(c)).

Further, section 403(a) of the HEOA amended section 402A of the HEA to eliminate the provision that limited secondary school eligibility for the TS program to exceptional circumstances.

Current Regulations: Current § 643.21 specifies the selection criteria the Secretary uses to evaluate an application for a TS grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Need for the project (§ 643.21(a)); Objectives (§ 643.21(b)); Plan of operation (§ 643.21(c)); and Applicant and community support (§ 643.21(d)).

Proposed Regulations (Need for the project): We are proposing to amend § 643.21(a) to provide that when evaluating an application for a new grant the Secretary will evaluate the need for the proposed project. To evaluate the need for the project, we would distribute 24 points in the following manner:

(1) Six points for a high number or high percentage of (a) low-income families residing in the target area, or (b) students attending the target schools who are eligible for free or reduced priced lunch, as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) Two points for low rates of high school persistence among individuals in the target schools, as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) Four points for low rates of students in the target school's graduating high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) Six points for low postsecondary enrollment and completion rates among individuals in the target area and schools, as evidenced by (a) low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available, and (b) a high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) Two points for the extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation by low-income or first generation students in such courses.

(6) Four points for other indicators of need for a TS project, including a high ratio of students to school counselors in the target schools and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth, in the target schools or the target area.

Reasons: We are proposing to amend § 643.21(a) (Need for the project) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of TS program grantees. We are proposing to modify the need for the TS project selection criteria because we believe that the revised criteria would be consistent with the purpose and goals of the TS program, as reflected in the outcome criteria established by Congress. In the application, the applicant would document the extent of the need for the proposed TS project in the proposed target area and would provide baseline data for the new outcome criteria that the applicant would use to establish project objectives that are ambitious and attainable.

In addition, based on concerns expressed by some non-Federal negotiators during the negotiated rulemaking sessions regarding the availability of reliable data from the target schools for purposes of calculating some of the need criteria, the proposed regulations would give applicants options for providing the number or percentage of low-income individuals in the proposed target area. To meet this requirement the applicant may provide data on either the number or the percentage of low-income families residing in the target area or the number or percentage of students attending the target schools who are eligible for free or reduced priced lunch. Further, to reduce burden, an applicant would only need to provide data on high school persistence, graduation, and postsecondary enrollment for the most recent year for which data are available; current regulations require data for the three most recent years.

The proposed regulations would also address a concern some non-Federal negotiators raised about the current requirement that an applicant provide data to show a high student dropout rate in the proposed target schools in the preceding three years. These non-Federal negotiators expressed concern that this provision could penalize applicants with existing projects that serve target schools that have already improved their dropout rates. We are not proposing to remove the dropout rate from the criteria. However, in light of the new statutory outcome criteria related to the "continued secondary school enrollment of participants," we have also included a criterion that requires the applicant to provide data on the annual high school persistence rates of students in the proposed target schools.

Proposed Regulations (Objectives): We are proposing to amend § 643.21(b) to provide that, in evaluating applications for TS grants, the Secretary consider the quality of the applicant's proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner:

(1) Two points for secondary school persistence.

(2) Two points for secondary school graduation (regular secondary school diploma).

(3) One point for secondary school graduation (rigorous secondary school program of study).

(4) Two points for postsecondary education enrollment.

(5) One point for postsecondary degree attainment.

Reasons: We are proposing to amend § 643.21(b) (Objectives) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the TS program. We are proposing to reflect the statutory TS outcome criteria in § 643.21(b) as selection criteria because we believe that the focus at the outset of the TS discretionary grant process (*i.e.*, evaluating applications using TS selection criteria) should be on the ultimate outcomes the TS program is intended to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires that the Secretary measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in

the applicant's approved application to the actual results achieved during the grant period. For these reasons, we believe it is appropriate to use the outcome criteria from section 402A(f)(3)(A) of the HEA in the selection criteria for the TS program.

Outcome criteria are also used to evaluate an applicant's PE and to assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Plan of operation): We are proposing to amend § 643.21(c) to provide that the Secretary, in evaluating an application for a TS grant, evaluate the quality of the applicant's proposed plan of operation as one of the selection criteria. We would distribute thirty points for this criteria in the following manner:

(1) Three points for the plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) Three points for the plan to identify and select eligible project participants, including the project's plan and criteria for selecting individuals who would receive support to complete a rigorous secondary school program of study.

(3) Ten points for the plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) Six points for the plan to provide services to students in need of services to complete a rigorous secondary school program of study.

(5) Six points for the plan to ensure the proper and efficient administration of the project, including timelines, personnel, and other resources, and the project's organizational structure; the time commitment of key project staff; financial, personnel, and records management; and, where appropriate, coordination with other programs for disadvantaged youth.

(6) Two points for the plan to follow former participants as they enter, continue in, and complete postsecondary education.

Reasons: We are proposing to amend § 643.21(c) (Plan of operation) to reflect the changes made to section 402A(f)(3)(A) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the TS program. We are proposing to include the revised TS plan of operation criteria in § 643.21(c) as a selection criteria because the revised criteria would be consistent with the purpose and goals of the TS program outcome criteria. The requested information would document the project's plans with regard to the criteria relating to a rigorous secondary school program of study and for following the academic progress of former participants through postsecondary education.

Proposed Regulations (Applicant and community support): We are proposing to amend § 643.21(d) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services.

Reasons: We are proposing to amend § 643.21(d) (Applicant and community support) to reflect the changes made to section 402A(b)(1) of the HEA by section 403(a)(5) of the HEOA, which eliminated the limitation on the eligibility of secondary schools for TS grants. We agreed with some of the non-Federal members of the negotiated rulemaking committee who expressed concern that the current selection criterion that requires applicants to have written commitments from schools, community organization, and others may provide an advantage to secondary schools or community organization applicants for TS grants over institutions of higher education. Without a change, institutions of higher education applying for a TS grant would have to get letters of commitment from their potential competitors for grants while secondary schools and community organizations would not have a similar requirement. To ensure a fair and equitable competition and to ensure that schools and community organizations have the full scope of partners necessary to provide appropriate services, we would require those applicants to get letters of commitment from institutions of higher education.

Prior Experience Criteria (§ 643.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Amount of a Grant (§ 643.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1) of the HEOA, increased the minimum TS grant from $180,000 to $200,000.

Current Regulations: Current § 643.23 specifies how the Secretary sets the amount of a TS grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount.

Reasons: We are proposing this change to reflect the changes to section 402A(b)(3) of the HEA by section 403(a)(3) of the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (New § 643.24)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 643.24 in the *Review Process for Unsuccessful Federal TRIO Applicants* section of the preamble.

Allowable and Unallowable Costs (§§ 643.30 and 643.31)

Transportation, Equipment and Supplies, and Tuition

Statute: Section 403A(b) of the HEOA amended section 403B(b) of the HEA and expanded the list of services a TS grantee may provide to include instruction in reading, writing, study skills, mathematics, science, and other subjects. Section 403A(b) of the HEOA amended sections 402A and 402B of the HEA and included outcome criteria to evaluate the quality and effectiveness of TS projects. The new outcome criteria require that TS projects report data on the graduation of participants from secondary school with a regular high school diploma in the standard number of years, the completion by participants of a rigorous secondary school program of study that would make them eligible for grants under the ACG program, and the completion by participants of postsecondary education.

Current Regulations: Current § 643.30 permits a TS project to use grant funds to pay certain costs. Current § 643.30(a) permits a grantee to pay some participant transportation costs. Current § 643.30(f) requires a grantee to obtain approval from the Department to purchase computers and other equipment. Current § 643.31(a) prohibits the payment of tuition for participants.

Proposed Regulations: We are proposing to amend § 643.30(a)(4) to permit a TS grantee, under certain circumstances, to pay the transportation costs for a participant receiving instruction that is part of a rigorous secondary school program of study. We also are proposing to revise § 643.30 (f) and add paragraph (g) to allow grantees to use grant funds for the purchase,

lease, or rental of computer hardware that supports the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study, and for project administration and recordkeeping.

We are proposing to add paragraph (h) to § 643.30 to permit a TS grantee to pay tuition, under certain circumstances, for a participant to take a course that is part of a rigorous secondary school program of study. Specifically, we propose to allow TS funds to be used to pay tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the participant's school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds to pay for tuition is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken at an institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a high school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with TS grant funds to an institution of higher education on behalf of a participant; and

(8) The TS project pays for no more than the equivalent of two courses for a participant each school year.

We also propose to drop "tuition" from the list of unallowable costs in § 643.31(a).

During the negotiated rulemaking sessions, many of the non-Federal negotiators noted that they had data to demonstrate that participants in TS projects needed tuition support to complete a rigorous program of study. In light of these statements we are seeking public comments and data on the need to permit TS projects to pay tuition for participants to take courses that are part of a rigorous secondary school program of study. We are requesting data on the availability of rigorous coursework offerings at target schools or in target areas, which may include, but are not limited to: The number of schools or districts within the State that do not provide rigorous curricula; the number of students who do not have access to the rigorous coursework or do not take rigorous courses available to them; and student demographic data on rigorous course-taking patterns in the target schools or areas.

We are also requesting information on how the lack of access to rigorous programs has impacted the educational opportunities available to individuals served by TS projects. We are also requesting cost estimates, based on existing TS projects, as to the amount and percentage of the project budget that might be used for tuition, if allowable, and the estimated number of participants that might benefit each year from this service. We may reexamine the need for or scope of this proposal based on the comments and data that we receive.

Reasons: Based on comments and information we received during the negotiated rulemaking sessions we believe that it is appropriate for grantees to use TS funds to pay for computer equipment and software. Authorizing this use of funds will permit grantees to deliver services more efficiently. We believe that prior approval for these expenditures is no longer necessary. With the new statutory outcome criterion related to a rigorous course of study, a TS project also may need to rent, lease, or purchase technology used by participants in a rigorous academic program.

Some non-Federal negotiators recommended revisions to the TS regulations to allow grantees to pay transportation and tuition costs for participants who are trying to complete a rigorous secondary school program of study when the course or courses are not offered at the secondary school the participant attends or at another school within the school district.

A number of legal and policy concerns were discussed regarding this provision. A significant policy concern discussed was whether TS is the appropriate mechanism for addressing the lack of rigorous courses in some secondary schools given other new Federal initiatives and funding to help all school districts provide a rigorous program of study. Also of concern was the potential cost of this provision and whether this would result in TS projects being able to serve fewer students.

At the final negotiated rulemaking session, the Department noted that we could consider authorizing the use of funds to pay tuition, but that we needed more data on the issue before we would consider including this authority in the regulations. We pointed out the Federal policy goal that every secondary school should offer a rigorous program of study to its students. We also noted that other Federal programs support the establishment of rigorous programs of study. Accordingly, we were not convinced that the limited TS funds should be used for this purpose. The non-Federal negotiators disagreed, stating that it is unreasonable to measure the performance of a TS grantee on the extent to which participants complete a rigorous secondary school program of study if a grantee cannot use project funds to support this activity. The non-Federal negotiators also provided examples of areas and target schools served by TS projects that lack courses needed to meet the State standards for a rigorous secondary school program of study. If TS projects serving these areas could not provide participants with access to these courses, the non-Federal negotiators opined, some TS participants would be denied the opportunity to qualify for ACG funds. They also noted that research has shown that students who take rigorous coursework in high school are more likely to enter and complete postsecondary education.

After further consideration, we understand that the availability of rigorous coursework may be an issue in some schools and communities served by TS projects and, thus, we have reconsidered our position on this issue. We propose to include, under certain conditions, the payment of tuition for courses that would allow project participants to complete a rigorous secondary school program of study. Providing opportunities for high school students to complete a rigorous secondary school program of study is important to ensuring opportunity and success in postsecondary education.

Nonetheless, we need data to understand the extent to which areas and schools served by TS projects lack rigorous coursework. Further, we need data to perform cost-benefit analyses that help us determine whether to permit the use of limited TS grant funds for this purpose. We cannot base policy decisions on the appropriate use of limited program funds on anecdotal evidence. The TS program has a national scope, and we must consider the cost implications of this proposal. The use of TS funds for tuition and other related costs would reduce the availability of funding for other program services and would reduce the number of participants that could be served by a TS project. Additionally, as the Department seeks improvements in education, we need to ensure that Federal programs are used in a coordinated way to leverage educational reform and opportunities that would benefit all students. Therefore, we are

requesting that commenters provide us with information and data regarding the tuition provisions in these proposed regulations.

To ensure that TS funds are only used to pay tuition in exceptional situations, the proposed regulations would permit the payment of tuition for courses that are part of a rigorous secondary school program of study only if the: course to be taken by the participant or a similar course is not offered in the school district; the participant takes the course at an institution of higher education; the course is comparable in rigor to courses that are part of the State's rigorous secondary school program of study; and the course is accepted by the participant's secondary school as meeting one or more of the course requirements for a high school diploma. We would also require an applicant proposing to use TS funds for tuition to provide detailed information in their application on the appropriateness and cost effectiveness of using the TS funds for this purpose.

What Other Requirements Must a Grantee Meet? (§ 643.32)

Changes to Number of Participants (643.32(b))

Statute: Section 402A(b)(3) of the HEA, as amended by the HEOA, establishes a minimum grant of $200,000 for TS. The HEA does not specify the number of participants a project must serve.

Current Regulations: Section 643.32(b) requires a TS project to serve a minimum of 600 participants; the Secretary may reduce this number if the amount of the grant for the budget period is less than $180,000, which was the minimum TS grant amount prior to the HEOA amendments.

Proposed Regulations: We are proposing to amend § 643.32(b) to remove the current requirement that a TS grantee serve a specific minimum number of participants and to redesignate the paragraphs that follow.

Reasons: We are proposing to remove the minimum number of participants from regulations so the Department has flexibility in each competition to establish the number of participants, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies for disadvantaged youth to complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Future grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This may include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

We intend to stipulate the minimum and maximum grant award amounts and to address the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. We also intend to establish a per-participant cost in the **Federal Register** notice to be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Changes to Recordkeeping Requirements (§ 643.32(b))

Statute: Section 402A(f)(3)(A)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for TS that requires projects to report on participants who complete a rigorous secondary school program of study.

Current Regulations: Current § 643.32(c) specifies the recordkeeping requirements for TS grantees. This provision does not reflect the changes made by the HEOA to the goals and services of the TS program.

Proposed Regulations: We are proposing to redesignate current paragraph (c) as (b) and to amend newly redesignated § 643.32(b) to include new recordkeeping requirements for TS program participants in a rigorous secondary school program of study.

Reasons: We are proposing to amend the recordkeeping requirements to reflect the changes made to the TS program by the HEOA. The proposed change to the regulations is also consistent with the recommendation of the non-Federal negotiators during the negotiated rulemaking sessions to require a grantee to keep a list of courses taken by participants who are enrolled in a rigorous secondary school program of study. This change would ensure that a TS project grantee maintain the documentation needed to determine that participants in a rigorous secondary school program of study have taken the courses needed to qualify for ACG grants, as required by section 402A(f)(3)(A)(iv) of the HEA.

Changes to Full-Time Director Requirement (§ 643.32(d))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 643.32(d) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We are proposing to amend § 643.32(d) to amend the provision that required a grantee to have a full time Project Director unless the project met certain conditions and requested a waiver. Specifically, under the proposed regulations, a waiver would not be required for a Director who is less than full-time on the project if the Director is also administering one or two additional programs for disadvantaged students. A grantee would have to request a waiver of the full-time director requirement for the Director to administer more than three programs.

Reasons: The proposed regulations would be consistent with section 402A(c)(6) of the HEA. In addition, the change would reduce the administrative burden on grantees by eliminating the requirement that a grantee request a waiver of the full-time director requirement under certain circumstances.

Educational Opportunity Centers (EOC), 34 CFR Part 644

Changes to the EOC Program Purpose (§ 644.1)

Statute: Section 403(f)(1)(C) of the HEOA amended section 402F(a) of the HEA and modified the purposes of the EOC program.

Current Regulations: Current § 644.1 specifies the purpose of the EOC program. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend § 644.1 by adding a new paragraph (c) containing the following text: "To improve the financial literacy and economic literacy of participants on topics such as basic personal income, household money management, and financial planning skills and basic economic decision-making skills."

Reasons: We are proposing to revise current § 644.1 to reflect the changes made by the HEOA to the EOC program authority statement in section 402F(a) of the HEA.

Applicant Eligibility (§ 644.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section

403(a)(1)(A) of the HEOA lists the types of entities that are eligible for EOC grants. Prior to enactment of the HEOA, a secondary school could apply for an EOC grant under "exceptional circumstances." The HEOA eliminates this limitation on the eligibility of a secondary school. Further, the HEOA defines public and private agencies and organizations that may apply for a grant to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 644.2 specifies who is eligible to apply for an EOC grant. This provision does not reflect the changes made to applicant eligibility by the HEOA.

Proposed Regulations: We are proposing to amend § 644.2 to conform to the statutory changes to applicant eligibility. Under the proposed regulations, a secondary school would be able to apply for an EOC grant without having to demonstrate "exceptional circumstances." In addition, a community-based organization with experience in serving disadvantaged youth may apply for a grant.

Reasons: We are proposing to revise current § 644.2 to conform to the changes made by the HEOA in applicant eligibility in section 402A(b)(1) of the HEA.

Required and Permissible Services (§ 644.4)

Statute: Section 403(f)(2) of the HEOA amended section 402F(b) of the HEA, which defines the permissible services or activities in the EOC program. As amended, the HEA lists certain services or activities that projects funded under the program may provide.

Current Regulations: Current § 644.4 specifies what services an EOC project may provide. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend § 644.4 and add to the permissible services that projects may provide under the EOC program in accordance with the changes made by the HEOA. Specifically, we propose to remove personal counseling services from the list of permissible services and replace it with individualized personal, career, and academic counseling services. We are also proposing to specify that permissible services includes programs and activities described in § 644.4 that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants. Finally, we are proposing to add education or counseling services designed to improve the financial literacy and economic literacy of participants to the list of permissible services for EOC projects.

Reasons: The proposed regulations would amend § 644.4 to revise the list of services that EOC projects are allowed to provide to conform with section 402F(b) of the HEA.

Project Period (§ 644.5)

Statute: Section 402A(b)(2) of the HEA, as amended by section 403(a)(1)(B)(i) of the HEOA, provides that all EOC grants are for five years. Prior to enactment of the HEOA, EOC grants were awarded for four years, except for applicants whose peer review scores were in the highest 10 percent of the scores of all applicants; those applicants received five-year grants.

Current Regulations: Current § 644.5 specifies the length of an EOC project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise the regulations to define the project period under the EOC program as five years for all grantees.

Reasons: The change is made to conform § 644.5 with section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 644.6)

Statute: None.

Current Regulations: Section 644.6 specifies which regulations apply to the EOC program. This provision contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the EOC program. We also propose excluding §§ 75.215 through 75.221 from the list of regulations that apply.

Reasons: We discuss the reasons for the changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 644.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of definitions of *different population, financial and economic literacy, foster care youth, homeless children and youth,* and *individual with disabilities* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble.

Number of Applications (New § 644.10)

We discuss the statutory authority, proposed regulations, and reasons for adding new § 644.10, Number of applications, in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (Current § 644.10, Proposed § 644.11)

Statute: Section 402F(c)(3) of the HEA requires that EOC grantees provide an assurance that individuals participating in the project do not have access to services from another EOC or a TS project.

Current Regulations: Current § 644.10 specifies what assurances an applicant must include in an application.

Proposed Regulations: We are proposing to re-number the regulations establishing the required assurances as § 644.11 and to revise paragraph (b) to require EOC grantees to provide an assurance that they will not provide the same services to participants as projects funded by programs serving similar populations, such as Veterans Upward Bound (VUB), and TS.

Reasons: We are proposing to amend the EOC project assurances to prohibit EOC projects from providing the same services to participants that the participants would receive under other programs serving similar populations, such as VUB and TS, to avoid the duplication of services between an EOC project and similar projects.

Making New Grants (§ 644.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the EOC (*see* section 402A(f)(3)(E) of the HEA). The HEA does not establish specific procedures for awarding PE points.

The HEA, as amended, no longer includes provisions for awarding additional points to an application for a project in designated territories of the United States.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the

fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 644.20 specifies the procedures the Secretary uses to make new grants. Section 644.20(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 644.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years will be the final PE score for the applicant.

We also propose to remove § 644.20(a)(3) and to amend the wording in § 644.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 644.20(a)(2). We also are proposing to remove § 644.20(a)(3) because there is no longer statutory authority for this provision and to amend § 644.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 644.21)

Statute: Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the EOC program. Specifically, pursuant to section 402A(f)(3)(E) of the HEA, the Secretary must measure the performance of EOC grantees by examining the extent to which the grantee met or exceeded the grantee's objectives (as established in the entity's approved application) regarding: (1) The enrollment of students without a secondary school diploma or its recognized equivalent and who were served by the program in programs leading to a diploma or its equivalent; (2) the enrollment of secondary school graduates who were served by the program in programs of postsecondary education; (3) the delivery of services to the total number of students served by the program, as agreed to by the entity and the Secretary; and (4) the provision of assistance to students served by the program in completing financial aid applications and college admission applications. These statutory changes necessitate a change in the grant selection criteria for "Objectives" (§ 644.21(b)).

Further, section 402A(b) of the HEA, as amended by section 403(a)(1) of the HEOA, eliminated the "in exceptional circumstances clause" that limited secondary school eligibility to apply for an EOC grant. This statutory change necessitates a change in the grant selection criteria regarding "Applicant and community support" (§ 644.21(d)).

Current Regulations: Current § 644.21 specifies the selection criteria the Secretary uses to evaluate an application for an EOC grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Objectives (§ 644.21(b)) and Applicant and community support (§ 644.21(d)).

Proposed Regulations (Objectives): We are proposing to amend § 644.21(b) to provide that, in evaluating applications for EOC grants, the Secretary will consider the quality of the applicant's proposed objectives and proposed targets (percentages) on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner: (1) Two points for enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent; (2) four points for postsecondary enrollment; (3) one point for applying for student financial aid assistance; and (4) one point for students applying for college admission assistance.

Reasons: We are proposing to amend § 644.21(b) to reflect the changes made to section 402A(f)(3)(E) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of the EOC program. We are proposing to reflect the statutory EOC outcome criteria in § 644.21(b) as selection criteria because we believe that the focus of the process of selecting EOC grant applications should be on the ultimate outcomes the EOC program is designed to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to use the outcome criteria from section 402A(f)(3)(E) of the HEA as the selection criteria for the EOC program.

Outcome criteria are also used to evaluate an applicant's PE and to assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Applicant and community support): We are proposing to amend § 644.21(d) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services. In paragraph (d) of this section, we also clarify that the current requirement for written commitments applies to secondary schools by adding the word "secondary" to the regulations.

Reasons: We discuss the reasons for the proposed changes to the *Selection Criteria—Applicant and Community Support* in the TS section of the preamble.

Prior Experience Criteria (§ 644.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in the *TRIO Outcome Criteria*—Prior Experience section of the preamble.

Amount of a Grant (§ 644.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, increased the minimum EOC grant from $180,000 to $200,000.

Current Regulations: Current § 644.23 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount to $200,000.

Reasons: We are proposing this change to reflect the changes to section 402A(b)(3)(B) of the HEA by section 403(a)(1)(C) of the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (New § 644.24)

We discuss the statutory authority, proposed regulations, and reasons for adding a new review process for unsuccessful applicants, in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable Costs (§ 644.30)

Statute: The statute does not specifically address allowable costs in the EOC program.

Current Regulations: Current § 644.30 allows EOC funds to be used for participant field trips for observing persons employed in various career fields only if the trips are within the target area. Current § 644.30 requires a grantee to obtain prior approval from the Secretary to use program funds to purchase computer and other equipment.

Proposed Regulations: We are proposing to revise § 644.30(a)(3) by removing the words "in the target area" and by rewording the paragraph for clarity; we also are proposing to revise § 644.30(f) to allow grantees to use program funds for the purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping without requesting prior approval.

Reasons: We discuss the reasons for permitting EOC grantees to purchase computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS part of this preamble. We also believe that career field trips should not be limited to the grant target area, as this might limit EOC participants' exposure to various careers.

Other Requirements of a Grantee (§ 644.32)

Changes to Number of Participants (§ 644.32(b))

Statute: The HEA does not stipulate the number of participants a project must serve.

Current Regulations: Section 644.32(b) requires an EOC project to serve a minimum of 1,000 participants; however, the Secretary may reduce this number if the amount of the grant for the budget period is less than $180,000 (which was the minimum grant amount in the EOC program prior to enactment of the HEOA.

Proposed Regulations: We are proposing to amend § 644.32(b) to remove the requirement that an EOC grantee serve a minimum number of participants.

Reasons: We are proposing to remove from the regulations the requirement that an EOC grantee serve a minimum number of participants to give the Department flexibility to establish the number of participants to be served based on the available resources for each competition and to adjust these amounts for subsequent competitions based on experience. We intend to stipulate the minimum and maximum grant award amounts and address the number of participants an EOC project is expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The **Federal Register** notice would also establish a per participant cost to be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Changes to Full-Time Director Requirement (Old § 644.32(d); New § 644.32(c))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Section 644.32(d) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We propose to reorganize section 644.32 by removing paragraph (d), redesignating § 644.32(c) as § 644.32(b), and adding a new § 644.32(c). The new § 644.32(c) would include some of the provisions in current § 644.32(d), but would not include the requirement that a grantee request a waiver if the Project director is administering one or two additional programs for disadvantaged students. Specifically, a grantee would not need a waiver from the Secretary to have a director that is less than full-time on the project if the director is also administering one or two additional programs for disadvantaged students. Under the proposed regulation, however, a grantee would be required to request a waiver of the full-time director requirement for the director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Upward Bound (UB) Program, 34 CFR Part 645

Applicant Eligibility (§ 645.2)

Statute: Section 402A(b)(1) of the HEA, as amended by section 403(a)(1)(A) of the HEOA, lists the types of entities that are eligible for UB grants. Prior to enactment of the HEOA, a secondary school would be eligible to apply for a UB grant if it could show "exceptional circumstances." The HEOA eliminates this limitation. Further, the HEOA defines public and private agencies and organizations that may apply for a grant to include community-based organizations with experience in serving disadvantaged youth.

Current Regulations: Current § 645.2 specifies who is eligible to apply for an UB grant. This provision does not reflect the changes made to applicant eligibility by the HEOA.

Proposed Regulations: We are proposing to amend § 645.2 to conform to the statutory changes to applicant eligibility. As with other eligible applicants, a secondary school may apply for an UB grant without having to demonstrate "exceptional circumstances." In addition, under proposed § 645.2, a community-based organization with experience in serving disadvantaged youth may apply.

Reasons: We are proposing to amend current § 645.2 to conform to section 402A(b)(1) of the HEA, as amended by the HEOA.

Grantee Requirements (§ 645.4)

Statute: Section 402A(e)(1) and (2) of the HEA provides lists of acceptable documentation of a participant's status as a low-income individual. The HEOA made no substantive changes to this section of the statute.

Current Regulations: Section 645.4(a) duplicates requirements in § 645.21. In addition, the heading for § 645.4 is not descriptive of the requirements in it.

Proposed Regulations: We are proposing to remove § 645.4(a) of the current regulations and redesignate the paragraphs that follow. We also propose to revise the section heading to read as follows: "What are the grantee requirements for documenting the low-income and first-generation status of participants?"

Reasons: Except for paragraph (a), the current regulation reflects the statutory requirements for documenting a participant's low-income and potential first-generation status. Therefore, we are proposing to revise the heading for this section to clearly describe the grantee's documentation requirements with regard to participant eligibility. We are proposing to remove paragraph (a) of

this section because it duplicates requirements in § 645.21.

Applicable Regulations (§ 645.5)

Statute: None.

Current Regulations: Section 645.5(a) contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the UB program. We also propose to specifically exclude 34 CFR 75.215 through 75.221 from the list of applicable regulations that apply.

Reasons: We discuss the reasons for the changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 645.6)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definitions of *institution of higher education* and *veteran* and for the addition of *different population, financial and economic literacy, foster care youth, homeless children and youth,* and *individual with disabilities* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. In addition, we propose to include definitions for two terms applicable to both the TS and UB programs (*regular secondary school diploma* and *rigorous secondary school program of study*) and two terms applicable to new UB requirements (*individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure).*

Regular Secondary School Diploma

Statute: Section 402C(b) of the HEA, as amended by section 403(c)(1) of the HEOA, requires a UB grantee to provide: "guidance on and assistance in alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma."

Current Regulations: None.

Proposed Regulations: We are proposing to amend § 645.6(b) to include a definition of *regular secondary school diploma.* The proposed regulations would define regular secondary school diploma to mean a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Reasons: We discuss the reasons for this new definition in the *Definitions* in the TS section of the preamble.

Rigorous Secondary School Program of Study

Statute: Section 402A(f)(3)(B)(v) of the HEA, as amended by section 403(a)(5) of the HEOA, includes a new outcome criterion for UB that requires the Secretary to consider to the extent to which a grantee met or exceeded its objectives on project participants that complete a rigorous secondary school program of study that will make such students eligible for programs such as the ACG program.

Current Regulations: None.

Proposed Regulations: We are proposing to amend the definitions in § 645.6(b) to include a definition of *rigorous secondary school program of study.* The proposed regulations would define *rigorous secondary school program of study* to mean a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

Reasons: We discuss the reasons for this new definition in the *Definitions* in the TS section of the preamble.

Individual who has a high risk for academic failure and *veteran who has a high risk for academic failure*

Statute: The HEOA amended section 402C(e)(2) of the HEA to include "students who have a high risk for academic failure" as a group eligible to be served by an UB project.

Current Regulations: None.

Proposed Regulations: We are proposing to add a definition of an *individual who has a high risk for academic failure* for participants in regular UB projects and a definition of a *veteran who has a high risk for academic failure* for participants in a VUB project.

For regular UB, an *individual who has a high risk for academic failure* would mean an individual who: (1) Has not achieved at the proficient level on State assessments in reading or language arts; (2) has not achieved at the proficient level on State assessments in math; (3) has not completed pre-algebra, algebra, or geometry; or (4) has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

For VUB, a *veteran who has a high risk for academic failure* would mean a veteran who: (1) Has been out of high school or dropped out of a program of postsecondary education for five or more years; (2) has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or (3) meets the definition of an individual with disabilities as defined in 645.6(b).

Reasons: We have proposed a definition of a high risk student based on our experience in administering the TRIO programs and that we believe appropriately identifies students most in need of academic assistance.

During the negotiated rulemaking sessions, we initially proposed that only regular UB projects be required to include students who are at high risk of academic failure as eligible participants. Because of the different populations served by UBMS and VUB projects, we did not think this provision should apply to these two project types. Many of the non-Federal negotiators agreed that UBMS projects should not be required to serve high-risk students since UBMS projects are special focus projects designed to prepare high school students for postsecondary education

programs that lead to careers in math and science fields.

Many of the non-Federal negotiators, however, felt that the requirement to serve high-risk students should apply to VUB projects. The proposed definition of a *veteran who has a high risk for academic failure* reflects the suggestions of some of the non-Federal negotiators. This proposed change is intended to ensure that VUB projects help veterans who can most benefit from the services offered. Additionally, to ensure that disabled veterans can benefit from the educational services and activities the VUB project provides, the VUB definition would include individuals who meet the proposed definition of an *individual with disabilities.*

UB Required Services (§ 645.11)

Statute: Section 403(c) of the HEOA amended sections 402C of HEA and modified the required services or activities for a UB grantee.

Current Regulations: Current § 645.11 does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: To conform with the HEA, we are proposing to amended the regulations to require that UB grantees provide the following services: (1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) advice and assistance in secondary and postsecondary course selection; (3) assistance in preparing for college entrance examinations and completing college admission applications; (4)(i) providing information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid described in section 483(e) of the HEA; (5) guidance on and assistance in secondary school reentry, alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma, entry into general educational development (GED) programs, or entry into postsecondary education; and (6) education or counseling services designed to improve the financial literacy and economic literacy of students or the student's parents, including financial planning for postsecondary education.

Reasons: We are proposing these changes to align the regulations with section 402C of the HEA as amended by the HEOA. Prior to enactment of the HEOA, UB grantees could choose participants services from among a number of permissible activities and services. Section 403(c) of the HEOA, however, amended the HEA to require grantees to provide certain services. The proposed amendments reflect the statutory change.

UB and UBMS Permissible Services (§ 645.12)

Statute: Section 403(c)(4) of the HEOA amended section 402C(d) of the HEA, which defines the permissible services or activities in the UB program.

Current Regulations: Current § 645.11(b) specifies what services an UB project may provide. This provision does not reflect changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to reflect the changes made by the HEOA and specify that UB and UBMS grantees may provide the following permissible services: (1) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth; (2) information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth; (3) on-campus residential programs; (4) mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons; (5) work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree; and (6) programs and activities described in (1) through (5) above and are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants with disabilities, participants who are homeless children and youths, participants who are foster care youth, or other disconnected participants.

Reasons: We are proposing these changes to align the regulations with section 402C(d) of the HEA as amended by the HEOA. Prior to enactment of the new law, projects funded under the UB program could choose from among a number of permissible activities and services to provide participants. Section 403(c) of the HEOA, however, amended section 402C of the HEA to require grantees to provide certain services to provide participants and gives grantees the option of providing other services. The proposed amendments would reflect the statutory changes relating to permissible services or activities.

VUB Permissible Services (§ 645.15)

Statute: Section 403(c) of the HEOA amended section 402C of the HEA governing the UB program which defines the required and permissible services or activities for VUB grantees.

Current Regulations: Current regulations do not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to modify § 645.15 to specify that VUB grantees may provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

Reasons: We are proposing this change to align the regulations with the statutory amendment made by section 403(c) of the HEOA to section 402C of the HEA.

Number of Applications (§ 645.20)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the number of applications an eligible applicant may submit (§ 645.20) in the *Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations* section of the preamble.

Assurances (§ 645.21)

Statute: Section 403(c)(5) of the HEOA amended section 402C(e) of the HEA, which requires UB grantees to provide certain assurances as part of the application process. Prior to enactment of the HEOA, a UB grantee had to provide an assurance that all participants in its project would be either low-income or first-generation college students with at least two-thirds of the participants a being both low-income and first-generation. The remaining participants could be either low-income individuals or first-generation college students. The HEOA amended section 402C(e) of the HEA, to modify this last group to include individuals who are at high risk for academic failure as a separate group of eligible participants. The HEOA also requires applicants to provide an assurance that no student will be denied participation in the applicant's UB project because the student entered the project after completing the 9th grade.

Current Regulations: Current § 645.21 specifies what assurances an applicant for a UB grant must include in an application. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend § 645.21 to include assurances for each of the three project types: UB, UBMS, and VUB. We are also proposing to add a new provision that would require that a UB grantee provide an assurance that the project will not provide participants the same services they are receiving from other programs serving similar populations.

An applicant for a regular UB grant would have to provide assurances that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student will enter the project after the 9th grade;

(4) Individuals who are receiving services from a GEAR UP project under 34 CFR part 694, another UB or UBMS project under 34 CFR part 645, a TS project under 34 CFR part 643, an EOC project under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

An applicant for an UBMS grant would have to provide assurances that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students; and

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from a GEAR UP project under 34 CFR part 694, a regular UB or another UBMS project under 34 CFR part 645, a TS project under 34 CFR part 643, EOC under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

An applicant for a VUB grant must have to provide assurances to the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) Individuals who are receiving services from another VUB project under 34 CFR part 645, a TS project under 34 CFR part 643, an EOC project under 34 CFR part 644, or a project under other programs serving similar populations will not receive the same services under the proposed project.

Reasons: The changes to the listing of required assurances in § 645.21 are needed to conform the regulations to the changes made to the HEA. Also, to ensure no duplication of services between an UB project and other similar programs, we are proposing that UB grantees provide an assurance that they will not provide the same service to a participant also participating, as applicable, in a project funded by GEAR UP, UB, UBMS, VUB, TS, EOC, or other programs serving similar populations.

Making New Grants (§ 645.30)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the UB programs (*see* section 402A(f)(3)(B) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 645.30 specifies the procedures the Secretary uses to make new grants. Section 645.30(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 645.30 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years will be the final PE score for the applicant.

We also propose to amend the wording in § 645.30(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: To provide more transparency in the process the Secretary will use to award PE points, we are proposing to amend § 645.30(a)(2). We also are proposing to amend § 645.30(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 645.31)

Statute: Section 402A(f)(3)(B) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those funded under the UB program. Specifically, pursuant to section 402A(f)(3)(B) of the HEA, the Secretary must measure the performance of UB grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) regarding: (1) The delivery of service to the total number of students served by the program, as agreed upon by the entity and the Secretary for the period; (2) the students' school performance, as measured by the students' grade point average, or its equivalent; (3) the students' academic performance, as measured by standardized tests, including tests required by the students' State; (4) the retention in, and graduation from, secondary school of the students; (5) the completion by these students of a rigorous secondary school program of study that will make these students eligible for programs such as the ACG; (6) the enrollment of the students in an institution of higher education; and, (7) to the extent practicable, the postsecondary education completion of the students. These statutory changes necessitate a change in the grant selection criteria for "Objectives" (§ 645.31(b)).

Further, section 402A(b) of the HEA, as amended by section 403(a)(1) of the HEOA, eliminated the "in exceptional circumstances clause" that limited the eligibility of secondary schools to apply for grants. This statutory change necessitates a change in the grant selection criteria regarding "Applicant and community support" (§ 645.31(d)).

Current Regulations: Current § 645.31 specifies the selection criteria the Secretary uses to evaluate an application for an UB grant. This provision does not reflect the changes made by the HEOA to the HEA applicable to the following selection criteria: Objectives (§ 645.31(b)) and Applicant and community support (§ 645.31(d)).

Proposed Regulations (Objectives): We are proposing to amend § 645.31(b) to provide that, in evaluating UB grant applications, the Secretary will consider the quality of the applicant's proposed objectives and proposed targets (percentages) on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute nine points for this criterion in the following manner for UB and UBMS: (1) One point for academic performance (GPA); (2) one point for academic performance (standardized test scores); (3) two points for secondary school graduation (with regular secondary school diploma); (4) one point for completion of a rigorous secondary school program of study; (5) three points for postsecondary enrollment; and (6) one point for postsecondary completion.

For VUB, we propose to distribute nine points for this criterion in the following manner: (1) Two points for academic performance (standardized test scores); (2) three points for education program retention and completion; (3) three points for postsecondary enrollment; and (4) one point for postsecondary completion.

Reasons: We are proposing to amend § 645.31(b) to reflect the changes made to section 402A(f)(3)(B) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure the performance of the UB program. We are proposing to reflect the statutory UB outcome criteria in § 645.31(b) as selection criteria because we believe that the focus at the outset of the UB discretionary grant process (*i.e.*, the evaluation of applications using UB selection criteria) should be on the ultimate outcomes the UB program is intended to attain.

Moreover, during the grant period, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grant based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during each year of the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section 402A(f)(3)(B) of the HEA as the selection criteria for the UB program.

Outcome criteria are also used to evaluate an applicant's PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Proposed Regulations (Applicant and community support): We are proposing to amend § 645.31(d)(2) to require written commitments from institutions of higher education, in addition to the current requirement for written commitments from schools and community organizations, to provide resources to supplement the grant and enhance project services.

Reasons: We discuss the reasons for the proposed changes to the *Selection Criteria—Applicant and Community Support* in the TS section of the preamble.

Prior Experience Criteria (§ 645.32)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria in § 645.32 in the *TRIO Outcome Criteria—Prior Experience* section of the preamble.

Amount of a Grant (§ 645.33)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1)(C) of the HEOA, increased the minimum UB grant from $190,000 to $200,000.

Current Regulations: Current § 645.33 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to reflect the statutory minimum grant amount.

Reasons: We are proposing this change to reflect the changes made to section 402A(b)(3)(B) of the HEA by the HEOA.

Project Period (§ 645.34)

Statute: Section 402A(b)(2) of the HEA, as amended by section 403(a)(1)(B)(i) of the HEOA, provides that all UB grants are for five years. Prior to the HEOA, UB grants were awarded for four years, except for applicants whose peer review scores were in the highest 10 percent of the scores of all applicants; these applicants received five year grants.

Current Regulations: Current § 645.34 specifies the length of an UB project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise the regulations to define the project period under the UB program as five years for all grantees.

Reasons: The change is made to conform § 645.34 with section 402A(b)(2) of the HEA as amended by the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 645.35)

We discuss the statutory authority, proposed regulations, and reasons for providing a new review process for unsuccessful applicants in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable Costs (§ 645.40)

Statute: The statute does not address the use of UB program funds to purchase equipment.

Current Regulations: Current § 645.40(n) requires a grantee to obtain prior approval from the Secretary to purchase computer and other equipment.

Proposed Regulations: We are proposing to revise § 645.40(n), redesignate § 645.40(o) as § 645.40(p), and add a new § 645.45(o) to permit an UB grantee, under certain circumstances, to purchase, lease or rent computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study and for project administration and recordkeeping without requiring prior approval from the Department.

Reasons: We discuss the reasons for permitting an UB grantee to purchase, lease, or rent computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS preamble.

Stipends (§ 645.42)

Statute: Section 403(c)(6) of the HEOA amended section 402C(f) of the HEA regarding the payment of stipends to UB project participants. The HEOA amended the HEA by deleting the words "during June, July, and August" and replacing them with "during the summer school recess, for a period not to exceed three months."

Current Regulations: Current § 645.42 specifies the terms of the payment of stipends in the UB program. This provision does not reflect changes made by the HEOA to the HEA.

Proposed Regulations: We propose to amend the current regulations to state that the stipend may not exceed $60 per month for the summer school recess for a period not to exceed three months except for participants in a work-study position who may be paid $300 per month during the summer recess.

Reasons: The proposed change would amend the regulations to reflect the change to section 402C(f) of the HEA by section 403(c)(6) of the HEOA.

Other Requirements of a Grantee (§ 645.43)

In these proposed regulations, current § 645.43(a) and (b) would be removed, a new § 645.43(a) would be added, and § 645.43(c) would be redesignated as § 645.43(b).

Changes to Number of Participants (Current § 645.43(a) Would Be Removed)

Statute: Section 402A(b)(3) of the HEA, as amended by the HEOA, establishes a minimum grant of $200,000 for UB. The HEA does not establish a minimum number of participants a UB project must serve.

Current Regulations: Current § 645.43(a)(1) and (2) require a regular UB project to serve between 50 and 150 participants; a UBMS project to serve between 50 and 75 participants; and a VUB project to serve a minimum of 120 participants. Current § 645.43(a)(3) gives the Secretary the authority to waive the number of participant requirements if the applicant demonstrates that the project will be more cost effective and consistent with the objectives of the program if a greater or lesser number of participants will be served.

Proposed Regulations: We propose to remove current § 645.43(a).

Reasons: We are proposing to remove from the regulations the requirement that UB grantees serve a minimum number of participants to give the Department the flexibility to establish the number of participants to be served based on the available resources for each competition and to adjust these numbers for subsequent competitions based on experience, changing priorities, and cost analyses.

We plan to stipulate the minimum and maximum grant award amounts and address the number of participants a UB project is expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The **Federal Register** notice would also establish a per participant cost to be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Changes to Full-Time Director Requirement (New § 645.43(a))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 645.43(b) requires a grantee to employ a full-time project director unless the grantee requests a waiver.

Proposed Regulations: We propose to add a new § 645.43(a), that would include some of the provisions in current § 645.43(b), but would eliminate the requirement for a waiver if a project director is administering one or two programs for disadvantaged students. A grantee would not need a waiver from the Secretary to have a director that is less than full-time on the project if the director is also administering one or two additional programs for disadvantaged students. A grantee would be required to request a waiver of the full-time director requirement for the director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Student Support Services (SSS), 34 CFR Part 646

SSS Program Purpose (§ 646.1)

Statute: Section 403(d)(1) of the HEOA amended section 402D(a) of the HEA, and modified the purpose of the SSS program.

Current Regulations: Current § 646.1(c) does not reflect the changes made by the HEOA.

Proposed Regulations: We propose to amend § 646.1(c) and add paragraph (d) as follows:

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youth, students who are in foster care or are aging out of the foster care system, or other disconnected students; and

(d) Improve the financial literacy and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

Reasons: The proposed changes are necessary to conform the regulations to section 402D(a)(3) of the HEA.

Required and Permissible Services (§ 646.4)

Statute: Section 403(b) of the HEOA amended section 402D of the HEA to require SSS grantees to provide certain services and to permit them to offer other permissible services.

Current Regulations: Current § 646.4 specifies what services a SSS grantee may provide. Prior to the changes made by the HEOA, SSS grantees could choose from among a number of permissible activities and services to provide participants. The current regulations do not identify any required services or activities that an SSS grantee must provide.

Proposed Regulations: The proposed regulations would revise § 646.4 to reflect the required and permissible services or activities for SSS grantees under the HEA.

Consistent with section 402D of the HEA, proposed § 646.4 would require that SSS projects provide the following services and activities: (1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects; (2) advice and assistance in postsecondary course selection; (3)(i) information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships, and (ii) assistance in completing financial aid applications, including the Free Application for Federal Student Aid; (4) education or counseling services designed to improve financial literacy and economic literacy of students, including financial planning for postsecondary education; (5) activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs; and (6) activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

The proposed regulations would specify the following permissible services or activities for SSS projects: (1) individualized counseling for personal, career, and academic matters provided

by assigned counselors; (2) information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students; (3) exposure to cultural events and academic programs not usually available to disadvantaged students; (4) mentoring programs involving faculty or upper class students, or a combination thereof; (5) securing temporary housing during breaks in the academic year for students who are homeless children and youths (as that term is defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1134a)) or were formerly homeless children and youths, and students who are in foster care or are aging out of the foster care system; and (6) programs and activities described in items (1) through (5) above that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

Reasons: We are proposing to revise § 646.4 to conform to changes made by the HEOA.

Project Period (§ 646.5)

Statute: Section 403a(1)(B)(i) of the HEOA amended the HEA to provide that all SSS grants are for five years. Prior to enactment of the HEOA, SSS grants were awarded for four years, except for applicants whose peer review scores are in the highest ten percent of the scores of all applicants. Applicants with peer review scores in the highest ten percent of all applicants receive five-year grants.

Current Regulations: Current § 646.5 specifies the length of an SSS project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: We are proposing to revise § 646.5 to define the project period as five years for all grantees.

Reasons: The proposed changes are necessary to conform to section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 646.6)

Statute: None.

Current Regulations: Section 646.6 specifies which regulations apply to the SSS program. This provision contains an outdated list of applicable regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the SSS program. We also propose to exclude §§ 75.215 to 75.221 from the list of applicable regulations.

Reasons: We discuss the reasons for the changes elsewhere in this preamble under the *Applicable Regulations* heading for the Training program.

Definitions (§ 646.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definition of *institution of higher education* and *individual with disabilities* and for the addition of *different campus, different population, financial and economic literacy, foster care youth,* and *homeless children and youth* in the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble. In addition, we propose to include definitions of the terms *low-income individual* and *first generation college student.*

Statute: Section 402A(h) of the HEA includes definitions of the terms "low-income individual" and "first generation college student."

Current Regulations: Section 646.7(a) currently includes cross-references to statutory definitions of low-income individual and first-generation college student, but does not include those definitions. Current § 646.7(b) includes a list of the terms used in Part 646 that are defined in 34 CFR 77.1. Current § 646.7(c) defines certain terms, some of which apply to all of the Federal TRIO programs, and some that are specific to the SSS program.

Proposed Regulations: Current § 646.7(a), which includes references to terms defined in the HEA, would be removed, and the definitions of the terms currently listed in § 646.7(a) would be included in proposed § 646.7(c). Current § 646.7(b) would be redesignated as § 646.7(a) and would include the list of terms defined in 34 CFR 77.1 that apply to the SSS program. Finally, current § 646.7(c) would be redesignated as § 646.7(b), and would include definitions of terms that apply to the SSS program, some of which apply to all the Federal TRIO programs, as discussed elsewhere in this preamble. We also propose to add the definitions of *low-income individual* and *first-generation college student* to § 646.7(c).

Reasons: We are proposing to revise § 646.7 and add the definitions for *low-income individual* and a *first-generation college student* to provide for consistency across the regulations for the Federal TRIO programs.

Number of Applications (§ 646.10)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for modifying § 646.10 in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Assurances (§ 646.11) (Title To Be Changed to: "What Assurances and Other Information Must an Applicant Include in an Application?")

Statute: Under section 402D(e) of the HEA as amended by the HEOA, the Secretary, in approving applications, shall consider an SSS applicant's past history in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining loan burden of each student at a manageable level. Prior to this amendment section 402D(e) of the HEA specified certain assurances that an applicant must provide to the Secretary.

Current Regulations: Section 646.11 does not reflect the statutory requirement that an applicant provide information on its efforts in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining the loan burden of each student at a manageable level.

Proposed Regulations: Proposed § 646.11 would require an applicant to describe, in its application, its efforts, and where applicable, its past history, in providing sufficient financial assistance to meet the full financial need of each student in the project and maintaining the loan burden of each student at a manageable level. In addition, we propose to change the section heading to "What assurances and other information must an applicant include in an application?"

Reasons: The proposed changes are necessary to reflect statutory requirements. We are proposing the change to the heading for § 646.11 to include a reference to "other information" because the proposed regulations would require an applicant to include information that is not an assurance.

Making New Grants (§ 646.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the SSS (*see* section 402A(f)(3)(C) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 646.20 specifies the procedures the Secretary uses to make new grants. Section 645.30(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 646.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted; the average of the scores for the three project years will be the final PE score for the applicant.

We also propose to amend § 646.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: We are proposing to amend § 646.20(a)(2) to provide more transparency in the process the Secretary will use to award PE points. We are also proposing to modify § 646.20(d) to be consistent with the language used for similar provisions in the proposed regulations for the other Federal TRIO programs.

Selection Criteria (§ 646.21)

Statute: Section 402A(f)(3) of the HEA, as amended by section 403(a) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grantees, including grantees who receive funding under the SSS program. Specifically, pursuant to section 402A(f)(3)(C) of the HEA, the Secretary must measure the performance of SSS grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) concerning: (1) The delivery of service to the total number of students served, as agreed upon by the entity and the Secretary for the period; (2) retention in postsecondary education of the students served by the SSS project; (3) students served by the SSS project who remain in good academic standing; and (4) completion of postsecondary education degrees or certificates, and transfer to institutions of higher education that offer baccalaureate degrees of project participants. These statutory changes necessitate changes to § 646.21(b).

Current Regulations: Current § 646.21 specifies the selection criteria the Secretary uses to evaluate an application for a SSS grant. The regulations do not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 646.21(b) to provide that, in evaluating SSS grant applications, the Secretary will consider the quality of the applicant's proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute eight points for this criterion in the following manner: (1) Three points for retention in postsecondary education; (2) two points for students in good academic standing at the grantee institution; (3) for two-year institutions only: (a) one point for certificate or degree completion; and (b) two points for certificate or degree completion and transfer to a four-year institution; or (4) for four year institutions only, three points for completion of a baccalaureate degree.

Reasons: We are proposing to amend § 646.21(b) to reflect the changes made to section 402A(f)(3)(C) of the HEA by section 403(a) of the HEOA regarding the outcome criteria to be used to measure performance of the SSS program. We are proposing to reflect the revised SSS outcome criteria in § 646.21(b) as selection criteria because we believe that the focus at the outset of the SSS discretionary grant process (*i.e.*, the evaluation of applications using SSS selection criteria) should be on the ultimate outcomes the SSS program is designed to attain.

Moreover, section 402A(f)(3)(C) of the HEA requires the Secretary to measure the performance of the grantee based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section 402A(f))(3)(C) of the HEA in the selection criteria for the SSS program.

Outcome criteria are also used to evaluate an applicant's PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Prior Experience Criteria (§ 646.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the SSS PE criteria in the *TRIO Outcome Criteria—Prior Experience* section of the preamble.

Amount of a Grant (§ 646.23)

Statute: Section 402A(b)(3)(B) of the HEA, as amended by section 403(a)(1) of the HEOA, increased the minimum SSS grant from $170,000 to $200,000.

Current Regulations: Current § 646.23 specifies how the Secretary sets the amount of a grant. This provision does not reflect the changes made by the HEOA to the HEA.

Proposed Regulations: We are proposing to amend the regulations to update the statutory minimum grant amount to $200,000.

Reasons: We are proposing this change to reflect the change made by the HEOA.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 646.24)

We discuss the statutory authority, current regulations, proposed regulations, and reasons adding a new review process for unsuccessful applicants in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of the preamble.

Allowable and Unallowable Costs (§§ 646.30 and 646.31)

Statute: The HEOA amended section 402D(d)(1) of the HEA to allow a recipient of an SSS grant that undertakes any of the permissible services in section 402D(c) to use its grant funds to provide grant aid to students under certain circumstances. Further, the HEOA amended section 402D(c)(5) of the HEA to include, in the list of permissible services in the SSS program, securing temporary housing during breaks in the academic year for participants who are homeless, or were formerly homeless, or who are in foster care. The statute does not address the use of grant funds to purchase computers and other equipment.

Current Regulations: Current § 646.30(f) does not reflect the new statutory provisions. Current § 646.30(f) requires a grantee to obtain prior approval from the Secretary to use grant funds to purchase computers and other equipment. Current § 646.31(b) prohibits the use of program funds for tuition, fees, stipends, and other forms

of direct financial support for staff and participants.

Proposed Regulations: We are proposing to amend § 646.30 by revising paragraph (f) to include as an allowable cost the purchase, lease or rental of computer hardware for participant development, project administration, and recordkeeping without requiring prior approval by the Secretary. We are also proposing to add as allowable costs the use of SSS funds for grant aid in a new paragraph (i) and to pay the costs of temporary housing for homeless and foster care youth in a new paragraph (j).

Reasons: We discuss the reasons for permitting a SSS project to purchase computer equipment without prior approval from the Secretary in the *Changes to the Allowable Costs* section of the TS preamble.

The HEOA placed significant emphasis on the need for SSS grantees to provide services for homeless and foster care youth to help eliminate the barriers these students face in pursuing their educational goals. In addition, because securing temporary housing during breaks in the academic year for participants who are homeless, or were formerly homeless, or who are in foster care is now included in the list of permissible services in section 402D(c)(5) of the HEA, we believe that the use of SSS funds for these purposes should be included as an allowable cost. The proposed change to allow grant funds to be used for grant aid for participants is to conform the regulations to the statute.

Other Requirements of a Grantee (§ 646.32)

Changes to Full-Time Director Requirement (§ 646.32(c))

Statute: Section 402A(c)(6) of the HEA requires that the Secretary permit the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students.

Current Regulations: Current § 646.32(c) requires a grantee to employ a full-time project director unless the grantee requests a waiver to allow the Director to administer more than one program for disadvantaged students.

Proposed Regulations: We propose to amend § 646.32(c) to eliminate the requirement for a waiver if a Director is administering one or two additional programs for disadvantaged students. A grantee must request a waiver of the full-time director requirement for the Director to administer more than three programs.

Reasons: We discuss the reasons for permitting the Director of a Federal TRIO program to administer one or more additional programs for disadvantaged students in the *Changes to Full-Time Director Requirement* in the TS section of the preamble.

Matching Requirements for Grant Aid (§ 646.33)

Statute: Section 402D(d)(1) of the HEA permits a grantee to use SSS funds to provide grant aid to students who meet the requirements in section 402D(d)(2) and (3) of the HEA. Section 402D(d)(4) of the HEA stipulates that grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or part B of title III of the HEA or under title V of the HEA, is not required to match the Federal funds used for grant aid. Section 402D(d)(5) limits the percentage of SSS program funds that may be used for grant aid to no more than 20 percent of the SSS funds.

Current Regulations: None.

Proposed Regulations: We propose to add a new § 646.33 that would specify the statutory matching and other requirements for a grantee that uses SSS funds for grant aid.

Reasons: These changes are necessary to reflect statutory changes.

Ronald E. McNair Postbaccalaureate Achievement (McNair) Program, 34 CFR Part 647

Required and Permissible Services (§ 647.4)

Statute: Section 403(b) of the HEOA amended section 402E of the HEA to require McNair grantees to provide certain services that were previously permissible and by adding a new list of permissible services.

Current Regulations: Current § 647.4 includes a list of permissible services under the program.

Proposed Regulations: Consistent with section 402E(b) of the HEA, proposed § 647.4(a) would require that McNair grantees provide: (1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study; (2) summer internships; (3) seminars and other educational activities designed to prepare students for doctoral study; (4) tutoring; (5) academic counseling; and (6) assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

Consistent with section 402E(c) of the HEA, proposed § 647.4(b) would specify that the following are permissible services or activities for McNair grantees: (1) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education; (2) mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students; and (3) exposure to cultural events and academic programs not usually available to disadvantaged students.

Reasons: We are proposing these changes to align the regulations with the statutory amendments made by section 403(b) of the HEOA to section 402E(b) and (c) of the HEA.

Project Period (§ 647.5)

Statute: Section 403(a)(1)(B)(i) of the HEOA amended section 402A(b)(2) of the HEA to provide that all grants under the McNair program will be for five years. Prior to enactment of the HEOA, McNair grants were awarded for four years except for applications that score in the highest ten percent of all applications approved for new grants, which are for five years.

Current Regulations: Current § 647.5 specifies the length of a McNair project period. This provision does not reflect the change made by the HEOA to the HEA.

Proposed Regulations: Proposed § 647.5 would reflect the statutory change that establishes the project period as five years for all grantees.

Reasons: The change is made to conform to section 402A(b)(2) of the HEA, as amended by the HEOA.

Applicable Regulations (§ 647.6)

Statute: None.

Current Regulations: Section 647.6 specifies which regulations apply to the McNair program. This provision contains an outdated list of regulations.

Proposed Regulations: We are proposing to update the list of regulations that apply to the McNair program. We also propose to exclude sections 75.215 to 75.221 from the list of applicable regulations.

Reasons: We discuss the reasons for these changes in the *Applicable Regulations* for the Training program section of the preamble.

Definitions (§ 647.7)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the definition of *institution of higher education* and for the addition of *different campus, different population,* and *financial and economic literacy,* in

the *Definitions Applicable to More Than One Federal TRIO Program* section of the preamble.

We are also proposing to revise the definitions for three additional terms that are applicable only to the McNair program: *graduate center; groups underrepresented in graduate school;* and *research or scholarly activity.*

Graduate Center

Statute: Sections 101 and 102 of the HEA define the term institution of higher education.

Current Regulations: The definition of *graduate center* in current § 647.7(b) includes outdated statutory citations to the definition of an educational institution.

Proposed Regulations: The definition of *graduate center* in § 647.7 would be revised to reference the definitions provided in sections 101 and 102 of the HEA.

Reasons: This proposed change is necessary to correct incorrect cross-references.

Groups Underrepresented in Graduate School

Statute: Section 402E(d)(2) of the HEA, as amended by the HEOA, specifically identifies Alaska Natives, Native Hawaiians, and Native American Pacific Islanders as groups underrepresented in graduate education.

Current Regulations: The definition of *groups underrepresented in graduate school* in current § 647.7(b) includes Black (non-Hispanic), Hispanic, and American Indian/Alaskan Native.

Proposed Regulations: We are proposing to modify § 647.7(b) to add Alaska Natives, Native Hawaiians, and Native American Pacific Islanders to the list of groups underrepresented in graduate education. Consistent with section 402E(d)(2) of the HEA, the proposed definition would reference the definition of Alaska Native in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the definition of Native Hawaiians in section 7207 of the ESEA, and the definition of Native American Pacific Islanders as defined in section 320 of the HEA.

Reasons: The changes are necessary to conform to statutory changes.

Research or Scholarly Activity

Statute: Section 402E(b) of the HEA requires McNair grantees to provide opportunities for students to participate in research and other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study. Section 402A(f)(3)(D) of the HEA, which includes the outcome criteria for the McNair program, also refers to the provision of appropriate scholarly research activities for students served by the McNair program.

Current Regulations: The term *research and scholarly activities* is not defined in current § 647.7.

Proposed Regulations: Proposed § 647.7 would define *research and scholarly activity* as an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

Reasons: We are proposing the addition of the definition of *research and scholarly activity* to provide for a clear and consistent understanding of the term. Because the term is used in the outcome criteria that will be used to evaluate a grantee's performance under the McNair program, it is important that grantees understand what constitutes *research and scholarly activities.* The proposed definition is similar to the one currently used in the McNair annual performance report and the McNair grant application package.

Number of Applications (§ 647.10)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the number of applications that an entity can submit under the McNair program in the *Number of Applications an Eligible Entity May Submit to Serve Different Campuses and Different Populations* section of the preamble.

Making New Grants (§ 647.20)

Statute: Section 402A(c)(2)(A) of the HEA requires the Secretary to consider, when making Federal TRIO grants, each applicant's prior experience (PE) of high quality service delivery under the program for which funds are sought. Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, now identifies the specific outcome criteria to be used to determine an entity's PE under the McNair program (*see* section 402A(f)(3)(D) of the HEA). The HEA does not establish specific procedures for awarding PE points.

Prior to enactment of the HEOA, the Secretary had the discretion to decide whether or not to consider an application from an applicant that carried out a project involving the fraudulent use of program funds. The HEOA amended the HEA to eliminate that discretion and prohibit the Secretary from considering an application from such a party.

Current Regulations: Current § 647.20 specifies the procedures the Secretary uses to make new grants. Section 647.20(a)(2) needs to be expanded to specify the procedures the Secretary will use to award PE points.

Proposed Regulations: Proposed § 647.20 would be expanded to specify the procedures the Secretary would use to award PE points. We are proposing that the Secretary evaluate the PE of an applicant for each of the three project years as designated by the Secretary in the **Federal Register** notice inviting applications. We also propose that an applicant may earn up to 15 PE points for each of the three years for which the annual performance report was submitted. The average of the scores for the three project years will be the final PE score for the applicant.

We also propose to amend the wording in § 647.20(d) to specify that the Secretary will not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

Reasons: We are proposing to amend § 647.20(a)(2) to provide more transparency in the process the Secretary will use to award PE points. We also are proposing to amend § 647.20(d) to reflect the statutory change that provides that the Secretary may not consider an application from an applicant that carried out a project involving the fraudulent use of program funds.

Selection Criteria (§ 647.21)

Statute: Section 402A(f)(3)(D) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Secretary to use specific outcome criteria to measure the performance of Federal TRIO grants, including those under the McNair program. Specifically, pursuant to section 402A(f)(3)(D) of the HEA, the Secretary must measure the performance of McNair grantees by examining the extent to which the grantee met or exceeded the grant's objectives (as established in the grantee's approved application) regarding: (1) The delivery of service to the total number of students served by the program, as agreed upon by the entity and the Secretary for the period; (2) the provision of appropriate scholarly and research activities for the students served by the program; (3) the acceptance and enrollment of these students in graduate programs; and (4) the continued enrollment of such students in graduate study and the attainment of doctoral degrees by former program participants. These statutory

changes necessitate a change in the grant selection criteria for "Objectives" (§ 647.21(b)).

Current Regulations (Objectives): Current § 647.21 specifies the selection criteria the Secretary uses to evaluate an application for a McNair grant. This regulation does not reflect the changes made by the HEOA.

Proposed Regulations: We are proposing to amend § 647.21(b) to provide that, in evaluating McNair applications, the Secretary considers the quality of the applicant's proposed objectives on the basis of the extent to which they are both ambitious and attainable, given the project's plan of operation, budget, and other resources. We propose to distribute nine points in the following manner: (1) Two points for research; (2) three points for enrollment in a graduate program; (3) two points for continued enrollment in graduate study; and (4) two points for doctoral degree attainment.

Reasons: We are proposing to amend § 647.21(b) to reflect the changes made to section 402A(f)(3)(D) of the HEA by section 403(a)(5) of the HEOA regarding the outcome criteria to be used to measure performance of the McNair program. We are proposing to reflect the statutory McNair outcome criteria in § 647.21(b) in the selection criteria because we believe that the focus at the outset of the McNair discretionary grant process (*i.e.,* evaluating applications using McNair selection criteria) should reflect the ultimate outcomes the McNair program is designed to attain.

Moreover, section 402A(f)(4) of the HEA requires the Secretary to measure the performance of the grantee during the grant period based on a comparison of the targets agreed upon for the outcome criteria established in the applicant's approved application to the actual results achieved during the grant period. For this reason, we believe it is appropriate to reflect the outcome criteria from section 402A(f)(3)(D) of the HEA in the selection criteria for the McNair program.

Outcome criteria are also used to evaluate an applicant's PE and assign PE points to an application. We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to evaluating an applicant's PE in the *Evaluating Prior Experience—Outcome Criteria* section of the preamble.

Prior Experience Criteria (§ 647.22)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for changes to the PE criteria under the McNair program in the *TRIO Outcome Criteria—Prior Experience* section of this preamble.

Review Process for Unsuccessful Federal TRIO Program Applicants (§ 647.24)

We discuss the statutory authority, current regulations, proposed regulations, and reasons for adding a review process for unsuccessful TRIO applicants under the McNair program in the *Review Process for Unsuccessful Federal TRIO Program Applicants* section of this preamble.

Allowable Costs (§ 647.30)

Statute: Section 402E(f) of the HEA provides that students participating in research under a McNair project may receive an award that includes a stipend not to exceed $2,800 per year. The statute does not address the use of grant funds to purchase equipment.

Current Regulations: Under current § 647.30(b) of the regulations the maximum stipend for students participating in research is $2,400. Current § 647.30(d) of the regulations requires a grantee to obtain approval from the Secretary to use McNair funds to purchase computer and other equipment.

Proposed Regulations: We are proposing to increase the maximum stipend amount in § 647.30(b) to $2,800. We also are proposing to revise paragraph (d) to allow grantees to use grant funds for the purchase, lease, or rental of computer hardware for participant development, project administration, and recordkeeping without prior approval from the Secretary.

Reasons: The change in the maximum stipend amount is necessary to conform to the statute. We discuss the reasons for permitting a McNair project to purchase computer equipment without prior approval in the *Changes to the Allowable Costs* section of the TS preamble.

Part 694—Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

Funding Rules

Statute: None.

Current Regulations: Current § 694.1 describes how the Secretary calculates the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under the GEAR UP program.

Proposed Regulations: The Department proposes to amend current § 694.1 to clarify that the Secretary may establish in a notice published in the **Federal Register** the maximum amount that may be awarded for each fiscal year to any GEAR UP Partnership grantee. Although the Secretary already has the authority to set a maximum award for a grant under 34 CFR 75.101(a)(2) and 75.104 of the Education Department General Administrative Regulations (EDGAR), the proposed provision would provide explicit regulatory authority for the Secretary to set a maximum award for GEAR UP Partnership grants. Under current § 694.1, the Secretary already sets a maximum award for State GEAR UP grants by publication of a notice in the **Federal Register.**

Proposed § 694.1(a) would also specify that the maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or, as in § 694.1(a) as currently exists, the amount calculated by multiplying $800 by the number of students the Partnership proposes to serve that year, as stated in the Partnership's plan.

Reasons: Although the Secretary already has the authority to set a maximum award for GEAR UP Partnership grants under 34 CFR 75.101(a)(2) and 75.104, the proposed changes to § 694.1(a) would provide explicit regulatory authority for the Secretary to set a maximum award for GEAR UP Partnership grants. Our proposal would apprise the public of the Secretary's authority in this area by having § 694.1 address establishment of a maximum award for both State grants and Partnership grants.

We propose to keep the $800 per student cap in § 694.1(a), because regardless of whether the Secretary decides to set a maximum Partnership award through a notice published in the **Federal Register**, we believe that it is important to ensure that the amount of a grant is proportionate to the number of students served and that excessive costs are discouraged. The $800 per student cap has proven to be sufficient for current GEAR UP Partnership grantees, and its retention ensures some consistency across grants with regard to the intensity of services provided to students.

Changes in the Cohort

Statute: Sections 404B(d) and 404C(a)(2)(F) of the HEA, as amended, address the cohort approach but do not specify which students a State or Partnership must serve when there are changes in the cohort.

Section 404B(d) of the HEA continues to provide that, under the cohort approach, Partnership grantees must provide services to (1) at least one grade level of students, beginning not later than seventh grade, in a participating

school that has a seventh grade and in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act or, (2) if a State or a Partnership determines that it would promote the effectiveness of a program, an entire grade level of students, beginning not later than seventh grade, who reside in public housing as defined in section 3(b)(1) of the United States Housing Act of 1937. Under section 404C(a)(2)(F) of the HEA, as amended by section 404(c)(2) of the HEOA, a State that chooses to use a cohort approach or a Partnership must include in its application a description of how it will define the cohorts of students to be served, and how it will serve the cohorts through grade 12.

Current Regulations: Current § 694.4 describes which students a State or Partnership must serve when there are changes in the cohort. Specifically, if not all of the students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, it requires a State or a Partnership to continue to provide GEAR UP services to at least those students in the cohort who attend participating schools that enroll a substantial majority of the students in the cohort.

Proposed Regulations: The Department is proposing to amend § 694.4 to provide that if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services, a Partnership or a State must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

Reasons: We are proposing to revise current § 694.4 in this manner in response to a request by the non-Federal negotiators to clarify who a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services.

Changes to Matching Requirements

Statute: Section 404C(b)(1) of the HEA, as amended by section 404(c)(3) of the HEOA, changes the GEAR UP matching requirement by permitting a GEAR UP grantee's required matching funds from State, local, institutional or private funds to be accrued over the full duration of the grant award period provided that the grantee makes "substantial progress" towards meeting the matching requirement in each year of the grant award period.

Current Regulations: Current § 694.7 is the regulatory provision addressing matching fund requirements and it does not reflect changes made to the HEA by the HEOA. Current § 694.7(a)(2) requires that the Partnership comply with the matching percentage stated in its application for each year of the project period. In addition, § 694.7(b)(2) contains authority for a Partnership with three or fewer IHEs as members to have a matching requirement of 30 to 50 percent of total project costs.

Proposed Regulations: Proposed § 694.7(a)(2) would require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. We would remove the provision regarding reduction of the match requirement for Partnerships with three or fewer IHEs from current § 694.7(b), and address both reduction and waiver of the matching requirement in new proposed §§ 694.8 and 694.9.

Reasons: The Department proposes to amend § 694.7 and to address reduction and waiver of the matching requirement in new proposed §§ 694.8 and 694.9 to more closely align these regulations with the corresponding matching requirements in the HEA, and to ensure that the regulations are clear and understandable to the public. The following section entitled *Waiver of Matching Requirements* discusses, in more detail, the statutory basis and rationale for the Department's proposal to add new §§ 694.8 and 694.9.

Waiver of Matching Requirements

Statute: Section 404C(b)(2) of the HEA, prior to the enactment of the HEOA, allowed the Secretary to modify, by regulation, the matching requirement applicable to a Partnership. Section 404C(b)(2) of the HEA, as amended by section 404(c)(3)(C) of the HEOA, retains this provision and also authorizes the Secretary to approve the following types of requests for reduction to the matching requirement: (1) Requests made at the time of an application, if the applicant demonstrates a significant economic hardship that precludes it from meeting the matching requirement, (2) requests made at the time of application by a Partnership applicant to count contributions to scholarship funds established under section 404E of the HEA on a two-to-one basis, and (3) requests made by a grantee demonstrating that the matching funds identified in its approved application are no longer available, and the grantee has exhausted all revenues for replacing these matching funds.

Current Regulations: Current § 694.7(b)(2) specifies the circumstances under which the Department permits an eligible Partnership grantee to reduce its obligation to match funds to less than 50 percent of the total cost over the project period. It does not reflect changes made to section 404C(b)(2) of the HEA by the HEOA.

Proposed Regulations: As discussed in the previous section, the Department proposes to remove paragraph (b)(2) from current § 694.7. The Department also proposes to add new § 694.8 (Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?). Proposed § 694.8(a) would provide that the Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate. For purposes of this preamble, we refer to this waiver as the "75 Percent Waiver."

Proposed § 694.8(b) would provide that the Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement. For purposes of this preamble, we refer to this waiver as the "50 Percent Waiver." Proposed § 694.8(b)(2) would specify that in determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a 50 Percent Waiver, the Secretary considers documentation of applicable factors and lists examples of these factors. Proposed § 694.8(b)(3) would state that, at the time of application, the Secretary may provide tentative approval of an applicant's request for a 50 Percent Waiver for all remaining years of the project period. This proposed section would specify that grantees that receive tentative approval of a 50 Percent Waiver for more than two years under § 694.8(b)(3) must submit to the Secretary every two years, by such time as the Secretary may direct, documentation that demonstrates that (1) the significant economic hardship upon which the waiver was

granted still exists; and (2) the grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

Consistent with section 404C(c)(1) of the HEA, proposed § 694.8(c) would provide that the Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

Also, similar to provisions in current § 694.7(b)(2), proposed § 694.8(d) would provide that the Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant meets the criteria set forth in proposed § 694.8(d)(1) through (3).

We propose to add new § 694.9 (Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?). This section would provide that after a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to (1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that the matching contributions described for those two years in the grantee's approved application are no longer available and the grantee has exhausted all funds and sources of potential contributions for replacing the matching funds; or (2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

Proposed § 694.9(b) would also specify that in determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors. This section would include a list of examples of these factors (*e.g.,* a reduction of revenues from State government, County government, or the local educational agency; an increase in local unemployment rates; and significant reductions in the operating budgets of institutions of higher education that are participating in the grant).

Proposed § 694.9(c) would provide that if a grantee has received one or more waivers under §§ 694.8 or 694.9, the grantee may request an additional waiver of the matching requirement under § 694.9 no earlier than 60 days before the expiration of the grantee's existing waiver. Finally, proposed § 694.9(d) would provide that the Secretary may grant additional waiver requests for up to 50 percent of the matching requirement for a period of up to two years upon the expiration of any previous waivers.

In order to accommodate these new proposed provisions, we propose to redesignate current §§ 694.8 and 694.9 as §§ 694.10 and 694.11, respectively. We also propose to redesignate current § 694.12 as § 694.17. We made no substantive changes to these three provisions when redesignating them.

Reasons: The Department is proposing to add new §§ 694.8 and 694.9 to incorporate suggestions made by non-Federal negotiators to (1) limit the waiver of the matching requirement to 50 to 75 percent of the requirement; (2) limit the period of the waiver to two years, unless the grantee reapplies for another waiver; and (3) create a multiple-tiered system for different types of waiver requests. We are proposing this new regulatory language because we believe that it will help preserve the integrity of the GEAR UP program as a partnership model with a significant matching requirement component, and balance this aspect of the program with fair, understandable, statutorily-based waiver options. In this regard, the 50 Percent and 75 Percent Waivers that we are proposing are consistent with the views expressed by the non-Federal negotiators. Also consistent with their views, we believe that while a maximum 50 percent waiver is reasonable for projects with partners and communities facing chronic economic difficulties, a larger waiver is appropriate where areas are facing significant economic hardship due to events such as a natural disaster. In accordance with the recommendation of the non-Federal negotiators, we propose a maximum 75 percent waiver for these circumstances, believing as the non-Federal negotiators expressed, that with the availability of in-kind matching contributions the Partnership should still be able to provide a 25 percent annual matching contribution.

Proposed § 694.8(b)(3) would specify that, at the time of application, the Secretary may provide tentative approval of an applicant's request for a 50 Percent Waiver for the entire project period. This would allow an applicant that meets the conditions for a waiver to apply for a grant without needing to identify additional sources of match funding for the later years of the project period. On-going significant economic hardship may preclude an applicant from being able to identify additional sources of match funding in a proposed budget for later years of the project and we do not believe that this should bar the applicant from obtaining a grant. Proposed § 694.8(b)(3) would require that grantees who received tentative approval of a waiver for more than two years submit documentation to the Secretary every two years with regard to continuation of significant economic hardship and efforts to meet the matching requirement. We believe that this proposal both will encourage grantees to seek alternative sources of match during their project period, and help the Department to provide appropriate oversight concerning the 50 Percent Waiver.

The non-Federal negotiators provided examples of factors the Secretary may consider in determining whether to provide an applicant or grantee a 50 Percent Waiver of the matching requirement. The Department incorporated the non-Federal negotiators' examples in proposed §§ 694.8(b)(2) and 694.9(b) because we believe that these examples will help the public, including applicants and grantees, to better understand the process for seeking a waiver of a portion of a GEAR UP Partnership matching requirement, and the Department's expectations in reviewing any waiver requests. We included regulatory language regarding additional waiver requests in proposed § 694.9(c) and (d) to allow grantees that continue to meet the conditions for a waiver to request and receive a waiver for a period of up to two additional years. Because no waiver of more than two years would be granted, the Secretary has an opportunity at least every two years to review whether a grantee continues to meet the conditions for a waiver.

The Department is proposing to divide the matching provisions into two separate sections, with provisions for Partnership applicants in § 694.8 and provisions for Partnership grantees in § 694.9 to make these provisions easier to follow and understand. The Department also is proposing to move the waiver provision in current § 694.7(b)(2) to new § 694.8, and is proposing slight modifications to the wording of that provision so that it aligns with the new waiver provisions in proposed §§ 694.8 and 694.9.

Scholarship Component

Statute: Section 404E(b)(1) of the HEA, as amended by section 404(e) of the HEOA, requires GEAR UP grantees

to use not less than 25 percent and not more than 50 percent of GEAR UP grant funds for activities described in section 404D of the HEA, *i.e.*, required and permissible pre-college or university activities, (except for the activity described in section 404D(a)(4) of the HEA, *i.e.*, a State's use of funds for scholarships under section 404E), with the remainder of the funds to be used for a scholarship program under section 404E of the HEA. However, section 404E(b)(2) allows a GEAR UP grantee to use more than 50 percent of GEAR UP grant funds for pre-college or university activities if (1) it demonstrates that it has another means of providing the students with the financial assistance described in section 404E of the HEA, and (2) describes these means in its project application.

Section 404E(c) of the HEA, as amended by section 404(e) of the HEOA, mandates that each grantee providing scholarships under section 404E must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

Section 404(e) of the HEOA amended section 404E(d) of the HEA regarding the minimum amount of a GEAR UP scholarship. Now the HEA states that the minimum amount of a GEAR UP scholarship for each fiscal year is the minimum Federal Pell Grant award under section 401 of the HEA for that award year. Prior law had made the minimum scholarship amount for each fiscal year the lesser of 75 percent of the average cost of attendance for an in-State student in a 4-year instructional program at an IHE in each State or the maximum Federal Pell grant for that year.

Section 404E(e)(1) and (2) of the HEA, as amended by section 404(e) of the HEOA, provides that States that receive a GEAR UP grant must hold in reserve funds for scholarships for eligible students, as defined in section 404E(g) of the HEA, in an amount that is not less than the minimum scholarship amount multiplied by the number of students that the State estimates will (1) complete a secondary school diploma, its recognized equivalent, or another recognized alternative standard for individuals with disabilities, and (2) enroll in an IHE. We address the definition of an "eligible student" in our discussion of proposed § 694.13(d) under the "Proposed Regulations" part of this section.

Finally, section 401(c) of Public Law 111–39, technical amendments to the HEOA enacted into law on July 1, 2009, amended section 404 of the HEOA to provide that section 404E(e) of the HEA is not applicable to grants made before August 14, 2008, except that the recipient of a grant made prior to that date may elect to apply the requirements contained in section 404E if the recipient informs the Secretary of this election. Section 401(c) of Public Law 111–39 goes on to provide that a grant recipient may make this election only if the election does not decrease the amount of the scholarship promised to an individual student under the grant.

Current Regulations: Current § 694.10 is the regulatory provision that specifies the requirements for GEAR UP scholarships under the HEA, as previously authorized. Current § 694.11 provides that GEAR UP Partnership grantees that do not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with GEAR UP funds, or non-Federal funds used to comply with the matching requirement, to students who participate in the early intervention component of GEAR UP if (1) the financial assistance is directly related to, and in support of, other activities of the Partnership under the early intervention component, and (2) it complies with the requirements for scholarship awards in § 694.10. These sections do not reflect the changes made by the HEOA to the statutorily required priorities.

Proposed Regulations: To accommodate the proposed addition of regulatory provisions, as discussed elsewhere in this preamble, the Department proposes to redesignate current §§ 694.10 and 694.11 as proposed §§ 694.13 and 694.15. We also propose to add a new § 694.12 and § 694.14 to address the changes made by section 401(c) of Public Law 111–39.

Specifically, proposed § 694.12(a) would provide that (1) State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable, and (2) Partnership grantees that choose to award scholarships to eligible students pursuant to section 404E of the HEA must likewise comply with the requirements of § 694.13 or § 694.14, as applicable. Consistent with section 401(c) of Public Law 111–39, proposed § 694.12(b) would clarify that a State or Partnership grantee providing section 404E scholarships with GEAR UP funds that were awarded to it prior to August 14, 2008, must provide such scholarships in accordance with the requirements of § 694.13 unless it (1) elects to provide the scholarships in accordance with the requirements of § 694.14 (which governs grantees with initial GEAR UP awards made on or after August 14, 2008), and (2) pursuant to § 694.12(b)(2), notifies the Secretary of this election, and ensure that the election does not decrease the amount of a GEAR UP scholarship that had been promised to a student. Finally, proposed § 694.12(c) would clarify that a State or Partnership grantee making section 404E scholarship awards using GEAR UP funds that were awarded on or after August 14, 2008, must provide such scholarships in accordance with the requirements of § 694.14.

Newly redesignated § 694.13 would provide basic requirements for section 404E scholarships for grantees who received their initial GEAR UP grant awards prior to August 14, 2008, and who choose not to make the election described in the paragraph above. Specifically, § 694.13(a) would provide that (1) the maximum scholarship amount that an eligible student may receive under this section must be established by the grantee; (2) the minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of (a) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public IHEs in the student's State, or (b) the maximum Federal Pell Grant award under section 401 of the HEA for the award year in which the scholarship is awarded; and (3) if an eligible student who is awarded a GEAR UP scholarship attends an IHE on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but the percentage reduction in the scholarship may not be greater than the percentage reduction in tuition and fees charged to that student.

Like § 694.10(e) of the current regulations, proposed § 694.13(b) would provide that scholarships made in accordance with the requirements of § 694.13 may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA. Proposed § 694.13(b), like current § 694.10(c), would go on to clarify that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

Proposed § 694.13(c)(1) would specify that grantees providing section 404E scholarship awards in accordance with § 694.13 must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a

Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded. Proposed § 694.13(c)(2) would specify that if a grantee providing section 404E scholarship awards in accordance with § 694.13 has funds remaining after awarding scholarships to students under § 694.13(c)(1), it may award GEAR UP scholarships to other eligible students (*i.e.*, students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships. These proposed provisions are similar to § 694.10(b)(1) and (2) of the current regulations.

Proposed § 694.13(d) would provide that for purposes of § 694.13, an eligible student is a student who (1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship; (2) has received a secondary school diploma or its recognized equivalent on or after January 1, 1993; (3) is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE that is located within the State's boundaries, except that, at the grantee's option, a State or a Partnership may offer scholarships to students who attend IHE outside the State; and (4) has participated in the activities under §§ 694.21 or 694.22.

Proposed § 694.13(e) (like proposed § 694.14(d)) would provide that States using a priority approach may award scholarships under § 694.13(a) to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

Proposed § 694.13(f) would provide that a State or a Partnership that provides scholarship awards in accordance with § 694.13 must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE. This provision is similar to current § 694.10(d).

New § 694.14 would establish requirements for section 404E scholarship awards made by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008. Proposed § 694.14(a) would provide that (1) the maximum scholarship amount that an eligible student may receive under section 404E must be established by the grantee; (2) the minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award; and (3) if an eligible student who is awarded a GEAR UP scholarship attends an IHE on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

Proposed § 694.14(b) would repeat the description of eligible student that we propose in § 694.13(d), except that the fourth element of proposed § 694.14(b) would differ from proposed § 694.13(d)(4). The fourth element of section 694.14(b) would specify that the student must have participated in the activities required under § 694.21 while the fourth element of § 694.13(d) would require that the student participated in activities under §§ 694.21 or 694.22.

Proposed § 694.14(c) would provide that (1) by the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education; (2) consistent with §§ 694.14(a) and 694.16(a), States must use funds held in reserve to make scholarships to eligible students; (3) scholarships must be made to all students who are eligible under the definition in § 694.14(b); and (4) a grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

Proposed § 694.14(d) would specify that States using a priority approach may award scholarships under § 694.14(a) to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

Proposed § 694.14(e) would require States awarding scholarships under this provision to provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

Proposed § 694.14(f) would specify that a State must provide scholarship funds as described in this section to all eligible students who attend an IHE in the State, and may provide these scholarship funds to eligible students who attend IHEs outside the State.

Proposed § 694.14(g) would permit a State or a Partnership that chooses to participate in the scholarship component of the GEAR UP program in accordance with section 404E of the HEA to award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an IHE.

Proposed § 694.14(h), like proposed § 694.13(b) and current § 694.10(e), would specify that a GEAR UP scholarship provided under section 404E of the HEA may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

Finally, we would redesignate current § 694.11 as § 694.15, and would revise it to provide that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds in satisfaction of the matching requirement in section 404C(b) of the HEA.

Reasons: The Department is proposing to revise newly redesignated § 694.13 and add new §§ 694.12 and 694.14 to implement section 404E of the HEA, as amended by section 404(e) of the HEOA, and section 401(c) of Public Law 111–39. Proposed § 694.12 would specify under what conditions State and Partnership GEAR UP grantees make section 404E scholarship awards.

Specifically, proposed § 694.12(a) would identify the different rules that State GEAR UP grantees must follow with regard to these awards, and that Partnership GEAR UP grantees must follow if they choose to make GEAR UP scholarship awards under section 404E. Proposed § 694.12(b) would (1) distinguish between section 404E scholarship awards made by grantees who received their initial GEAR UP grant awards prior to August 14, 2008, and section 404E scholarship awards made by grantees who received their initial GEAR UP grant awards on or after August 14, 2008, and (2) identify the applicable regulatory provision (*i.e.*, § 694.13 or § 694.14) for each group of grantees.

In doing so, § 694.12(b) and (c) implement section 401(c) of Public Law 111–39, which makes section 404E scholarship requirements inapplicable to grantees who received their initial award before that date unless a grantee elected to apply the new requirements

without decreasing the amount of scholarship provided to individual students. In this regard, proposed § 694.12(b)(2) would specify when and how GEAR UP grantees who received initial grant awards prior to August 14, 2008, may elect to apply the rules for GEAR UP grantees that received their initial grant awards on or after August 14, 2008. Public Law 111–39 does not address this matter. We are proposing to add these provisions to ensure the public understands the responsibilities of, and options available to, all State and Partnership grantees with regard to the scholarship component of the GEAR UP program.

Consistent with section 401(c) of Public Law 111–39, we propose to revise newly redesignated § 694.13 to identify the scholarship requirements governing State and Partnership GEAR UP grantees who received their initial awards prior to August 14, 2008. The provisions in proposed § 694.13 make the requirements in section 404E as it existed prior to the effective date of the HEOA applicable to such scholarship awards unless a grantee chooses to make the election that section 401(c) authorizes. As discussed more fully below in our reasons for proposing § 694.14(d), we propose adding a new paragraph (e) to these provisions, which would clarify that a State using a priority approach to select participating students may award scholarships to eligible students at any time during the grant award period (rather than holding these funds in reserve until the seventh year of the grant award period). We do so because a State selecting students using the priority approach may provide initial GEAR UP services much later than seventh grade, and so would need to be able to award scholarships much earlier in its multiyear project period than would a State grantee that used a cohort approach to select students.

Similarly, we are proposing to add a new § 694.14 to implement and clarify the scholarship requirements in section 404E of the HEA, as amended, that apply to scholarship awards made by grantees who received initial GEAR UP awards on or after August 14, 2008. We are proposing to include in § 694.14(a)(1) and (a)(2) regulatory language regarding maximum and minimum scholarship amounts to reflect the language in 404E(d) of the HEA, as amended by section 404(e) of the HEOA. As with proposed § 694.13(a)(3), proposed § 694.14(a)(3) would retain the requirement in current § 694.10(a)(2) regarding the extent a scholarship awarded to a student attending an IHE on less than a full-time basis may be reduced.

We are also proposing to incorporate the statutory definition of an *eligible student* from section 404E(g) of the HEA in both proposed § 694.13(d) and § 694.14(b). Except for removing the phrase "early intervention" before the word "activities" in the fourth element of the definition and requiring that eligible students have participated in the new required activities under section 404D(a) (*see* proposed § 694.21) rather than in what had been the early intervention activities, section 404(e) of the HEOA did not change the definition of this term from what it had been in section 404E(d) of the HEA, as previously authorized. While we did not include a definition of *eligible student* in the existing regulations, we believe that including a definition of the term that reflects the statutory definition in section 404E(g) of the HEA in both proposed regulations would make them clearer and more understandable for the public.

The regulatory language the Department is proposing to include in § 694.14(c)(1) and (c)(2) regarding funds that a State grantee must hold in reserve for GEAR UP scholarships reflects statutory requirements in section 404E(b), (d), and (e) of the HEA, as amended by section 404(e) of the HEOA. In addition, in response to a request by non-Federal negotiators, we are proposing to clarify, in § 694.14(c)(3), that grantees must provide scholarships to all eligible students under section 404E of the HEA. In this regard, we agree with the non-Federal negotiators that the new minimum scholarship provision in section 404E(d) of the HEA is intended to ensure that all grantees (that receive initial awards on or after August 14, 2008) provide scholarships to each eligible student in an amount that is at least the Federal Pell Grant minimum. For this reason, we also are proposing in § 694.14(c)(3) to prohibit a grantee from establishing additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

We are proposing to include, in § 694.14(d), regulatory language clarifying that a State using a priority approach to select participating students (*see* section 404D(d) of the HEA, as amended by section 404(d) of the HEOA) may award scholarships to eligible students at any time during the grant award period (rather than holding these funds in reserve until the seventh year of the grant award period). We do so because under the priority approach, which by law is available only to State GEAR UP grantees, initial services may be provided much later than seventh grade. Hence, a State grantee that selected students using the priority approach would need to be able to award scholarships much earlier in its multiyear project period than would a State grantee that selected students using a cohort approach.

The Department's proposal in § 694.14(e), to incorporate the requirement that grantees provide information on eligibility requirements for scholarships to participating students when they enter the GEAR UP program, reflects section 404E(c) of the HEA, as amended by 404(e) of the HEOA. Similarly, its proposal in § 694.14(f), that State grantees must provide scholarships to GEAR UP students attending IHEs in the State and may do so to students attending IHEs out-of-State, reflects section 404E(e)(2) and (g) of the HEA, as amended by 404(e) of the HEOA. We propose both provisions to help the public better understand the various requirements affecting GEAR UP scholarships.

Proposed § 694.14(g) would remove from the current regulations the requirement that a State, or a Partnership that chooses to participate in the GEAR UP scholarship component in accordance with section 404E of the HEA, award continuation scholarships in successive award years to each student who received an initial scholarship and who continues to be eligible for a scholarship. Rather than mandating this action, the proposed regulations would allow a State or Partnership to make these awards. We are proposing this change because we believe that there may not be sufficient funds available to provide continuation scholarships in successive award years to every student who received an initial scholarship and continues to be eligible for a scholarship. Grants that have sufficient funds to provide continuation scholarships to their students would be encouraged to do so.

Proposed § 694.14(g), regarding the prohibition against considering the amount of a GEAR UP scholarship in determining a student's eligibility for other grant assistance under Title IV of the HEA, and the proviso that the total amount of Federal assistance not exceed the student's total cost of attendance, reflects new section 404E(f) of the HEA (formerly section 404E(e) of the HEA). Here again, we propose the provision to help the public better understand the various requirements affecting GEAR UP scholarships.

Finally, proposed § 694.15 would permit a Partnership that does not implement the section 404E scholarship component to still provide scholarship assistance to GEAR UP students with non-Federal funds as a matching

contribution. Proposed § 694.15 is similar to current § 694.11 with regard to non-Federal funds. However, proposed § 694.15 omits language in the existing regulation that specifically authorizes GEAR UP Partnership grantees that do not participate in the section 404E scholarship component to use Federal or non-Federal funds for scholarships awards as part of their early intervention services. We would omit this language because section 404D of the HEA, as amended by section 404(d) of the HEOA, no longer authorizes such a use of Federal grant funds. We propose to clarify in § 694.15 that these non-Federal funds may still be used to satisfy the matching requirement.

Redistribution or Return of Unused Scholarship Funds/Reporting on Scholarship Monies After the Grant Period

Statute: Section 404E(e)(4)(A)(i) of the HEA, as amended by section 404(e)(5) of the HEOA, specifies that grantees may redistribute any funds not used by eligible students within six years of their completion of secondary school to other eligible students. Section 404E(e)(4)(A)(ii) of the HEA, as amended, now requires grantees to return scholarship funds not used by eligible students within the applicable timeframe and not redistributed to other eligible students to the Secretary for distribution to other grantees.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add new § 694.16, and to provide in § 694.16(a) that scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA, and which are not used by an eligible student as defined in § 694.14(b) within six years of the student's scheduled completion of secondary school, may be redistributed by the grantee to other eligible students. Consistent with section 401(c) of Public Law 111–39, proposed § 694.16 would clarify that requirements in this section apply only to funds reserved for section 404E scholarship awards by grantees whose (1) initial GEAR UP grant awards were made on or after August 14, 2008, or (2) whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to proposed § 694.12(b)(2), elect to meet the § 694.14 scholarship requirements (rather than the § 694.13 requirements).

To implement requirements in section 404E(e)(4)(A)(ii) of the HEA governing return of unused funds to the Department, proposed § 694.16(b) would provide that any Federal scholarship funds that are not used by an eligible student within six years of the student's scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires. Furthermore, proposed § 694.16(c) and (d) would provide that (1) grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary; and (2) a scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

Reasons: The Department proposes to add new § 694.16 to implement the mandates in 404E(e)(4)(A) of the HEA and the technical amendments reflected in section 401(c) of Public Law 111–39, as well as to promote reasonable fiscal oversight.

Except for two aspects of the return-of-funds provision in proposed § 694.16(b), proposed § 694.16(a) and (b) reflects the statutory provisions in section 404E(e)(4)(A)(i) and (ii) of the HEA, as amended. One way in which paragraph § 694.16(b) supplements the statute is the application of the requirement to Federal funds only. While section 404E(e)(4)(A)(ii) of the HEA refers only to the return of unused scholarship funds held in reserve, we do not believe it would be appropriate for the Department to require the return of any unused non-Federal funds that had been contributed to the GEAR UP scholarship fund. For this reason, the language of proposed § 694.16(b) reflects our understanding that the statutory provision was intended to apply only to unused Federal GEAR UP funds that a grantee holds in reserve.

The other regulatory issue embedded in proposed § 694.16(b)(2) concerns when a grantee must return unused Federal funds held in reserve to the Department. The Department is proposing to require the return of Federal funds within 45 days after the six-year period for expending the scholarship funds expires. We believe this time-frame, which would be reflected in proposed § 694.16(b), is appropriate because the 45-day period is consistent with other Title IV, HEA programs.

In addition, in proposed § 694.16(c), the Department proposes to require grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary. We believe that this requirement would increase the accountability of grantees as well as the Department's ability to track and monitor the large amounts of Federal funds and non-Federal matching funds that grantees reserve for GEAR UP scholarships. We understand that depending on the amount of scholarship funding to be disbursed the, number of eligible recipients, and the scholarship amount each recipient would receive, a grantee's reporting period may well extend beyond its project period. However, grantees were to have obligated these funds during the project period to irrevocable trusts or other mechanisms for ultimate disbursal, and the reasonable and necessary costs associated with providing the reports that proposed § 694.16(c) would require would be legitimate administrative expenses that grantees or those administering the scholarship funds may charge to Federal funds held in reserve. We therefore believe it is reasonable to expect all grantees to make arrangements for implementing proposed § 694.16 before the end of their project period.

For similar reasons, the Department also proposes in § 694.16(d) to clarify that a GEAR UP scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund. Reasonable and necessary costs associated with making appropriate records available for inspection after the project period has ended would likewise be legitimate charges against Federal funds held in reserve.

21st Century Scholar Certificates

Statute: Section 404F of the HEA, as amended by 404(f) of the HEOA, provides that each GEAR UP grantee must provide a 21st Century Scholar Certificate to all participating students served by the project. It also provides that the 21st Century Scholar Certificate must be personalized for each student and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

Current Regulations: Current § 694.13 addresses 21st Century Scholarship Certificates, but does not reflect changes

made to section 404C(b)(2) of the HEA by the HEOA.

Proposed Regulations: The Department is proposing to redesignate current § 694.13 as proposed § 694.18 and amend newly redesignated § 694.18 to (1) specify that the grantee, rather than the Department, will prepare the 21st Century Certificate, and (2) provide that 21st Century Scholarship Certificates must indicate the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

Reasons: This amendment is necessary to reflect the changes made to section 404F(b) of the HEA by section 404(f) of the HEOA.

Requirements Applicable to State GEAR UP Grantees That Serve Students Under the National Early Intervention Scholarship and Partnership Program (NEISP)

Statute: Section 404A of the HEA, as amended by the Higher Education Amendments of 1998, provided that in making awards to States under this program, the Secretary must ensure that students served under this chapter on the day before the date of enactment of the Higher Education Amendments of 1998 continue to receive assistance through the completion of secondary school. This statutory requirement no longer exists in the HEA.

Current Regulations: Current § 694.14 provides that any State that receives a GEAR UP grant and that served students under the NEISP program on October 6, 1998, must continue to provide services under this part to those students until they complete secondary school.

Proposed Regulations: None.

Reasons: We propose to remove the requirements reflected in current § 694.14 because this regulatory provision is obsolete. The NEISP program has not been authorized since 1998 and any students served under that program are well beyond traditional high school age.

Priority

Statute: Section 404A(b)(3)(A) of the HEA, as amended by section 404(a)(2) of the HEOA, gives a priority in funding to a State that (1) has carried out successful GEAR UP programs prior to enactment of the HEOA, and (2) has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies. Section 404A(b)(3)(B) of the HEA, as amended, provides that, in making GEAR UP grant awards to States, the Secretary must ensure that students served under the GEAR UP program prior to the enactment of the HEOA continue to receive assistance through the completion of secondary school.

Current Regulations: Current § 694.15 is the regulatory provision that specifies the priorities the Secretary establishes for the GEAR UP program. It does not reflect the changes made by the HEOA to the statutorily required priorities.

Proposed Regulations: The proposed regulations would redesignate current § 694.15 (What priorities does the Secretary establish for a GEAR UP grant?) as proposed § 694.19 to accommodate the proposed addition of other regulatory provisions, as discussed elsewhere in this preamble. Under newly redesignated § 694.19, the Secretary would award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies. Under proposed § 694.19(a), whether a State GEAR UP grant is deemed successful would be determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements relating to the grant.

Reasons: We are proposing to revise newly redesignated § 694.19, which addresses the priorities the Secretary establishes for a GEAR UP grant, to reflect the changes made by the HEOA to section 404A(b)(3)(A) of the HEA. In order to notify the public of how these priorities will work, we propose to clarify that the Department will implement these statutorily required priorities by using them as competitive preference priorities in the award-making process. In addition, in response to comments received from non-Federal negotiators, we are proposing to specify in this section how the Department will determine whether a State GEAR UP grant has been "successful" under section 404A(b)(3)(A)(i) of the HEA. Thus, proposed § 694.19(a) would specify that the Secretary will determine whether a GEAR UP grant has been successful based upon data (including outcome data) submitted as part of the applicant's annual and final performance reports for the grant it previously carried out, and its history of compliance with statutory and regulatory requirements relating to that grant. The Secretary would determine the extent to which an applicant has a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies" on the basis of information included in its GEAR UP application.

More information about the award process, including the priorities given in the competitions for State GEAR UP grants, may be included in the notices inviting applications for the State GEAR UP grant competitions that the Department publishes in the **Federal Register**. However, we believe that general information about how the priorities will be implemented (*i.e.,* as competitive preference priorities), and how the Department will assess whether an applicant has carried out a successful State GEAR UP Grant prior to August 14, 2008, are best addressed in the program regulations. Proposed § 694.19 would incorporate language from section 404A(b)(3)(A) of the HEA, but not the requirement in section 404A(b)(3)(B) of the HEA that the Secretary ensure that students served by State GEAR UP grants before the enactment of the HEOA continue to receive services through completion of secondary school. Though this requirement appears in the same statutory section as the priority that is given to eligible entities for a State GEAR UP grant, the statutory language does not require the Secretary to give a priority to eligible entities that would continue to serve these students. The requirement in section 404a(b)(3)(B) of the HEA is addressed in more detail under the *Continuity of Student Services* section elsewhere in this preamble.

Duration of Awards

Statute: Section 404A(b)(2) of the HEA, as amended by section 404(a)(2) of the HEOA, provides that the Secretary may award a GEAR UP grant for six years or, seven years in the case of a State or Partnership that applies for a seven-year GEAR UP grant to enable it to provide services to a student through the student's first year of attendance at an IHE.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add § 694.20 and § 694.24. Specifically, proposed § 694.20(a) would provide that the Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an IHE if the State or Partnership (1) applies for and is awarded a new award after August 14, 2008, and (2) in its application, requests a seventh year so that it may continue to provide services to students through their first year of

attendance at an IHE. Proposed § 694.20(b) would specify that a State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an IHE, as long as the grantee continues to provide all required early intervention services throughout the Federal budget period. Proposed § 694.20(c) provides that if a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee (1) would need to provide services to students in their first year of attendance at an IHE; and (2) may choose to provide services to high school students who have yet to graduate. Proposed § 694.20(d) provides that grantees that continue to provide services to students through their first year of attendance at an IHE must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

Finally, § 694.24 would clarify that, consistent with its approved applications and § 694.20, a GEAR UP grantee may provide any services to students in their first year of attendance at an IHE that will help those students succeed in school, and that do not duplicate services otherwise available to them. The proposed regulation would also provide a large number of specific examples of such services.

Reasons: Throughout the negotiating rulemaking process, the Department sought feedback from the non-Federal negotiators on: (1) Whether we should regulate on the types of services that should be provided by GEAR UP grantees during the seventh year of the grant and to whom those services should be provided, (2) whether GEAR UP grantees that are providing a seventh year of services should be required to serve a certain percentage of their students during the seventh year, (3) whether GEAR UP grantees should be required to collaborate with other providers (such as TRIO grantees) when providing services during the seventh year, and (4) whether GEAR UP grantees using a multiple cohort approach should be able to serve students in high school during a seventh year.

In response to comments provided by non-Federal negotiators and tentative agreement reached by the Committee, the Department has proposed to add new § 694.20. The proposal reflects the language of section 404A(b)(2) of the HEA, as amended, which authorizes GEAR UP funding for this seventh project year only for new grantees. We are proposing to include, in § 694.20(a), language that clarifies that in order to be eligible for a seventh year of funding, State or Partnership applicants must apply for and be awarded a new GEAR UP grant after August 14, 2008, and must request in their applications a seventh year of funding to provide services to students through their first year of attendance at an IHE. We propose to include this provision to be consistent with section 404A(b)(2) of the HEA, and to ensure that grantees from the very beginning have planned to implement strong student services in the seventh year of the grant.

Just as proposed § 694.14(d) would permit grantees using the priority approach (rather than or in addition to a cohort approach) to provide scholarship awards before the seventh year, under § 694.20(b) grantees using a priority approach would be able to serve students in their first year of attendance at an IHE before the seventh year of the grant. The provision would simply require that provision of these services (1) is consistent with the grantees' approved application, and (2) does not undermine grantees' provision of all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency. We propose the latter condition in order not to detract from the basic purpose of GEAR UP—to help increase the numbers of students in economically deprived areas get ready for, and enroll in, postsecondary education.

Proposed § 694.20(c) would specify that if a grantee is awarded a seventh year of GEAR UP funding, the grantee must provide services to students in their first year of attendance at an IHE, and may choose to provide services to high school students who have yet to graduate. While the provision would have limited applicability to projects that use the cohort approach, we are proposing it specifically to allow grantees that are serving multiple cohorts of students to continue providing services to students who are in high school during the seventh year of the project period. The Department believes that this approach will encourage continuity of services to all students served by the grant.

Non-Federal negotiators expressed the belief that proper coordination between GEAR UP grantees and available campus programs is important so that GEAR UP students are provided the supports they need, and limited GEAR UP funds enhance rather than duplicate services available to GEAR UP students after enrollment in an IHE. Some negotiators also expressed the belief that various factors, including the distance between IHEs graduates would attend and the grantee, the number of different IHEs that graduates would attend, and a grantee's efforts to obtain information about and coordinate with the providers of other services at those IHEs, could create significant challenges. We agree with both of these considerations, and in balancing them propose § 694.20(d). This provision would require GEAR UP grantees that continue to provide services to students through their first year of attendance at an IHE to coordinate, to the extent practicable, with other campus programs to enhance, not duplicate services. We propose to identify academic support services as one kind of other campus programs given the pivotal role of academic support to many GEAR UP students.

Finally, we propose to add new § 694.24 to provide examples of the types of services that a grantee may provide to students in their first year of attendance at an IHE and to list examples of these services. We believe that this information would be helpful to applicants and grantees as they plan and implement the type of IHE-level services that are most appropriate for each GEAR UP student.

Required and Allowable Activities

Statute: Section 404D of the HEA, as amended by section 404(d) of the HEOA, modifies the GEAR UP program statute by identifying certain activities and services that GEAR UP grantees must provide, and other activities and services that are permissible and thus ones that projects may offer using GEAR UP funds.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add §§ 694.21, 694.22, 694.23, and 694.24 to address required and allowable activities. Proposed § 694.21 would identify the services that, under section 404D(a) of the HEA, all GEAR UP projects must offer. Consistent with section 404D(b) of the HEA, proposed § 694.22 would list examples of other services and activities that all GEAR UP projects may provide. Proposed § 694.23 would incorporate the language from 404D(c) of the HEA, and describe additional activities that are allowable for State GEAR UP projects. Finally, as noted elsewhere in this preamble, proposed § 694.24 would describe the additional services that, consistent with proposed § 694.20 and its approved application, a GEAR UP project may provide to students in their first year of attendance at an IHE.

Reasons: Currently, the GEAR UP program regulations do not list examples of permissible or required GEAR UP services or activities. The non-Federal negotiators suggested—and we agreed—that it would be helpful for applicants and grantees if the Department included in its GEAR UP regulations the examples of required and allowable activities provided in section 404D of the HEA. Also, based on suggestions from the non-Federal negotiators, we are proposing to separate the required and permissible activities into multiple regulatory sections. We believe that this structure will increase the clarity and comprehensibility of the regulatory language for applicants and grantees.

For the most part, proposed §§ 694.21, 694.22, and 694.23 would reflect the statutory language in section 404D(a) through (c) of the HEA. In addition to a few minor, non-substantive differences between these regulations and that statutory provision, please note the following.

First, section 404D(a)(4) of the HEA would require a State grantee to provide for the scholarships under section 404E. We are concerned that some will question whether this provision requires States to use GEAR UP funds for GEAR UP scholarships even though section 404E(b) permits the Secretary to waive the requirement that GEAR UP funds be used for scholarships if the State demonstrates that it has another means of providing the financial assistance section 404 requires, and describes such means in its program application. To avoid any confusion, we have included the exception for this State "waiver" in proposed § 694.21(d).

Furthermore, in response to the suggestion of a non-Federal negotiator, we would clarify in proposed § 694.22(e)(4) that the work grantees may perform in assisting GEAR UP students to develop their graduation and career plans may include activities related to helping students with career awareness and planning activities as they relate to a rigorous academic curriculum. We believe that providing examples of what graduation and career plans may include would both enhance the understanding of the public, as well as GEAR UP applicants and grantees, of the types of services that may be provided in this area, and foster creativity with regard to grantees' provision of career-related services.

In addition, non-Federal negotiators expressed concerns that the statutory language in section 404D of the HEA was ambiguous as to whether the costs of administering a scholarship fund are allowable. The HEA specifies in 404(C)(c)(1)(B) that the costs of administering a scholarship program may count towards the matching requirement, but the HEA does not speak directly to whether Federal funds may be used to support scholarship administration. We believe that such costs of administering authorized activities are allowable under applicable cost principles contained in OMB Circulars A–21 and A–87. However, to clarify the matter, we have included in proposed § 694.22(g) the express authority for grantees to use GEAR UP funds to support the costs of administering a scholarship program.

As discussed elsewhere in this preamble, we propose to add § 694.24 to explain the types of services that a grantee may provide to GEAR UP students in their first year of attendance at an IHE and to list examples of these services. We believe that this information will be helpful to applicants and grantees as they evaluate the type of services that are appropriate to provide to these students.

Continuity of Student Services

Statute: Section 404A(b)(3)(B) of the HEA, as amended by section 404(a)(2) of the HEOA, provides that in making awards to eligible States, the Secretary must ensure that students served under the GEAR UP program prior to the enactment of the HEOA continue to receive assistance through the completion of secondary school. Section 404B(d)(1)(C) of the HEA, as amended by section 404(b) of the HEOA, further requires the Secretary to ensure that eligible Partnerships provide services to students who received services under a previous GEAR UP grant award but have not yet completed the 12th grade. Prior to the enactment of the HEOA, there was no requirement for either State or Partnership grantees to serve students served under a previous grant.

Current Regulations: None.

Proposed Regulations: The Department is proposing to add § 694.25 to implement sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA. In doing so we are proposing that the provisions have effect only where the initial and subsequent grants are both awarded on or after August 14, 2008, the effective date of the HEOA. Specifically, proposed § 694.25 would provide that if (1) a Partnership or State is awarded a GEAR UP grant on or after that date (*i.e.,* initial grant), (2) the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and (3) the grantee receives a new award in a subsequent GEAR UP competition (*i.e.,* new grant), the grantee must continue to provide services required by § 694.21 and authorized under §§ 694.22 and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade. The grantee would be able to provide these services by using GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

Reasons: We are proposing to add § 694.25 to implement and clarify sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA, as amended by sections 404(a)(2) and 404(b) of the HEOA, respectively.

Section 404A(b)(3)(B) of the HEA provides that in making awards to eligible State grantees, the Secretary will ensure that GEAR UP students served on the day before the date of enactment of the HEOA continue to receive assistance through the completion of secondary school. Absent legislative language to the contrary, we interpret the phrase "making awards" in this section as referring to making new GEAR UP awards. We do so because, without evidence of congressional intent that the new requirement apply to continuation awards for grantees that had received initial GEAR UP grants prior to the date of enactment of the HEOA, we do not believe Congress intended that grantees should assume the costs and burdens of activities newly required in the HEOA that they had no legal responsibility to bear when they applied for their GEAR UP grants before the enactment of the HEOA. For this reason, with regard to State GEAR UP grants, proposed § 694.25 would apply only to recipients of new grants.

Proposed § 694.25 would contain a similar requirement for Partnerships that receive new GEAR UP awards. Prior to the changes made by the HEOA, a Partnership grantee was not required to continue to assist students who had not completed the 12th grade after the project period ended. As we stated in the preceding paragraph, in the absence of clear legislative intent that Congress intended to impose the costs and burdens of activities newly required in the HEOA on recipients of GEAR UP continuation grants, we do not believe we can impose such a requirement. For this reason, with regard to Partnership GEAR UP grants, proposed § 694.25 similarly would apply only to recipients of new grants.

With regard to States and Partnerships that receive an initial GEAR UP grant on or after August 14, 2008, the date of enactment of the HEOA, we interpret sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA to require those grantees to

continue to provide services required by § 694.21 and authorized under §§ 694.22 and 694.23 to those students who are enrolled in secondary schools until they complete the twelfth grade if (1) the initial grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and (2) the grantee receives a new award in a subsequent GEAR UP competition.

We do not interpret sections 404A(b)(3)(B) and 404B(d)(1)(C) of the HEA to require grantees to provide Federal GEAR UP services outside of the six- or seven-year grant period for the Federal GEAR UP award (*see* section 404A(b)(2) of the HEA, as amended by section 404(a)(2) of the HEOA) because this would result in an untenable situation. We believe that this situation would be untenable because, were the Secretary to interpret the law as applying outside of the six- or seven-year authorized grant period, the Secretary would be mandating specific grantee action without the ability to adequately enforce the requirement. In this regard, the only means the Secretary would have available to seek enforcement of these provisions, including any needed grantee reporting and follow-up, would be to use formal administrative and judicial procedures to seek the return of Federal GEAR UP funds years after their expenditure. Absent evidence to the contrary, we do not believe that the Congress intended the statute to have this effect.

Therefore, proposed § 694.25 provides that only a grantee that receive both an initial and new award on or after August 14, 2008, must, during the Federal funding period, continue to provide GEAR UP services to students who received services under the previous GEAR UP grant award but have not yet completed the twelfth grade.

Executive Order 12866

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 set forth in the Executive order. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through these discretionary grant programs will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definition, and selection criteria justify the costs.

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

HEP and CAMP Programs

The Secretary has concluded that there is no need to discuss the changes to the regulations for HEP and CAMP in the *Regulatory Impact Analysis* because the changes to regulations for these programs were minor. The most significant changes to these regulations address who can be considered an immediate family member of a migrant individual in order to be eligible for program services. The Department determined that providing clarity to the term "immediate family member" would help ensure there is a uniform standard of eligibility for these programs.

Federal TRIO Programs

Need for Federal Regulatory Action

These proposed Federal TRIO program regulations are needed to implement provisions of the HEOA, which changed certain features of the TRIO program. In proposing these regulations, the Secretary has endeavored to regulate only where necessary, and in ways that to the extent possible reflect the recommendations of the non-Federal negotiators:

- *Number of Applications:* The HEA stipulates that entities may submit multiple applications for grants under each TRIO program "if the additional applications describe programs serving different populations or different campuses." The HEA, as amended by the HEOA, defines "different populations" and "different campuses."
- *Section 643.30: Rigorous Secondary School Program of Study:* The HEOA modified the HEA's outcome criteria for Talent Search by adding the completion of a "rigorous secondary school program of study" as one of the criteria to be considered in calculating prior experience points.
- *Section 643.32: Changes to Minimum Number of Participants Served in Talent Search:* In order to provide it with greater flexibility to establish the minimum number of participants in each TS grant competition, the Department proposes to eliminate the current regulatory requirement that TS projects serve a minimum number of individuals.
- *Sections 643.30, 644.30, 645.40, 646.30, 647.30: Changes to Allowable Costs (Computer Hardware and Software) (TS)(EOC)(UB)(SSS)(McNair):* The requirement that grantees must seek prior approval for purchases of computer equipment was not addressed in the statute. However, during negotiated rulemaking, negotiators reached a consensus that computer equipment and software are necessary costs for grantees to deliver services. Accordingly, the Department proposes to change its regulations with respect to the purchase of computer equipment.

Regulatory Alternatives Considered

Sections 643.7, 646.7, 643.10, 644.10, 645.20, 646.10, 647.10: Number of Applications: Branch Campuses and Different Populations

The HEA stipulates that entities may submit multiple applications "if the additional applications describe programs serving different populations or different campuses." Section 402A(h)(1) and (2) of the HEA defines "different campus" and "different population." A "different campus" is defined as a site of an institution of higher education that: Is geographically apart from the main campus of the institution; is permanent in nature; and offers courses in educational programs leading to a degree, certificate, or other recognized credential. A "different population" is defined in section 402A(h)(2) of the HEA as a group of individuals that an eligible entity

desires to serve through an application for a TRIO grant that is: Separate and distinct from any other population that the entity has applied for a TRIO grant; and while sharing some of the same needs as another population that the entity has applied to serve, has distinct needs for specialized services.

The proposed regulations would clarify that, for the purposes of the TS and UB programs, applicants will be allowed to submit multiple applications if they plan to serve different target schools. For the SSS and McNair programs, applicants can submit multiple applications if they propose to serve different campuses.

The proposed regulations would use a definition of "different campus" that is different from the definition of "different campus" currently included in the SSS regulations. Current SSS regulations require a "different campus" to have separate budget and hiring authority to be an eligible applicant. However, HEA, as amended by HEOA, defined "different campus" as a site of an institution of higher education that is: "geographically apart from the main campus of the institution," "permanent," and one that offers courses leading to an educational credential. The proposed regulations would implement this definition in accordance with the amended statute. With respect to the implementation of the HEA's definition of "different populations," initially, during the negotiated rulemaking sessions, the Department proposed to implement this change consistent with its current practice. Currently, all of the TRIO programs except for SSS prohibit an applicant from submitting an application proposing to serve a different population within the same target area, school, campus, *etc.* The SSS program allows an entity to submit a separate application to serve individuals with disabilities. However, the non-Federal negotiators disagreed with this approach and argued that the HEA permits applicants to submit multiple applications that propose to serve different populations, even in the same target area, school, or campus. Ultimately, the Secretary agreed with the non-Federal negotiators. Under the proposed regulations, therefore, an applicant planning to serve a separate population would be permitted under certain circumstances to apply for a separate grant to serve this population even if it also applies to serve a different population of students on the same campus.

While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations the Department needs to establish some limitations on the number of separate applications an eligible entity may submit for each competition. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and to ensure fairness and consistency in the application process, the Department proposes to amend the regulations for each of the TRIO programs to provide that the Department will define, for each competition, the different populations of participants for which an eligible entity can submit separate applications and publish this information in the **Federal Register** notice inviting applications and other application materials for the competition.

This approach would give the Department the flexibility to designate the different populations for each competition based on changing national needs. It also would permit the Department to more effectively manage the program competitions within the available resources.

For these reasons, under the proposed regulations, an entity applying for more than one grant under the TS, EOC, and UB programs would be able to submit separate applications to serve different target areas and different target schools, and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs would be able to submit separate applications to serve different campuses and would also be able to submit separate applications to serve one or more of the different populations of participants designated in the **Federal Register** notice inviting applications for the competition.

These regulatory changes are expected to increase the number of grant applications for SSS (and other TRIO) grants. For the SSS program, the Department estimates an increase of about 450 applicants (from 1,200 to 1,650) for each competition. With 450 new applicants devoting approximately 34 hours to the process, the Department expects that the amount of money spent on applications by applicants would increase by $742,950. (Note, however, that the cost to individual applicants is not expected to increase).

INCREASE IN AGGREGATE APPLICANT COSTS

Burden	Calculations	Estimated increase
Professional Staff	(450 additional applications * 27 hours * $30 per hour) + Overhead at 50% of salary.	$546,750
Clerical Staff	(450 additional applications * 7 hours * $12 per hour) + Overhead at 50% of salary	56,700
Use of Computer Equipment	450 additional applications * ($200 for computer time + $10 for printing)	94,500
Operation Cost	450 additional applications * $100 cost of finding and maintaining application materials.	45,000
Total		742,950

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

In addition, the cost of administering SSS grant competition would likely increase. In particular, the Department estimates that variable costs of processing and reviewing applications will increase 37.5 percent. The cost of retaining outside reviewers should increase to $555,000 from $404,000 while application processing costs should increase from approximately $25,000 to $34,560. Costs associated with staff time for conducting the supervised review process are expected to increase from $377,000 to $518,000. Finally, costs associated with financing

workshops, field reading and slate preparation are expected to increase from $917,000 to $1,260,625. In sum, the Department estimates the expected increase in grant applications to increase administration costs by approximately $646,000.

INCREASE IN COST TO FEDERAL GOVERNMENT

Burden	Calculations	Estimated increase
Field Reviewers	Proportional increase in field reviewers as a result of increase in applications * $1,100 ($1,000 honorarium, $100 for expenses).	$151,364
Processing applications	Proportional increase in staff or staff hours as a result of increase in applications	9,426
Contractor logistical support for workshops, achieving prior unfunded applications, application processing, field reading and slate preparation.	Proportional increase in contract costs as a result of increase in applications	343,807
Staff time for conducting supervised review.	Proportional increase in staff costs hours as a result of increase in applications	141,382
Total		645,978

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

The primary beneficiaries of the regulatory change related to different populations will be students with special needs. To the extent that college completion strategies vary across different populations of students, allowing applicants to submit separate applications for different populations would increase the delivery of the right kinds of services to students. SSS projects geared specifically towards ESL students, for instance, would be able to provide highly specialized services to these students in a more efficient and effective manner than would a general SSS project.

Section 643.30: Rigorous Secondary School Program of Study: Adding Tuition as an Allowable Cost in the TS Program

The HEOA modified the HEA's outcome criteria for the TS program. These outcome criteria are used to determine the award of prior experience points for grantees that choose to apply for future awards. One of the new outcome criteria added to the statute requires grantees to report on the number of all TS participants who complete a rigorous secondary school program of study that will make the students eligible for Academic Competitiveness Grants (ACG). This new statutory criterion in and of itself does not require that TS projects provide more intensive services: It could be interpreted simply as requiring the Department to track whether TS students, with proper counseling on course selection and with referrals to tutoring services, enroll in the coursework that would qualify them for an ACG grant. (In most States, students can qualify for an ACG grant if they complete four years of English; three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics; three years of science, including at least two of three specific courses, biology, chemistry, and physics; three years of social studies; and one year of a language other than English. Under the ACG program, there are other options for meeting the rigorous course of study requirement, including taking International Baccalaureate or Advanced Placement courses.)

Non-Federal negotiators contended that some schools served by TS grantees do not provide the type of curriculum necessary for students to meet the requirements of a "rigorous secondary school program of study." Consequently, they argued, grantees serving students in these schools are at a disadvantage with respect to meeting this criterion. They specifically requested that grantees be permitted to use grant funds to enable participants in the TS program to attend classes at other schools to help grantees satisfactorily meet this new outcome criterion. For example, a TS grantee would be permitted to provide funds to a student whose high school offers only biology and not chemistry or physics so that the student could attend a local community college or take an online course to take chemistry or physics.

During the negotiated rulemaking sessions, the negotiators did not reach agreement on this issue. The Department has decided to propose to allow TS grantees to use grant funds to pay a participant's tuition for a course that is part of a rigorous secondary school program of study if a similar course is not offered at a school within his or her LEA provided that several conditions are met. The Department has also decided to propose regulations that would allow TS grantees to pay for a student's transportation to a school not regularly attended by that student in order for that student to take a course that is part of a rigorous program of study.

To determine the impact of these proposed regulations, we need to estimate the number of TS participants who do not have access to a rigorous secondary school program of study at their high school and the cost of providing these participants with the requisite curriculum (whether through tuition or transportation). We also need to estimate the extent to which grantees that are serving schools with these participants would elect to incur these costs because, under the proposed rules, grantees would not required to provide tuition or transportation assistance.

According to recent program data from the ACG 2007–2008 End of the Year Report, 54 percent of ACG recipients qualified under a rigorous coursework component, 41 percent under a State designated curriculum, and four percent under the Advanced Placement or International Baccalaureate Program courses. The Department does not have data on the availability of curricula that would satisfy the rigorous secondary school program of study requirement. Therefore, we are asking the public for data on the extent to which rigorous coursework offerings that would meet the ACG requirements are not available at the schools or areas that are targeted under the TS program and the number of potential TS participants in these schools or areas that would be unable to meet the requirements because of the unavailability of the curriculum.

Although we do not have data on the number of affected students, we do have some data on the cost of providing tuition assistance. Based on data collected by the American Association of Community Colleges (AACC) in 2008, we estimate that the cost of providing a student with one course per semester, including required textbooks, would be approximately $560 to $1,280. AACC data indicate that the per credit costs for public community college ranges from about $20 in California to $180 in Vermont. This compares to an average grantee cost per TS participant of approximately $402 in 2008, which means that the opportunity cost of providing tuition for one TS participant to take one class at a community college is roughly equal to what it costs on average to serve 1 to 3 additional participants under the TS program prior to the enactment of HEOA. Because we do not know the extent to which grantees would elect to use funds for this purpose or the actual costs of providing access to this coursework, we are asking current TS grantees to provide estimates regarding the amount of the project budget that might be used for tuition and the estimated number of participants that might benefit each year from this service if the grantee elected to provide it. These data would enable us to better estimate the effect of using TS funds for this purpose on program measures, including the cost per successful outcome.

With respect to the benefits of this proposed regulatory change, the Secretary believes that students enrolled in schools with curricula that do not meet the State's definition of a rigorous program of study will be the primary beneficiaries. TS participants in schools that do not offer all of coursework needed to satisfy this requirement (*e.g.*, a physics or chemistry course) may be afforded the opportunity to take such coursework at a local institution of higher education. Given the body of research suggesting that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education, providing this benefit to TS participants could improve their educational outcomes. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students that took a basic high school curriculum.[1] However, grantees will need to balance the opportunity costs of providing these opportunities to individual students with the expected educational benefits to avoid an unnecessary increase in the cost of successful outcomes under this program.

[1] GAO, "Additional Efforts Could Help Education With its Education Goals," May 2003. (*http://www.gao.gov/new.items/d03568.pdf*).

Section 643.32: Changes to Minimum Number of Participants Served in Talent Search

The proposed regulations would remove the regulatory requirement that TS projects serve a minimum number of individuals. Current regulations require that any grantee receiving an award of $180,000 or more must serve a minimum of 600 individuals. The Department proposes to remove this requirement.

The Department proposes to take this action to provide it flexibility in each competition to establish the number of participants, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies for disadvantaged youth to complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Future grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This may include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

The Department intends to address the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for the competition. The Department also intends to establish a per-participant cost in the **Federal Register** notice that would be used to determine the amount of the grant for an applicant proposing to serve fewer participants than required for the minimum grant award for the competition.

Sections 643.30, 644.30, 645.40, 646.30, 647.30: Changes to Allowable Costs (Computer Hardware and Software) (TS)(EOC)(UB)(SSS)(McNair)

Under the proposed regulations, TRIO projects no longer would be required to obtain the Secretary's approval before purchasing computer and software equipment. This regulatory change would remove administrative costs associated with obtaining this approval.

GEAR UP

Need for Federal Regulatory Action

The proposed GEAR UP regulations are needed to implement provisions of the HEOA, which changed certain features of the GEAR UP program. We identify those statutory changes that have prompted us to propose significant changes in regulations. In proposing these regulations, the Secretary has endeavored to regulate only where necessary, and in ways that to the extent possible reflect the recommendations of the non-Federal negotiators:

- *Section 694.19—Priority:* Section 404A(b)(3)(A) of the HEA now requires that priority be given to those States that have "carried out successful [GEAR UP] programs" prior to enactment of HEOA, and have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies."
- *Section 694.8—Waiver of Matching Requirements:* Section 404C(b)(2) of the HEA, as amended by the HEOA, permits the Secretary to waive the matching requirement for a Partnership in whole or in part if, at the time of application, the Partnership (a) demonstrates significant economic hardship that precludes it from meeting the matching requirement, or requests that its contributions to the scholarship fund under section 404E of the HEA be matched on a two-for-one basis. Section 404C(b)(2) of the HEA also permits the Secretary to waive the matching requirement for any Partnership grantee that demonstrates that the matching funds described in its application are not available, and that it has exhausted all revenues for replacing these matching funds.
- *Sections § 694.12 and § 694.13—Scholarship Component:* Section 404E(e)(1) of the HEA, as amended by HEOA, requires each State grantee to reserve an amount of money that is not less than the minimum scholarship amount described in section 404E(d) of the HEA, multiplied by the number of students the grantee estimates will complete a secondary school diploma or its equivalent as may be required for the students' admission at an IHE, and enroll in an IHE. The Department interprets this new statutory provision along with the new requirement in section 404E(d) of the HEA that all eligible students (as defined in section 404E(g) of the HEA), whether served by a State or Partnership grantee, who enroll in an IHE receive at least the minimum Federal Pell Grant award, to require any GEAR UP grantee subject to the section 404E requirements to

provide this minimum award to all GEAR UP students enrolled in an IHE. This statutory change led the Department to revisit its current regulations governing the provision of continuation scholarships.

• *Section § 694.16—Return of Unused Scholarship Funds:* Section 404(e)(4)(A)(ii) of the HEA, as amended by HEOA, now requires State grantees either to redistribute to other eligible students scholarship funds that are not used by eligible students within six years of the student's completion of secondary school or return those funds to the Secretary for distribution to other grantees in accordance with the funding rules described in section 404B(a) of the HEA.

Regulatory Alternatives Considered

Section 694.17: Priority

Proposed § 694.17 clarifies how the Department would implement the statute's requirement that priority in making awards be given to those States that (1) prior to enactment of HEOA have "carried out successful GEAR UP programs" and (2) have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies." While the Department could seek to implement this priority by having applicants address in their applications how they met both aspects, we believe that imposing this kind of data burden is unnecessary.

We are proposing instead to rely, where possible, on reports that applicants previously submitted in implementing their prior GEAR UP projects. Thus, to implement this statutory requirement, the Department would grant "priority preference points" to State applicants, based, in part, on their prior submission of data, including outcome data, about their projects and other information available to the Department. At present, the Department is considering implementing the second element of the priority, which concerns a prior, demonstrated commitment to early intervention leading to college access, through review of the new GEAR UP application itself given that we do not know how else the Department would obtain the information it needs to determine the extent to which applicants would meet the second element of the priority. Moreover, should the Department determine that it needs applicants to provide more information in their applications that reflect this second element, the Department believes that the additional burden would be very small, and that the costs of this additional administrative burden would be far outweighed by the benefits from ensuring that the Department is able to give priority to the most deserving State applicants.

Sections 694.8 and 694.9: Waiver of Matching Requirements

Consistent with section 404C(b) of the HEA, as amended by the HEOA, these proposed sections would specify the circumstances in which the Secretary would consider requests from applicants for a waiver of the GEAR UP's matching requirement based on significant economic hardship, and from grantees based on the unavailability of matching funds as described in section 404C(b)(2)(A) and (B) of the HEA. (Section 404C(b)(2)(A)(i) of the HEA also authorizes a Partnership applicant to request that contributions to scholarship funds established under section 404E of the HEA be matched on a two-to-one basis, but our proposed § 694.8(c) simply repeats this statutory provision.)

The proposed regulations that would govern waiver requests by applicants (proposed § 694.8) and by grantees (proposed § 694.9) would provide significant benefit to the public, and do so in numerous ways. First, they provide that the Secretary would entertain waiver requests of significant amounts from applicants and grantees—up to 75 percent for up to two years in the case of an applicant that demonstrates a significant economic hardship stemming from a specific, exceptional, or uncontrollable event, and up to 50 percent for up to two years in the case of an applicant with a pre-existing and on-going significant economic hardship that precludes them from meeting the matching requirement. Second, by providing clarifying examples of the kinds of economic situations and events that would give rise to approval of an applicant's or grantee's waiver requests, the proposed regulations would advise the public of the considerations the Secretary will examine upon receipt of a waiver request.

Finally, for an applicant in an area that faces chronic economic challenges expected to affect the life of the GEAR UP project, proposed § 694.8(b)(3) would permit the Secretary to grant tentative approval of the waiver for the entire project period, subject to the Partnership's submission of documentation every two years that confirms (1) the continued economic hardship, and (2) the Partnership's continuing and unsuccessful attempts to secure matching contributions. This latter proposal would both eliminate this applicant's need to prepare a non-Federal budget as part of its application, and upon initial approval of the waiver request, would provide a basis for predicting whether or not the Secretary would be expected to extend the waiver in future years.

Thus, these regulatory provisions would provide a substantial benefit to grantees meeting the proposed criteria. For example, in 2009, the average GEAR UP grant award made to a Partnership was approximately $1.1 million. Because, absent a waiver, GEAR UP grantees must match the amount of Federal expenditures, the average annual matching requirement for a Partnership was also $1.1 million in 2009. However, under proposed §§ 694.8(b) and 694.9(a)(1), a Partnership applicant that can demonstrate an ongoing significant economic hardship that precludes it from meeting the matching requirement, or a Partnership grantee that can demonstrate that its matching contributions are no longer available and that it has exhausted all fund and sources of potential replacement contributions, could receive a waiver up to 50 percent, or on average up to $600,000 per year. And, under proposed §§ 694.8(a) and 694.9(a)(2), a Partnership that can demonstrate the unavailability of match due to an uncontrollable event such as a natural disaster that has had a devastating impact on members of the Partnership and the community in which they operate may receive a waiver of up to 75 percent—thus creating a benefit (*i.e.*, a lessened private commitment) on average of up to $900,000 per year. Given the current national economic climate, such waiver requests seem likely. Moreover, for grantees that would not be able to continue operating their GEAR UP projects without these waivers, these proposed regulations would enable the participating students to continue to receive GEAR UP services, albeit at a reduced level given the smaller matching contributions.

In considering the amount of match subject to possible waiver, the non-Federal negotiators opposed waivers of greater size. They stressed the importance of a vibrant and committed partnership in GEAR UP projects required partners to maintain a commitment of their own resources to help provide needed GEAR UP services. Moreover, the non-Federal negotiators also noted that even under current economic conditions, partners committed to the GEAR UP projects should be able to secure substantial in-kind matching contributions.

Accordingly, they rejected options under which the Secretary might provide a waiver of the matching contributions for one or more years of the project because of economic conditions or a one-time exceptional or uncontrollable event waiver of up to 100 percent.

We agree with the non-Federal negotiators on this issue. We believe that our proposal to allow the Secretary to grant waivers of the program's matching requirement of up to 50 and 75 percent strikes the right balance between (a) providing relief where circumstances beyond the control of a Partnership affect its ability to maintain its required match, and (b) the need for members of the Partnership to be truly committed to helping to provide the services that participating GEAR UP students need.

Sections 694.12 and 694.13: Scholarship Component

Proposed § 694.14(g) would make the current regulatory requirement that grantees participating in the scholarship component must grant continuation scholarships to each student who was granted an initial scholarship (and who remains eligible) inapplicable to grantees that receive their initial GEAR UP awards on or after August 14, 2008. Our proposal to remove this financial burden from these grantees recognizes that by requiring each eligible student to receive at least the Federal Pell Grant minimum award, section 404E of the HEA, as amended by the HEOA, will leave grantees with insufficient scholarship funds to meet the current regulatory requirement. While GEAR UP students may bear a corresponding cost by not having these continuation awards available to them, these costs—like our proposal to omit the requirement in current § 694.10(d) from proposed § 694.14—results from the new statutory requirement that all eligible students receive at least the Pell Grant minimum award. Because the minimum scholarship amount is equal to the minimum Federal Pell Grant award, (which is defined in section 401(a)(1)(C) of the HEA as 10 percent of the maximum Pell Grant award), the benefit to grantees as a result of this proposed regulation would be equal to at least 10 percent of the appropriated maximum Pell grant award in a given year, multiplied by the number of individuals the grantee rejects for continuation awards. Importantly, because removing the continuation award requirement from these regulations would only apply to new awards, no GEAR UP students in newly funded projects would have the expectation of receiving a GEAR UP continuation scholarship.

Section 694.16: Return of Unused Scholarship Funds

Section 404(e)(4)(A)(ii) of HEA, as amended by HEOA, requires grantees to return to the Secretary any scholarship funds that remain after they have first redistributed unused funds to eligible students. To enable the Department to monitor these scholarship accounts and ensure that Federal funds reserved for scholarships are expended as intended, the Department proposes to add § 694.16(c), which would require grantees participating in the scholarship component of the program to provide annual information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved for GEAR UP scholarships, and the disbursement of those scholarship funds to eligible GEAR UP students. These annual reports would need to be submitted until all of the funds are either disbursed or returned to the Secretary.

This requirement imposes an administrative burden on the grantees. Grantees would be able to charge some of these administrative costs to their award of Federal GEAR UP grant funds because some of these annual reports would be prepared and submitted during the project period. Other annual reports would need to be prepared and submitted after the six- or seven-year GEAR UP project period has ended (by which time it is possible that the Partnerships have dissolved). In order to pay the costs of post-project reports, grantees would be able to (1) reserve additional amounts during each project period for the future costs of preparing and submitting post-project reports, or (2) authorize those administering the GEAR UP scholarship accounts to deduct such amount from the amount held in reserve for GEAR UP scholarships (assuming that all eligible students will still be able to receive a minimum Federal Pell Grant award).

Because the Department has not yet established detailed reporting requirements for this regulatory provision, it is difficult to estimate the costs that grantees could charge to GEAR UP funds. The Department solicits information from the public regarding the potential costs associated with this provision and the content and format of the future collection of information. The Secretary believes that the costs introduced by this proposed regulatory provision are justified by the Department's need to have the necessary information to monitor the millions of dollars of Federal funds obligated to GEAR UP scholarship accounts.

Accounting Statement: As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to Institutions of Higher Education, public and private agencies and organizations, and secondary schools under these programs as a result of this proposed regulatory action. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$1,218.
From Whom to Whom.	Federal Government to Institutions of Higher Education, public and private agencies and organizations, and secondary schools.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not adversely impact a substantial number of small entities. The proposed regulations would affect institutions of higher education, States, LEAs and nonprofit organizations. The U.S. Small Business Administration Size Standards define entities as "small" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

HEP and CAMP

The Secretary believes that the minor changes proposed to the HEP and CAMP regulations will not affect small entities.

Federal TRIO Programs

The Secretary believes that the proposed regulations will not adversely impact any small entities receiving TRIO grants. The Department has determined that approximately 141 of the 2,887 TRIO grantees are defined as "small entities" under the U.S. Small Business Administration's size standards. Of these 141 entities, 133 are

nonprofit organizations that receive less than $5,000,000 in total annual revenue, 7 are LEAs or Tribes with jurisdictions containing fewer than 50,000 people, and one is a secondary school. The Secretary believes that the proposed regulations will not negatively impact these small entities and, in fact, believes that small grantees will benefit from these regulations. The removal of the minimum students served requirement under the Talent Search program will benefit small entities, whose typically smaller budgets make it difficult to serve large numbers of students. In addition, the elimination of the requirement for grantees to obtain the Secretary's approval before purchasing computer equipment would particularly benefit small grantees, for which administrative costs are most burdensome. Most importantly, given that TRIO programs are competitive grant programs, all costs of participating are reimbursed by the grant.

GEAR UP

The Secretary believes that the proposed regulations will not adversely impact any small entities receiving GEAR UP grants. The 42 States receiving grants are not small entities because each State has a population exceeding 50,000. Thirty of the fiscal agents for the 154 Partnership grants are local educational agencies; according to the U.S. Census Bureau, 6 of these LEAs have jurisdiction over an area with fewer than 50,000 residents, and as such, are defined as "small entities" under the U.S. Small Business Administration size standards. However, the Secretary believes that these small entities will not be adversely impacted by the proposed regulations. In accordance with statutory changes, the Secretary's proposed regulations regarding matching requirement waivers should particularly benefit small fiscal agents, which are more vulnerable to economic hardship than large fiscal agents, and, therefore, more likely to qualify for waivers. Most importantly, given that GEAR UP is a competitive grant program, all costs of participating are reimbursed by the grant.

The Secretary invites comments from small institutions as to whether they believe the proposed regulations would have a significant impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 642.21, 642.22, and 642.25 of the Training Program for Federal TRIO Programs (Training) regulations; §§ 643.21, 643.22, 643.24 and 643.32 of the Talent Search (TS) regulations; §§ 644.21, 644.22, and 644.24 of the Educational Opportunity Centers (EOC) regulations; §§ 645.31; 645.32, and 645.35 of the Upward Bound (UB) regulations; §§ 646.21, 646.22, 646.24, and 646.33 of the Student Support Services (SSS) regulations; §§ 647.21, 647.22 and 647.24 of the Ronald E. McNair Postbaccalaureate Achievement Program (McNair); and §§ 694.7, 694.8, 694.9, 694.14, 694.19, and 694.20 of the GEAR UP regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Parts 642, 643, 644, 645, 646, 647—Federal TRIO Programs

Recent grant application packages for the Training, SSS, TS, EOC, UB, and McNair programs have been or will be discontinued; new application packages for these programs will be developed prior to their next competitions, and will reflect any regulatory changes included in the final regulations that will be published in 2010. For each new application, a separate 30-day **Federal Register** notice will be published to solicit comment on the new application several months prior to the next scheduled competition for the program.

Likewise, any regulatory changes applicable to the annual performance reports (APRs) will affect grants awarded under competitions conducted after the enactment of the HEOA. The APRs for the first year of a new grant will be due approximately 15 months after the beginning of the new grant period. Until new grants are awarded, the Department will continue to use the existing APR for the program. A new APR for each program that addresses the new HEOA requirements will be developed for the new grant period. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form for each program prior to its usage.

Sections 642.21 and 642.25 (Training)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed regulations for the Training Program would amend the selection criteria the Secretary would use to evaluate an application for a new grant to conform to current practice. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Specifically, we propose to drop the *Need* criterion from the selection criteria for the Training Program (current § 642.31(f)) to conform to current practice. An applicant for a Training grant would need to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department would establish the "need" for the proposed training; thus, it would be redundant to require an applicant to provide data in the application to support the need for the training project. Therefore, the *Need* selection criterion is no longer necessary. The proposed change would reduce the amount of information an applicant must include in its application.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The proposed regulatory change to the selection criteria would reduce the amount of information an applicant must include in its application,

resulting in an estimated burden reduction of 240 hours. In addition, we estimate that approximately ten percent of the applications received under each competition for Training grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours for a burden increase of 12 hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review.

Taken together, the proposed increase and decrease in burden would result in a net total burden reduction of 228 hours, reflected in OMB Control Number 1840–NEW1.

Sections 643.21 and 643.25 (TS)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a new TS grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA has made significant changes to the purpose and goals of the TS program as reflected in changes to applicant eligibility, the list of required and permissible services, and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 643.21(a) (Need for the project); 643.21(b) (Objectives); 643.21(c) (Plan of operation); and 643.21(d) (Applicant and community support). The revised selection criteria would replace the existing criteria in §§ 643.21(a) 643.21(b), 643.21(c), and 643.21(d).

In addition, the application would describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The Department does not expect that proposed changes to the selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for TS grants will score within the "funding band". For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 60 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW2. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new TS grants currently scheduled for fall 2010.

Sections 644.21 and 644.24 (EOC)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed regulations for the EOC Program amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Revisions in the selection criteria are needed to address the statutory changes resulting from the HEOA. The HEOA has made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 644.21(b) (Objectives) and 644.21(d)(2) (Applicant and community support). The revised selection criteria would replace existing criteria.

In addition, the application would describe the procedures an unsuccessful applicant would need to follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be able to submit any additional data or information that was not included in its original application.

The Department does not expect that these proposed changes to the selection criteria would increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for EOC grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second

review. This will result in a total burden increase of 20 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW3. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new EOC grants currently scheduled for fall 2010.

Sections 645.31 and 642.35 (UB)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed UB regulations would amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes and procedures for a second review of unsuccessful applications. The new application would include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA has made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we propose to revise the following selection criteria: §§ 645.31(b) (Objectives) and 645.31(d)(2) (Applicant and community support). The revised selection criteria would replace existing criteria in §§ 645.31(b) and 645.31(d)(2).

In addition, the application would describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be permitted to submit any additional data or information that was not included in its original application.

The Department does not expect these proposed changes to the selection criteria will increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for UB grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 80 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW4. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new UB grants currently scheduled for either fall 2010 or fall 2011.

Sections 646.11; 646.21 and 646.25 (SSS)—The Assurances and Other Information an Applicant Must Include in an Application, the Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed SSS regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA and add the statutory requirement that an applicant include in its application a description of its efforts in providing participants with sufficient financial assistance. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory changes and current practice, we propose to revise § 646.21(b) (Objectives). The revised selection criteria will replace existing criteria. Further, the revised § 646.11 will include the requirement that the applicant discuss in its application its efforts to provide participants sufficient financial assistance.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" are eligible to request a second review. As described in the proposed regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant will be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant must provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative, or scoring error in the processing or review of the application. The applicant, however, cannot submit any additional data or information that was not included in its original application.

The Department does not expect the proposed changes to the selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for SSS grants will score within the "funding band" and be eligible for a second review. For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 66 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW5. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next

competition for new SSS grants currently scheduled for fall 2013.

Sections 647.21 and 647.25 (McNair)—Selection Criteria the Secretary Uses To Evaluate an Application for a New Grant and the Second Review Process for Unsuccessful Applicants

The proposed McNair regulations would amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the proposed regulations would establish processes and procedures for a second review of unsuccessful applications. The new application would describe the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA has made changes to the outcome criteria. To better align the selection criteria with these statutory changes and current practice, we propose to revise § 647.21(b) (Objectives). The revised selection criteria would replace the current criteria in § 647.21(b).

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the proposed regulations, only those applicants in the proposed "funding band" would be eligible to request a second review. As described in the proposed regulations, the Department would notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant would be given 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant would need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, would not be permitted to submit any additional data or information that was not included in its original application.

The Department does not expect proposed changes to the selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for McNair grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This would result in a total burden increase of 16 hours for the revised application, which would be reflected in a new OMB Control Number 1840–NEW6. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form for the next competition for new McNair grants currently scheduled for either fall 2010 or fall 2011.

Section 642.22 (Training)—How Does the Secretary Evaluate Prior Experience?

The HEA, as amended, does not establish specific outcome criteria for the Training program; the program outcome criteria for evaluating a grantee's prior experience (PE) are established in current regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations amend the prior experience criteria the Secretary uses to award PE points as follows.

For Training (Newly redesignated § 642.20 and 642.22), we propose to clarify the PE criteria and to update the regulations to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of points would change from 8 points to 15 points.

The burden hour estimate associated with this APR is reported under OMB Control Number 1894–0003, the Department's generic performance report Standard 524B form. The Department does not expect these proposed editorial changes to increase burden.

Section 643.22 (TS)—How Does the Secretary Evaluate Prior Experience? and Section 643.32 Includes a New Recordkeeping Requirement

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the TS program. Prior to the enactment of the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The proposed regulations would amend the PE criteria to address statutory changes resulting from the HEOA. The new statutory outcome and PE criteria for TS require grantees to report on: (1) Secondary school persistence of participants; (2) secondary school graduation of participants with regular secondary school diploma; (3) secondary school graduation of participants in a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also propose to amend the recordkeeping requirements in § 643.32 to require grantees to maintain a list of courses taken by participants receiving support to complete a rigorous secondary school program of study.

Currently one APR form is used for both the TS and EOC programs. Because of the proposed changes to TS, the Department plans to develop a new APR for TS. The Department expects the proposed reporting and recordkeeping requirements to increase the reporting burden for this new data collection to 15 hours for each grantee. This would result in a total burden increase of 7,050 hours for the new APR, which would be reflected in a new OMB Control Number 1840–NEW7. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Section 644.22 (EOC)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the EOC

program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The new statutory PE criteria are similar to the current regulatory PE criteria (*see* current § 644.22); therefore, the Department does not expect the proposed changes to increase burden on a EOC grantee. However, when a new TS APR is developed, the current TS/EOC form would not be used by TS grantees; therefore, we expect a total burden decrease for this data collection of 2,820 hours, which would be reflected in a new OMB Control Number 1840–NEW8.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Section 645.32 (UB)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience (PE) of high quality service delivery and for the purpose of reporting annually to the Congress on the performance of the UB program. Prior to the enactment of the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The new statutory outcome PE criteria for UB requires grantees to report on: (1) The academic performance of participants; (2) secondary school retention and graduation of participants; (3) completion by participants of a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

The Department expects the new requirements that a grantee report on the completion of a rigorous secondary school program of study and postsecondary completion of participants would increase the reporting burden for this data collection by six hours for each grantee. This would result in a total burden increase of 6,858 hours for the revised APR, which would be reflected in a new OMB Control Number 1840–NEW9.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2012 or fall 2013.

Section 646.22 (SSS)—How Does the Secretary Evaluate Prior Experience? and New Section 646.33 Adds the Statutory Matching Requirements for Grantees That Use Federal SSS Funds for Grant Aid

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the SSS program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The statutory outcome PE criteria for the SSS program requires grantees to report on baccalaureate degree competition for participants at four-year institutions and certificate and associate degree completion and transfers to four-year institutions for participants at two-year institutions. The Department expects that these requirements for tracking the academic progress of SSS participants through degree completion to increase the reporting burden by six hours for each grantee.

We also propose to add new § 646.33 to incorporate the statutory provisions that permit a grantee to use Federal grant funds to provide grant aid to students. Many grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for grant aid. For those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), we estimate that the proposed regulations will increase the burden by two hours per grantee. The combined increase would result in a total burden increase of 6,720 hours for the revised APR, which would be reflected in a new OMB Control Number 1840–NEW10. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2011.

Section 647.22 (McNair)—How Does the Secretary Evaluate Prior Experience?

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria for the McNair Program to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the McNair program. Prior to the HEOA, the PE criteria were established in regulations.

Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its APR. The proposed regulations would amend the criteria the Secretary uses to award PE points.

The Department expects the new statutory requirements that include long-term tracking of the academic progress of McNair participants through completion of the doctoral degree will increase the reporting burden for this data collection by 4 hours per grantee. This will result in a total burden increase of 760 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW11. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2012 or 2013.

Part 694—GEAR UP

Sections 694.7, 694.8 and 694.9—Matching Requirements for GEAR UP Grants

The proposed regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The proposed regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The proposed regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.

We estimate that the proposed changes would increase burden by 12.5 hours for each GEAR UP applicant in OMB Control Number 1840–NEW12, for a total burden increase of 6,250 hours, based on 500 applicants. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

We estimate that the proposed changes would decrease burden by 500 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden decrease of 7,860 hours, and likewise in OMB Control Number 1840–NEW14, resulting in a total burden decrease of 5,625. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2011 or spring 2012. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds.

Section 694.16(c)—Scholarship Reporting Requirements

The proposed regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to 694.12(b)(2), elect make scholarships pursuant to the HEOA requirements in to furnish information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting would be required until these funds are fully expended or, if Federal funds, returned to the Secretary.

We estimate that these proposed changes would increase burden by 400 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden increase of 8,760, and by 800 hours for each grantee in OMB Control Number 1840–NEW14, resulting in a total burden increase of 6,925. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2011 or spring 2012.

Section 694.19—Priorities for GEAR UP Grants

The proposed regulations would provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Applicants would respond to these priorities as part of their applications in OMB Control Number 1840–NEW12, which would increase total burden by 6,250 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

Section 694.20—When May a GEAR UP Grantee Provide Services to Students Attending an Institution of Higher Education?

Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

We estimate that the proposed changes would increase burden by 300 hours in OMB Control Number 1840–NEW12 for each GEAR UP applicant for a total burden increase of 150,000 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be fall 2010.

Consistent with this discussion, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the Paperwork Reduction Act of 1995.

Regulation section	Information section	Collection OMB Control No.
Sections 642.21 and 642.25 (Training).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a Training grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW1 (Training) This is a new collection. The Department has submitted the new application form for public comment to be used for the next competition for new Training grants scheduled for spring/summer 2010. The proposed regulations would affect applicant burden in two ways. First, the proposed elimination of the *Need* selection criterion would reduce the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours. Additionally, the proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 12 hours (or, an estimated two burden hour increase for each of the estimated six applicants that will fall within an estimated 10 percent funding band under the second review process). In total, there would be an estimated decrease in burden of 228 hours.
Sections 643.21 and 643.24 (TS).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a TS grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW2 (TS) This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 60 hours (or, an estimated two burden hour increase for each of the estimated 30 applicants that will fall within an estimated two percent funding band under the second review process). In total, there would be an estimated burden increase of 60 hours.
Sections 644.21 and 644.24 (EOC).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for an EOC grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW3 (EOC) This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 20 hours (or, an estimated two burden hour increase for each of the estimated 10 applicants that will fall within an estimated two percent funding band under the second review process). In total, there would be an estimated burden increase of 20 hours.
Sections 645.31 and 645.35 (UB).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a UB grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW4 (UB) This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010 or 2011. The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 80 hours (or, an estimated two burden hour increase for each of the estimated 40 applicants that will fall within an estimated two percent funding band under the second review process). In total, there would be an estimated burden increase of 80 hours.

Regulation section	Information section	Collection OMB Control No.
Sections 646.11; 646.21 and 646.24 (SSS).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a SSS grant and amend the assurance and other information an applicant must include in its application. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW5 (SSS) This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2013. The Department does not expect that proposed amendments to the selection criteria or the assurance and other information an applicant must include in its application would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 66 hours (or, an estimated two burden hour increase for each of the estimated 33 applicants that will fall within an estimated two percent funding band under the second review process). In total, there would be an estimated burden increase of 66 hours.
Sections 647.21 and 647.24 (McNair).	The proposed regulations would amend the selection criteria the Secretary uses to evaluate an application for a McNair grant. The proposed regulations also would add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW6 (McNair) This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010 or 2011. The Department does not expect that proposed amendments to the selection criteria would change an applicant's paperwork burden. The proposed regulatory processes and procedures for a second review of unsuccessful applications would lead to an estimated burden increase of 16 hours (or, an estimated two burden hour increase for each of the estimated eight applicants that will fall within an estimated two percent funding band under the second review process). In total, there would be an estimated burden increase of 16 hours.
Section 642.22 (Training)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations, we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1894–0003 (Training) The Department would continue to use the Department's generic performance report for the Training program. Proposed changes would be editorial in nature. There would be no increase in estimated burden hours.
Sections 643.22 (TS) and 643.32.	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report. The proposed regulations also amend the recordkeeping requirements for TS.	1840–NEW7 (TS) This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new TS grants. The revised APR is needed for fall 2012 data collection. The proposed regulations would increase grantee data collection and reporting requirements in two ways. First, the proposed regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for TS grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. Additionally, the proposed regulatory amendments to recordkeeping requirements would require grantees to maintain a list of courses taken by participants receiving support to complete a rigorous secondary school program of study, a new data collection that would also increase grantees' burden hours. The Department expects these two proposed changes to result in an increase of 15 burden hours per grantee. In total, there would be an estimated burden increase of 7,050 hours.

Regulation section	Information section	Collection OMB Control No.
Section 644.22 (EOC)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW8 (EOC) This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new EOC grants. The revised APR is needed for fall 2012 data collection. Because the new statutory PE criteria are similar to the current regulatory PE criteria, the Department does not expect the proposed changes to affect the burden on EOC grantees. However, the Department expects that burden hours would be reduced as a result of the development of a new TS APR form, since such a form would allow the current TS/EOC APR form to be used exclusively by EOC grantees. In total, there would be an estimated burden decrease of 2,820 hours.
Section 645.32 (UB)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW9 (UB) This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new UB grants. The revised APR is needed for fall 2012 or 2013 data collection. The proposed regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for UB grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. The Department expects proposed changes to result in an increase of six burden hours per grantee. In total, there would be an estimated burden increase of 6,858 hours.
Sections 646.22 and 646.33 (SSS).	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report. The proposed regulations also add a new section on matching requirements for SSS.	1840–NEW10 (SSS) This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new SSS grants. The revised APR is needed for fall 2011 data collection. The proposed regulations would increase grantee data collection and reporting requirements in two ways. First, the proposed regulatory amendments to the PE criteria, which address statutory requirements for tracking the academic progress of SSS participants through degree completion, would increase the reporting burden by six hours for each grantee. Additionally, for those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), the proposed regulations would increase burden by an estimated two hours per grantee. In total, there would be an estimated burden increase of 6,720 hours.
Section 647.22 (McNair)	The proposed regulations would amend the prior experience (PE) criteria the Secretary uses to award PE points. Under the proposed regulations we would award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination would be based on the information the grantee submits in its annual performance report.	1840–NEW11 (McNair) This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new McNair grants. The revised APR is needed for fall 2012 or 2013 data collection. The proposed regulatory amendments to the PE criteria, which address statutory requirements for long-term tracking of the academic progress of McNair participants through completion of the doctoral degree, would increase the reporting burden by four hours for each grantee. In total, there would be an estimated burden increase of 760 hours.

Regulation section	Information section	Collection OMB Control No.
694.7, 694.8, and 694.9 GEAR UP.	The proposed regulations would provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds. The proposed regulations also would provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately. The proposed regulations also would provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement.	1840–NEW12 This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. There would be an estimated burden increase of 6,250 hours. 1840–NEW13 This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden decrease of 7,860 hours. 1840–NEW14 This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden decrease of 5,625 hours. The proposed regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The proposed regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The proposed regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.
694.14(c)	The proposed regulations would require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 to furnish information on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds until these funds are fully expended or returned to the Secretary.	1840–NEW13 This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. There would be an estimated burden increase of 8,760 hours. 1840–NEW14 This would be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR grants. There will be an estimated burden increase of 6,925 hours. The proposed regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, to provide information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting would be required until these funds are fully expended or, if Federal funds, returned to the Secretary.
694.19	The proposed regulations provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies.	1840–NEW12 This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. There would be an estimated burden increase of 6,250 hours. The proposed regulations would provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Regulation section	Information section	Collection OMB Control No.
694.20	Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.	1840–NEW12 This would be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2010. Burden would increase by 300 hours. Under the proposed regulations, GEAR UP applicants would be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Parts 206, 642, 643, 644, 645, 646, 647,and 694

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements, Training.

Dated: March 3, 2010.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 206, 642, 643, 644, 645, 646, 647, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

2. Section 206.3 is amended by:

A. In paragraph (a)(1), removing the word "parent" and adding, in its place, the words "immediate family member".

B. Revising paragraph (a)(2).

The revision reads as follows:

§ 206.3 Who is eligible to participate in a project?

(a) * * *

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 200, subpart C (Title I—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

* * * * *

3. Section 206.4 is amended by:

A. Redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively.

B. Adding a new paragraph (a)(6).

C. Adding new paragraphs (a)(9) through (a)(11).

The additions read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) * * *

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

* * * * *

(9) 34 CFR part 97 (Protection of Human Subjects).

(10) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(11) 34 CFR part 99 (Family Educational Rights and Privacy).

* * * * *

4. Section 206.5 is amended by:

A. Redesignating paragraphs (c)(5), (c)(6), and (c)(7) as paragraphs (c)(6), (c)(7), and (c)(8), respectively.

B. Adding a new paragraph (c)(5).

C. In newly redesignated paragraph (c)(7), removing the citation "(c)(7)" and adding, in its place, the citation "(c)(8)".

D. Revising newly redesignated paragraph (c)(8).

E. In paragraph (d)—

1. Removing the citation "34 CFR 201.3" and adding, in its place, the citation "34 CFR 200.81"; and

2. Removing the words "Chapter 1" and adding, in their place, the words "Title I".

The addition and revisions read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(c) * * *

(5) *Immediate family member* means one or more of the following:

(i) A spouse.

(ii) A parent, step-parent, adoptive parent, foster parent, or anyone with guardianship.

(iii) Any person who—

(A) Claims the individual as a dependent on a Federal income tax return for either of the previous two years, or

(B) Resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

* * * * *

(8) *Seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

* * * * *

5. Section 206.10 is amended by:

A. In paragraph (b)(1)(iii)(B), adding the words "(including preparation for college entrance examinations)" after the word "program".

B. In paragraph (b)(1)(v), removing the words "Weekly stipends" and adding, in their place, the word "Stipends".

C. In paragraph (b)(1)(viii), adding the words "(such as transportation and child care)" after the word "services".

D. In paragraph (b)(1), adding a new paragraph (ix).

E. In paragraph (b)(2)(ii) introductory text, adding the words "to improve placement, persistence, and retention in postsecondary education" after the word "services".

F. In paragraph (b)(2)(ii)(A), by—

1. Removing the word "and"; and

2. Adding the words "economic education, or personal finance" before the word "counseling".

G. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(vii).

H. Adding a new paragraph (b)(2)(vi).

I. In newly redesignated paragraph (b)(2)(vii), removing the words "support services", and adding, in their place, the words "essential supportive services (such as transportation and child care),".

The additions read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(ix) Other activities to improve persistence and retention in postsecondary education.

(2) * * *

(vi) Internships.

* * * * *

6. Section 206.11 is amended by:

A. In paragraph (b)(1), removing the word "and" after the punctuation";".

B. In paragraph (b)(2), removing the punctuation "." after the word "aid" and adding, in its place, the words ", and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and".

C. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 206.11 What types of CAMP services must be provided?

* * * * *

(b) * * *

(3) For students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of those students.

* * * * *

§ 206.20 [Amended]

7. Section 206.20(b)(2) is amended by removing the amount "$150,000" and adding, in its place, the amount "$180,000".

8. Section 206.31 is added to subpart D of part 206 to read as follows:

§ 206.31 How does the Secretary evaluate points for prior experience for HEP and CAMP service delivery?

(a) In the case of an applicant for a HEP award, the Secretary considers the applicant's experience in implementing an expiring HEP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of—

(i) Participants who received a general educational development (GED) credential; and

(ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(b) In the case of an applicant for a CAMP award, the Secretary considers the applicant's experience in implementing an expiring CAMP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who—

(i) Successfully completed the first year of college; and

(ii) Continued to be enrolled in postsecondary education after completing their first year of college; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d–2(e))

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

9. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

Subpart A of Part 642—[Amended]

10. Section 642.1 is revised to read as follows:

§ 642.1 What is the Training Program for Federal TRIO Programs?

The Training Program for Federal TRIO programs, referred to in these regulations as the Training program, provides Federal financial assistance to train the leadership personnel and staff employed in, or preparing for employment in, Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17)

11. Section 642.2 is amended by revising the section heading to read as follows:

§ 642.2 Who are eligible applicants?

* * * * *

12. Section 642.3 is amended by:

A. Revising the section heading.

B. In paragraph (a), adding the word "funded" after the word "projects".

C. In paragraph (b) by removing the words "staff or"; adding the words "or staff" after the word "personnel"; and adding the word "funded" after the word "projects".

The revision reads as follows:

§ 642.3 Who are eligible participants?

* * * * *

§§ 642.4 and 642.5 [Redesignated as §§ 642.5 and 642.6]

13. Sections 642.4 and 642.5 are redesignated as §§ 642.5 and 642.6.

14. A new § 642.4 is added to read as follows:

§ 642.4 How long is a project period?

A project period under the Training program is two years.

(Authority: 20 U.S.C. 1070a–17(b))

15. Newly redesignated § 642.5 is amended by:

A. Revising the section heading.

B. Revising paragraph (a).

The revisions read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

16. Newly redesignated § 642.6 is amended by:

A. Revising the section heading.

B. In paragraph (b) by revising the introductory text; revising definitions of "Federal TRIO programs", "Institution of higher education", "Leadership personnel"; adding, in alphabetical order, new definitions for "Foster care youth", "Homeless children and youth", "Individual with disabilities", and "Veteran"; and removing the authority citation following the definition of "Federal TRIO programs"; and

C. Adding an authority citation at the end of the section.

The revisions and additions read as follows:

§ 642.6 What definitions apply?

* * * * *

(b) *Definitions that apply to this part.*

* * * * *

Federal TRIO programs means those programs authorized under section 402A of the Act: the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement programs.

Foster care youth means youth who are in foster care or who are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

* * * * *

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Leadership personnel means project directors, coordinators, and other individuals involved with the supervision and direction of projects funded under the Federal TRIO programs.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1001 *et seq.,* 1070a–11, 1070–17(b), 1088, 1141, and 1144a)

17. Section 642.7 is added to subpart A of part 642 to read as follows:

§ 642.7 How many applications may an eligible applicant submit?

An applicant may submit more than one application for Training grants as long as each application describes a project that addresses a different absolute priority that is designated in the **Federal Register** notice inviting applications.

(Authority: 20 U.S.C. 1070d, 1070d–1d; 20 U.S.C. 1221e–3)

18. Subpart B of part 642 is revised to read as follows:

Subpart B—What Types of Projects and Activities Does the Secretary Assist under this Program?

Sec.

642.10 What types of projects does the Secretary assist?

642.11 What activities does the Secretary assist?

642.12 What activities may a project conduct?

Subpart B—What Types of Projects and Activities Does the Secretary Assist under this Program?

§ 642.10 What types of projects does the Secretary assist?

The Secretary assists projects that train the leadership personnel and staff of projects funded under the Federal TRIO Programs to enable them to operate those projects more effectively.

(Authority: 20 U.S.C. 1070a–17)

§ 642.11 What activities does the Secretary assist?

(a) Each year, one or more Training Program projects must provide training for new project directors.

(b) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating projects funded under the Federal TRIO programs.

(2) Assisting students to receive adequate financial aid from programs assisted under title IV of the Act and from other programs.

(3) The design and operation of model programs for projects funded under the Federal TRIO programs.

(4) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(5) Strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups

that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–17)

§ 642.12 What activities may a project conduct?

A Training program project may include on-site training, on-line training, conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operations of Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17(b))

PART 642—[AMENDED]

19. Part 642 is amended by redesignating subparts D and E as subparts C and D, respectively.

Subpart C of Part 642—[Amended]

§§ 642.30, 642.31, 642.32, 642.33, and 642.34 [Redesignated as §§ 642.20, 642.21, 642.22, 642.23, and 642.24]

20. Newly redesignated subpart C of part 642 is amended by redesignating §§ 642.30, 642.31, 642.32, 642.33, and 642.34 as §§ 642.20, 642.21, 642.22, 642.23, and 642.24, respectively.

21. Newly redesignated § 642.20 is amended by:

A. Revising the section heading.

B. In the introductory text of paragraph (a), removing the citation "§ 642.31" and adding, in its place, the citation "§ 642.21".

C. In paragraph (a)(1), removing the number "100" and adding, in its place, the number "75".

D. Revising paragraph (b).

E. Adding new paragraphs (c), (d), and (e).

The additions and revisions read as follows:

§ 642.20 How does the Secretary evaluate an application for a new award?

* * * * *

(b) In addition, for an applicant who is conducting a Training program in the fiscal year immediately prior to the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience (PE) of high quality service delivery, as provided in § 642.22, based on the applicant's performance during the first project year of that expiring Training program grant.

(c) The Secretary selects applications for funding within each specific absolute priority established for the competition in rank order on the basis of the score received by the application in the peer review process.

(d) Within each specific absolute priority, if there are insufficient funds to fund all applications at the next peer review score, the Secretary adds the PE points awarded under § 642.22 to the peer review score to determine an adjusted total score for those applications. The Secretary makes awards at the next peer review score to the applications that have the highest total adjusted score.

(e) In the event a tie score still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, consistent with § 642.23.

* * * * *

22. Newly redesignated § 642.21 is amended by:

A. Revising the section heading.

B. Revising paragraph (a)(2)(v)(C).

C. Revising paragraph (b)(2)(iv)(C).

D. Removing paragraph (f).

E. Adding an OMB control number parenthetical following the section.

The revisions and addition read as follows:

§ 642.21 What selection criteria does the Secretary use?

* * * * *

(a) * * *

(2) * * *

(v) * * *

(C) Individuals with disabilities; and

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(C) Individuals with disabilities; and

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW1)

* * * * *

23. Newly redesignated § 642.22 is revised to read as follows:

§ 642.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 642.20(b), the Secretary—

(1) Evaluates the applicant's performance under its expiring Training program grant;

(2) To determine the number of PE points to be awarded, uses the approved project objectives for the applicant's expiring Training program grant and the information the applicant submitted in its annual performance report (APR); and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicate the APR data used to calculate PE are incorrect.

(b)(1) The Secretary may add from 1 to 15 points to the point score obtained on the basis of the selection criteria in § 642.21, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (e) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary awards no PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(d) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary awards no PE points if the applicant did not serve the approved number of participants.

(e) The Secretary evaluates the applicant's PE on the basis of the following criteria:

(1) (4 points) Number of participants. Whether the applicant provided training to the approved number of participants.

(2) Training objectives. Whether the applicant met or exceeded its objectives for:

(i) (4 points) Assisting the participants in developing increased qualifications and skills to meet the needs of disadvantaged students.

(ii) (4 points) Providing the participants with an increased knowledge and understanding of the Federal TRIO Programs.

(3) (3 points) Administrative requirements. Whether the applicant met all the administrative requirements under the terms of the expiring grant, including recordkeeping, reporting, and financial accountability.

(Approved by the Office of Management and Budget under control number 1894–0003.)

(Authority: 20 U.S.C. 1070a–11)

24. Newly redesignated § 642.23 is amended by revising the section heading to read as follows:

§ 642.23 How does the Secretary ensure geographic distribution of awards?

* * * * *

25. Newly redesignated § 642.24 is revised to read as follows:

§ 642.24 What are the Secretary's priorities for funding?

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.
(2) Counseling.
(3) Assessment of student needs.
(4) Academic tests and testing.
(5) College and university admissions policies and procedures.
(6) Cultural enrichment programs.
(7) Career planning.
(8) Tutorial programs.
(9) Retention and graduation strategies.
(10) Strategies for preparing students for doctoral studies.
(11) Project evaluation.
(12) Budget management.
(13) Personnel management.
(14) Reporting student and project performance.
(15) Coordinating project activities with other available resources and activities.
(16) General project management for new directors.
(17) Statutory and regulatory requirements for the operation of projects funded under the Federal TRIO programs.
(18) Assisting students in receiving adequate financial aid from programs assisted under title IV of the Act and from other programs.
(19) The design and operation of model programs for projects funded under the Federal TRIO programs.
(20) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.
(21) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(17), (18), (19), (20), and (21) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

26. Section 642.25 is added to subpart C of part 642 to read as follows:

§ 642.25 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 642.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this

section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW1.)

(Authority: 20 U.S.C. 1070a–11)

27. A new § 642.26 is added to read as follows:

§ 642.26 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for a new grant, and

(2) 34 CFR 75.253, for the second year of a project period.

(b) The Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) 170,000; or

(2) The amount requested by the applicant.

Subpart D of Part 642—[Amended]

§ 642.40 and 642.41 [Redesignated as § 642.30 and 642.31]

28. Newly redesignated subpart D of part 642 is amended by redesignating §§ 642.40 and 642.41 as §§ 642.30 and 642.31, respectively.

29. Newly redesignated § 642.30 is amended by:

A. Revising the section heading.

B. In paragraph (d), removing the words "if approved in writing by the Secretary".

The revision reads as follows:

§ 642.30 What are allowable costs?

* * * * *

30. Newly redesignated § 642.31 is amended by revising the section heading to read as follows:

§ 642.31 What are unallowable costs?

* * * * *

PART 643—TALENT SEARCH

31. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

32. Section 643.1 is amended by:

A. In paragraph (b), adding the words ", and facilitate the application for," after the word "of".

B. Revising paragraph (c).

The revision reads as follows:

§ 643.1 What is the Talent Search program?

* * * * *

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

* * * * *

33. Section 643.2 is amended by:

A. In the introductory text, adding the word "entities" after the word "following".

B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".

C. Removing paragraph (d).

D. Redesignating paragraph (c) as paragraph (d).

E. Adding a new paragraph (c).

F. In newly redesignated paragraph (d), removing the words "paragraphs (a) and (b)" and adding, in their place, the words "paragraphs (a), (b), and (c)".

The addition reads as follows:

§ 643.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

34. Section 643.3 is amended by:

A. In paragraph (a)(3)(i), removing the words ", has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program".

B. In paragraph (a)(3)(ii), removing the words ", has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program".

C. Redesignating paragraph (b) as paragraph (c).

D. Adding a new paragraph (b).

E. In newly redesignated paragraph (c), removing the citation "643.6(b)" and adding, in its place, the citation "643.7(b)".

The addition reads as follows:

§ 643.3 Who is eligible to participate in a project?

* * * * *

(b) An individual is eligible to receive support to complete a rigorous secondary school program of study if the individual meets the requirements of paragraph (a)(1) of this section, is accepted into the Talent Search project by the end of the first term of the tenth grade, is enrolled or is preparing to enroll in a rigorous secondary school program of study, as defined by his or her State of residence, and is designated as enrolled in a rigorous secondary school program of study on reports submitted by the grantee to the Secretary.

* * * * *

35. Section 643.4 is revised to read as follows:

§ 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial literacy and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

(1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Personal and career counseling or activities.

(3) Information and activities designed to acquaint youth with the range of career options available to the youth.

(4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(5) Workshops and counseling for families of participants served.

(6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.

(7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(Authority: 20 U.S.C. 1070a–12)

36. Section 643.5 is revised to read as follows:

§ 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a–11)

37. Section 643.6 is amended by revising paragraph (a) to read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

38. Section 643.7(b) is amended by:

A. Revising the definition of "*Institution of higher education*".

B. Revising the definition of "*Veteran*".

C. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", "Individuals with disabilities", "Regular secondary school diploma", and "Rigorous secondary school diploma".

The revisions and additions read as follows:

§ 643.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (*e.g.,* searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system. * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially

limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA. * * *

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR § 691.16(a) through § 691.16(c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses. * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

39. Subpart B of part 643 is amended by revising the subpart heading to read as set forth above.

§ 643.10 [Redesignated as § 643.11]

39a. Redesignate § 643.10 as § 643.11.

40. A new § 643.10 is added to read as follows:

§ 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–12; 1221e–3)

41. Newly redesignated § 643.11 is amended by:

A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

B. In paragraph (a), adding the words ", and at least two-thirds of the participants selected to receive support for a rigorous secondary school program of study," after the words "Talent Search project".

C. Revising paragraph (b). The revision reads as follows:

§ 643.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Talent Search project; a Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part 694; a Regular Upward Bound, Upward Bound Math and Science Centers, or Veterans Upward Bound project under 34 CFR part 645; an Educational Opportunity Centers project under 34 CFR part 644; or other programs serving similar populations will not receive the same services under the proposed project.

* * * * *

42. Section 643.20 is amended by:

A. In paragraph (a)(2)(i), removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery (PE)".

B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

C. Adding paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words "through (3)" and adding, in their place, the words "and (a)(2)".

F. Revising paragraph (d).

The additions and revision read as follows:

§ 643.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed. * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

43. Section 643.21 is amended by:

A. Revising paragraphs (a), (b), and (c).

B. Revising paragraph (d)(2).

C. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–0065".

The revisions read as follows:

§ 643.21 What selection criteria does the Secretary use?

* * * * *

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to

which the application contains clear evidence of the following:

(1) (6 points) A high number or high percentage of the following—

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school's graduating high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by—

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation by low-income or first generation students in such courses.

(6) (4 points) Other indicators of need for a Talent Search project, including a high ratio of students to school counselors in the target schools and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth, in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the Need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants, including the project's plan and criteria for selecting individuals who would receive support to complete a rigorous secondary school program of study.

(3) (10 points) The plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) For those students in need of services to complete a rigorous secondary school program of study, the project's plan to provide services sufficient to enable the participants to succeed.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; financial, personnel, and records management; and, where appropriate, coordination with other programs for disadvantaged youth.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) * * *

(2) (8 points) Resources secured through written commitments from institutions of higher education, secondary schools, community organizations, and others.

* * * * *

44. Section 643.22 is revised to read as follows:

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Secondary school persistence. Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) Secondary school graduation (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of current and prior participants from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) Secondary school graduation (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(5) (3 points) Postsecondary enrollment. Whether the applicant met or exceeded its objective regarding the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in an institution of higher education by the fall term immediately following the school year.

(6) (1.5 points) Postsecondary completion. Whether the applicant met or exceeded its objective regarding the completion of a program of postsecondary education within the

number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the **Federal Register** notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840–NEW7.)

(Authority: 20 U.S.C. 1070a–12)

§ 643.23 [Amended]

45. Section 643.23 is amended by:

A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

B. In paragraph (b)(1), removing the amount "$180,000" and adding, in its place, the amount "$200,000".

46. A new § 643.24 is added to subpart C of part 643 to read as follows:

§ 643.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE

points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW2.)

(Authority: 20 U.S.C. 1070a–11)

47. Section 643.30 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

D. In paragraph (a)(2), removing the word "and".

E. In paragraph (a)(3)by adding the words "for participants" after the word "trips"; removing the words "in the target area"; and removing the punctuation "." at the end of the paragraph and adding, in its place, the words "; and".

F. Adding a new paragraph (a)(4).

G. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

H. Revising paragraph (f).

I. Adding new paragraphs (g) and (h).

The revision and additions read as follows:

§ 643.30 What are allowable costs?

* * * * *

(a) * * *

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken at an institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a high school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

* * * * *

48. Section 643.31 is amended in paragraph (a) by removing the phrase "Tuition, stipends," and by adding "Stipends" in its place.

49. Section 643.32 is amended by:

A. Removing paragraph (b).

B. Redesignating paragraph (c) as paragraph (b).

C. In newly redesignated paragraph (b) introductory text, removing the word "shall" and adding, in its place, the word "must".

D. In newly redesignated paragraph (b)(3), removing the word "and".

E. In newly redesignated paragraph (b)(4), removing the punctuation "." and adding, in its place, the words "; and".

F. Adding a new paragraph (b)(5).

G. Adding a new paragraph (c).

H. Removing paragraph (d).

I. In the OMB control number parenthetical following newly added paragraph (c), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–NEW2".

The additions read as follows:

§ 643.32 What other requirements must a grantee meet?

* * * * *

(b) * * *

(5) A list of courses taken by participants receiving support to complete a rigorous secondary school

program of study as defined in § 643.7(b).

(c) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Talent Search program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

50. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

51. Section 644.1 is amended by:

A. In the introductory text, removing the words "to provide".

B. In paragraph (a), removing the word "Information" and adding, in its place, the words "To provide information"; removing the word "for" and adding, in its place, the word "to"; and removing the word "and" that appears after the punctuation ";".

C. In paragraph (b), removing the word "Assistance" and adding, in its place, the words "To provide assistance"; and removing the punctuation "." at the end of the sentence and adding, in its place, the word "; and".

D. Adding a new paragraph (c).

The addition reads as follows:

§ 644.1 What is the Educational Opportunity Centers program?

* * * * *

(c) To improve the financial literacy and economic literacy of participants on topics such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

52. Section 644.2 is amended by:

A. In the introductory text of the section, adding the word "entities" after the word "following".

B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".

C. Removing paragraph (d).

D. Redesignating paragraph (c) as paragraph (d).

E. Adding a new paragraph (c).

F. In newly redesignated paragraph (d), removing the word "and" before the citation "(b)" and adding, in its place, the punctuation ","; and adding the words ", and (c)" after the citation "(b)".

The addition reads as follows:

* * * * *

§ 644.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

53. Section 644.4 is amended by:

A. Redesignating paragraphs (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively.

B. Adding a new paragraph (e).

C. In newly redesignated paragraph (g), removing the word "Personal" and adding, in its place, the words "Individualized personal, career, and academic".

D. Revising newly redesignated paragraph (k).

The addition and revision read as follows:

§ 644.4 What services may a project provide?

* * * * *

(e) Education or counseling services designed to improve the financial literacy and economic literacy of participants.

* * * * *

(k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.

* * * * *

54. Section 644.5 is revised to read as follows:

§ 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a–11)

55. Section 644.6 is amended by revising paragraph (a) to read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

56. Section 644.7(b) is amended by:

A. Adding, in alphabetical order, new definitions for *Different population, Financial and economic literacy, Foster care youth, Homeless children and youth,* and *Individual with disabilities.*

B. Revising the definition of *Institution of higher education.*

C. Revising the definition of *Veteran.*

The additions and revisions read as follows:

§ 644.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that—

(i) Is separate and distinct from any other population that the entity has applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary education (*e.g.,* spending, saving, personal budgeting);

(iv) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(v) Scholarship, grant, and loan education (*e.g.,* searches, application processes, and differences between private and government loans); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means those persons defined in section 725 of

the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Veteran means a person who—

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

57. The heading for subpart B of part 644 is revised to read as set forth above.

§ 644.10 [Redesignated as § 644.11]

58. In subpart B of part 644, § 644.10 is redesignated as § 644.11.

59. A new § 644.10 is added to subpart B of part 644 to read as follows:

§ 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11, 1221e–3)

60. Newly redesignated § 644.11 is amended by:

A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

B. Revising paragraph (b).

The revision reads as follows:

§ 644.11 What assurances must an applicant submit?

* * * * *

(b) Individuals who are receiving services from another Educational Opportunity Center project under this part, a Veterans Upward Bound project under 34 CFR part 645, a Talent Search project under 34 CFR part 643, or other programs serving similar populations will not receive the same services under the proposed project.

* * * * *

61. Section 644.20 is amended by:

A. In paragraph (a)(2)(i), removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery (PE)".

B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Removing paragraph (a)(3).

E. In paragraph (b), removing the words "paragraphs (a)(1) through (3)" and adding, in their place, the words "paragraph (a)".

F. Revising paragraph (d).

The revision and additions read as follows:

§ 644.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

62. Section 644.21 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the words "of support" after the word "commitments"; and adding the words "institutions of higher education, secondary" before the word "schools".

C. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0065" and adding, in their place, the numbers "1840–NEW3".

The revision reads as follows:

§ 644.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent.

(2) (4 points) Postsecondary enrollment.

(3) (1 point) Student financial aid assistance.

(4) (1 point) Student college admission assistance.

* * * * *

63. Section 644.22 is revised to read as follows:

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;

(2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (d)(1) of this section (Number

of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to the approved number of participants.

(2) (3 points) *Secondary school diploma.* Whether the applicant met or exceeded its approved objective with regard to participants who do not have a secondary school diploma or its equivalent who enroll in programs leading to a secondary school diploma or its equivalent.

(3) (6 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates who enroll in programs of postsecondary education during the project year by the fall term immediately following the school year.

(4) (1.5 points) *Financial aid assistance.* Whether the applicant met or exceeded its objective regarding assistance to individuals in completing financial aid applications.

(5) (1.5 points) *College admission assistance.* Whether the applicant met or exceeded its objective regarding assistance to individuals in completing applications for college admission.

(Approved by the Office of Management and Budget under control number 1840–NEW8.)

(Authority: 20 U.S.C. 1070a–16)

64. Section 644.23 is amended by:

A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

B. Revising paragraph (b)(1).

The revision reads as follows:

§ 644.23 How does the Secretary set the amount of a grant?

* * * * *

(b) * * *

(1) $200,000; or

* * * * *

65. Section 644.24 is added to subpart C of part 644 to read as follows:

§ 644.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as

described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW3)

(Authority: 20 U.S.C. 1070a–11)

66. Section 644.30 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

D. Revising paragraph (a)(3).

E. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

F. Revising paragraph (f).

The revisions read as follows:

§ 644.30 What are allowable costs?

* * * * *

(a) * * *

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

67. Section 644.32 is amended by:

A. Removing paragraphs (b) and (d).

B. Redesignating paragraph (c) as paragraph (b).

C. Adding a new paragraph (c).

D. In the OMB control number parenthetical following paragraph (b), removing the numbers "1840–0065" and adding, in their place, the numbers "1840–NEW8".

The addition reads as follows:

§ 644.32 What other requirements must a grantee meet?

* * * * *

(c) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Educational Opportunity Centers program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

PART 645—UPWARD BOUND PROGRAM

68. The authority citation for part 645 is revised to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

69. Section 645.2 is amended by:

A. In paragraph (a), removing the word "Institutions" and adding, in its place, the words "An institution".

B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 645.2 Who is eligible for a grant?

* * * * *

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

* * * * *

70. Section 645.4 is amended by:

A. Revising the section heading.

B. Removing paragraph (a).

C. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

The revision reads as follows:

§ 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

* * * * *

71. Section 645.5 is amended by revising paragraph (a) to read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

72. Section 645.6(b) is amended by:

A. Revising the definition of *Institution of higher education.*

B. Revising the definition of *Veteran.*

C. Adding, in alphabetical order, new definitions for *Different population, Financial and economic literacy, Foster care youth, Homeless children and youth, Individual who has a high risk for academic failure, Individual with disabilities, Regular secondary school diploma, Rigorous secondary school program of study,* and *Veteran who has a high risk for academic failure.*

The revisions and additions read as follows:

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

* * * * *

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant, and loan education (*e.g.,* searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)).

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who—

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not completed pre-algebra, algebra, or geometry; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the ACG Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Veteran who has a high risk for academic failure means a veteran who—

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with disabilities as defined in § 645.6(b).

* * * * *

73. Section 645.11 is revised to read as follows:

§ 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide—

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial literacy and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(Authority: 20 U.S.C. 1070a–13)

§ 645.12, 645.13, and 645.14 [Redesignated as § 645.13, 645.14, and 645.15]

74. Sections 645.12, 645.13, and 645.14 of subpart B of part 645 are redesignated as §§ 645.13, 645.14, and 645.15 of subpart B of part 645, respectively.

75. A new § 645.12 is added to subpart B of part 645 to read as follows:

§ 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as—

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree; and

(f) Programs and activities as described in § 645.11 or paragraphs (a)(1) through (a)(6) of this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants.

(Authority: 20 U.S.C. 1070a–13)

76. Newly redesignated § 645.15 is amended by—

A. In the introductory text, removing the words "§ 645.11(a) and may be provided under § 645.11(b)" and adding, in their place, the citation "§ 645.11";

B. In paragraph (b), removing the word "and";

C. In paragraph (c), removing the punctuation "." and adding, in its place, the word "; and"; and

D. Adding a new paragraph (d).

The addition reads as follows:

§ 645.15 What additional services do Veterans Upward Bound projects provide?

* * * * *

(d) Provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

* * * * *

77. Section 645.20 is revised to read as follows:

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–13, 1221e–3)

78. Section 645.21 is revised to read as follows:

§ 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) project under 34 CFR part 694, another regular Upward Bound or Upward Bound Math and Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) Individuals who are receiving services from GEAR UP under 34 CFR part 694, a regular Upward Bound or another Upward Bound Math-Science Centers project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) Individuals who are receiving services from another Veterans Upward Bound project under this part, a Talent Search project under 34 CFR part 643, an Educational Opportunity Centers project under 34 CFR part 644, or other programs serving similar populations will not receive the same services under the proposed project.

(Authority: 20 U.S.C. 1070a–13)

79. Section 645.30 is amended by:

A. In paragraph (a)(2)(i), removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery (PE)".

B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The additions and revision read as follows:

§ 645.30 How does the Secretary decide which grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

80. Section 645.31 is amended by:

A. Revising paragraph (b).

B. In paragraph (d)(2), adding the word "secondary" after the word "from"; and adding the words "institutions of higher education," after the word "schools,".

The revision reads as follows:

§ 645.31 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers—

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound—

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

* * * * *

81. Section 645.32 is revised to read as follows:

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section (Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(ii) of this section (Academic improvement on standardized test) and paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) *Regular Upward Bound and Upward Bound Math and Science Centers.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to the approved number of participants.

(ii) *Academic Performance.* (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to the percentage of project participants that received a 2.5 grade point average or better on a 4.0 scale or its equivalent at the end of each school year.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective

with regard to the percentage of project participants that performed at the proficient level on State assessments in reading/language arts and math.

(iii) (3 points) *Secondary school retention and graduation.* Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) *Rigorous secondary school program of study.* Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who were enrolled in and completed a rigorous secondary school program of study.

(v) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the percentage of current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education by the fall term immediately following the school year.

(vi) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(2) *Veterans Upward Bound.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to the approved number of participants.

(ii) (3 points) *Academic improvement on standardized test.* Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who improved their academic performance during the project year as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) *Education program retention and completion.* Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who remain enrolled in or completed their Veterans Upward Bound educational program during the project year.

(iv) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the percentage of participants who enrolled in an institution of higher education during the project year or by the fall term immediately following the project year.

(v) (3 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to the percentage of postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.33 [Amended]

82. Section 645.33 is amended by, in paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

83. Section 645.34 is revised to read as follows:

§ 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a–11)

84. A new § 645.35 is added to subpart D of part 645 to read as follows:

§ 645.35 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW4.)

(Authority: 20 U.S.C. 1070a–11)

85. Section 645.40 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. Revising paragraph (n).

C. Redesignating paragraph (o) as paragraph (p).

D. Adding new paragraph (o).

The revision and addition read as follows:

§ 645.40 What are allowable costs?

* * * * *

(n) Purchase, lease, or rental of computer hardware, software, and other equipment and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software needed for project administration and recordkeeping.

* * * * *

86. Section 645.42 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 645.42 What are Upward Bound stipends?

* * * * *

(d) * * *

(1) * * *

(ii) The stipend may not exceed $60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid $300 per month during the summer school recess.

* * * * *

87. Section 645.43 is amended by:

A. Removing paragraphs (a) and (b).

B. Adding a new paragraph (a).

C. Redesignating paragraph (c) as paragraph (b).

D. Adding an OMB control number parenthetical following paragraph (b).

The additions read as follows:

§ 645.43 What other requirements must a grantee meet?

(a) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (a)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Regular Upward Bound, Upward Bound Math and Science or Veterans Upward Bound program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW9.)

* * * * *

PART 646—STUDENT SUPPORT SERVICES

88. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

89. Section 646.1 is amended by:

A. In paragraph (a), adding the word "college" before the word "retention".

B. Revising paragraph (c).

C. Adding new paragraph (d).

The revision and addition read as follows:

§ 646.1 What is the Student Support Services program?

* * * * *

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial literacy and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

90. Section 646.4 is revised to read as follows:

§ 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist students participating in the project in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for—

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–14)

91. Section 646.5 is revised to read as follows:

§ 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a–11)

92. Section 646.6 is amended by revising paragraph (a) to read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

93. Section 646.7 is amended by:

A. Removing paragraph (a).

B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

C. In newly redesignated paragraph (b), revising the definition of *Different campus;* removing the definition of *Different population of participants;* revising the definition of *Individual with disabilities;* and adding, in alphabetical order, new definitions for *Different population, Financial and economic literacy, First generation college student, Foster care youth, Homeless children and youth, Institution of higher education,* and *Low-income individual.*

The revisions and additions read as follows:

§ 646.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for secondary education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (*e.g.,* searches, application processes, differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in educational experiences and opportunities.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

* * * * *

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

94. Subpart B of part 646 is revised to read as follows:

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14; 20 U.S.C. 1221e–3)

§ 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that—

(1) Not less than two-thirds of the project participants will be—

(i) Low-income individuals who are first generation college students; or

(ii) Individuals with disabilities;

(2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and

(3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.

(b) The applicant must describe in the application its efforts, and where applicable, past history, in—

(1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and

(2) Maintaining the loan burden of each student in the project at a manageable level.

(Approved by the Office of Management and Budget under control number 1840–1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

95. Section 646.20 is amended by:

A. In paragraph (a)(2)(i), removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery (PE)".

B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

D. Revising paragraph (d).

The revisions and additions read as follows:

§ 646.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

96. Section 646.21 is amended by:

A. Revising paragraph (b).

B. Revising the OMB control number at the end of the section.

The revision reads as follows:

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW5.)

* * * * *

97. Section 646.22 is revised to read as follows:

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (4 points) Postsecondary retention. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-year institution to a four-year institution during the academic year.

(3) (4 points) Good academic standing. Whether the applicant met or exceeded its objective regarding the percentage of all participants served who are in good academic standing at the grantee institution.

(4) (4 points) Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree). Whether the applicant met or exceeded its objective regarding the percentage of participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree). Whether the applicant met or exceeded its objectives regarding the percentage of participants who—

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11; 1070a–14)

§ 646.23 [Amended]

98. Section 646.23(b)(1) is amended by removing the amount "$170,000" and adding, in its place, the amount "$200,000".

99. A new § 646.24 is added to subpart C of part 646 to read as follows:

§ 646.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes

errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW5.)

(Authority: 20 U.S.C. 1070a–11)

100. Section 646.30 is amended by:

A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

B. Revising paragraph (f).

C. Adding new paragraphs (i) and (j).

The revision and additions read as follows:

§ 646.30 What are allowable costs?

* * * * *

(f) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

* * * * *

(i) Grant Aid to eligible students who—

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that—

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year

students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for—

(1) Students who are homeless children and youths or were formerly homeless children and youths; and

(2) Students who are foster care youth.

* * * * *

§ 646.31 [Amended]

101. Section 646.31(b) is amended by adding the words ", except for Grant aid under § 646.30(i)" after the word "support".

§ 646.32 [Amended]

102. Section 646.32 is amended by:

A. In paragraph (a)(2), removing the words "Higher Education".

B. Revising paragraph (c).

C. In the OMB control number parenthetical following paragraph (d), removing the numbers "1840–0017" and adding, in its place, the numbers "1840–NEW5".

The revisions read as follows:

§ 646.32 What other requirements must a grantee meet?

* * * * *

(c) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (c)(1) of this section if the applicant demonstrates that the requirement to administer no more than three programs will hinder effective coordination between the Student Support Services program and—

(i) One or more Federal TRIO programs (sections 402A through 402F of the HEA); or

(ii) One or more similar programs funded through other sources.

* * * * *

103. Section 646.33 is added to subpart D of part 646 to read as follows:

§ 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student Grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for Grant aid to eligible students described in § 646.30(i) must—

(1) Match the Federal funds used for Grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for Grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for Grant aid.

(Approved by the Office of Management and Budget under control number 1840–NEW10.)

(Authority: 20 U.S.C. 1070a–11)

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

104. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

105. Section 647.4 is revised to read as follows:

§ 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

(1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.

(2) Summer internships.

(3) Seminars and other educational activities designed to prepare students for doctoral study.

(4) Tutoring.

(5) Academic counseling.

(6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

(1) Education or counseling services designed to improve the financial literacy and economic literacy of students, including financial planning for postsecondary education.

(2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(Authority: 20 U.S.C. 1070a–15)

106. Section 647.5 is revised to read as follows:

§ 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a–11)

107. Section 647.6 is amended by revising paragraph (a) to read as follows:

§ 647.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215–75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

108. Section 647.7(b) is amended by:

A. Removing the definition of *Summer internship.*

B. In the definition of *Graduate center,* revising the introductory text.

C. Revising the definition of *Groups underrepresented in graduate education.*

D. Revising the definition of *Institution of higher education.*

E. Adding, in alphabetical order, new definitions for *Different campus, Different population, Financial and economic literacy,* and *Research or scholarly activity.*

The revisions and additions read as follows:

§ 647.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, including but not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Scholarship, grant and loan education (*e.g.,* searches, application processes, and differences between private and government loans); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

* * * * *

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that—

* * * * *

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

* * * * *

Subpart B—How Does One Apply for an Award?

109. Subpart B of part 647 is amended by revising the subpart heading to read as set forth above.

§ 647.10 [Redesignated as § 647.11]

109a. Redesignate § 647.10 as § 647.11.

110. Section 647.10 is added to subpart B of part 647 to read as follows:

§ 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3)

111. Section 647.20 is amended by:

A. In paragraph (a)(2)(i), adding the words "of high quality service delivery (PE)" after the words "prior experience".

B. Revising paragraph (a)(2)(ii).

C. Adding new paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).

D. Revising paragraph (d).

The revisions and addition read as follows:

§ 647.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

* * * * *

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

112. Section 647.21 is amended by:

A. Revising paragraph (b).

B. Adding an OMB control number parenthetical following paragraph (d).

The revision and addition read as follows:

§ 647.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Research.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW6)

* * * * *

113. Section 647.22 is revised to read as follows:

§ 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in § 647.20(a)(2)(i), the Secretary—

(1) Evaluates an applicant's performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant's expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) For the criteria specified in paragraph (e)(1) of this section (Number of participants), the Secretary does not award any PE points if the applicant did not serve the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) Number of participants. Whether the applicant provided services to the approved number of participants.

(2) (3 points) Research and scholarly activities. Whether the applicant met or exceeded its objective for providing

participants with appropriate research and scholarly activities each academic year.

(3) (3 points) Graduate school enrollment. Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants who complete the baccalaureate program during the academic year.

(4) (4 points) Continued enrollment in graduate school. Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) Doctoral degree attainment. Whether the applicant met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840–NEW11.)

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.23 [Amended]

114. Section 647.23 is amended by:

A. In paragraph (b), introductory text, removing the words "beginning in fiscal year 1995".

B. In paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

115. Section 647.24 is added to subpart C of part 647 to read as follows:

§ 647.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as discussed in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW6.)

(Authority: 20 U.S.C. 1070a–11)

116. Section 647.30 amended by:

A. In paragraph (b), removing the amount "$2,400" and, adding, in its place, the amount "$2,800".

B. Revising paragraph (d).

The revision reads as follows:

§ 647.30 What are allowable costs?

* * * * *

(d) Purchase, lease, or rental of computer hardware, computer software, or other equipment for participant development, project administration, or project recordkeeping.

117. Section 647.32 is amended by adding an OMB control number parenthetical following paragraph (d) to read as follows:

§ 647.32 What other requirements must a grantee meet?

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW11.)

* * * * *

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

118. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

119. Section 694.1 is amended by revising paragraph (a), introductory text to read as follows:

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The Secretary may establish the maximum amount that may be awarded each fiscal year for a GEAR UP Partnership grant in a notice published in the **Federal Register**. The maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or the amount calculated by multiplying—

* * * * *

120. Section 694.4 is amended by revising paragraph (b)(2) to read as follows:

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

* * * * *

(b) * * *

(2) Must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

* * * * *

121. Section 694.7 is revised to read as follows:

§ 694.7 What are the matching requirements for a GEAR UP grant?

(a) In order to be eligible for GEAR UP funding—

(1) An applicant must state in its application the percentage of the cost of the GEAR UP project the applicant will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period.

(b) Except as provided in §§ 694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (*i.e.,* one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) over the project period.

(c) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

122. Part 694 is amended by redesignating §§ 694.8, 694.9, 694.10, 694.11, 694.12, 694.13, and 694.15 as follows:

Old section	New section
§ 694.8	§ 694.10
§ 694.9	§ 694.11
§ 694.10	§ 694.13
§ 694.11	§ 694.15
§ 694.12	§ 694.17
§ 694.13	§ 694.18
§ 694.15	§ 694.19

123. New § 694.8 is added to read as follows:

§ 694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b)(1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (*e.g.,* there are few employers in the local area, large employers have left the local area, or significant reductions in employment in the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) At the time of application, the Secretary may provide tentative approval of an applicant's request for a waiver under paragraph (b)(1) of this section for all remaining years of the project period. Grantees that receive tentative approval of a waiver for more than two years under this paragraph must submit to the Secretary every two years by such time as the Secretary may direct documentation that demonstrates that—

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes—

(1) A fiscal agent that is eligible to receive funds under title V, or Part B of title III, or section 316 or 317 of the HEA, or a local educational agency;

(2) Only participating schools with a 7th grade cohort in which at least 75 percent of the students are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act; and

(3) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act.

(Authority: 20 U.S.C. 1070a–23)

124. New § 694.9 is added to read as follows:

§ 694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to—

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that—

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues from State government, County government, or the local educational agency (LEA).

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (*e.g.,* large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under § 694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant an additional waiver request for up to 50 percent of the matching requirement for a period of up to two years beyond the expiration of any previous waiver.

(Authority: 20 U.S.C. 1070a–23)

125. New § 694.12 is added to read as follows:

§ 694.12 Under what conditions do State and Partnership GEAR UP grantees make section 404E scholarship awards?

(a)(1) *State Grantees.* All State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable.

(2) *Partnership Grantees.* Partnerships may, but are not required, to award scholarships to eligible students. If a Partnership awards scholarships to eligible students pursuant to section 404E of the HEA, it must comply with the requirements of § 694.13 or § 694.14, as applicable.

(b)(1) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008.* A State or Partnership grantee making section 404E

scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.13 unless it elects to provide the scholarships in accordance with the requirements of § 694.14 pursuant to paragraph (b)(2) of this section.

(2) *Election to use § 694.14 requirements.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, may provide such scholarship awards in accordance with the requirements of § 694.14 (rather than the requirements of § 694.13) provided that the grantee—

(i) Informs the Secretary, in writing, of its election to make the section 404E scholarship awards in accordance with the requirements of § 694.14; and

(ii) Such election does not decrease the amount of the scholarship promised to any individual student under the grant.

(c) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made on or after August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.14.

(Authority: 20 U.S.C. 1070a–25)

126. Newly redesignated § 694.13 is revised to read as follows:

§ 694.13 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008?

The following requirements apply to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 unless the grantee elects to provide such scholarship awards in accordance with the requirements of § 694.14 pursuant to § 694.12(b)(2).

(a)(1) The maximum scholarship amount that an eligible student may receive under this section must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of—

(i) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public institutions of higher education in the student's State; or

(ii) The maximum Federal Pell Grant award funded under section 401 of the HEA for the award year in which the scholarship is awarded.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) Scholarships provided under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(c) Grantees providing section 404E scholarship awards in accordance with this section—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (c)(1) of this section, award GEAR UP scholarships to other eligible students (*i.e.,* students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(d) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in activities under § 694.21 or § 694.22.

(e) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(f) A State or a Partnership that makes scholarship awards from GEAR UP funds in accordance with this section must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

127. New § 694.14 is added to read as follows:

§ 694.14 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008?

The following requirements apply to section 404E scholarship awards provided by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were issued prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elected to use the § 694.14 requirements (rather than the § 694.13 requirements).

(a)(1) The maximum scholarship amount that an eligible student may receive under section 404E of the HEA must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend

institutions of higher education outside the State; and

(4) Has participated in the activities required under § 694.21.

(c)(1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and § 694.16(a), States must use funds held in reserve to make scholarships to eligible students.

(3) Scholarships must be made to all students who are eligible under the definition in paragraph (b) of this section. A grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

(d) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

(g) A State or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(h) A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(Authority: 20 U.S.C. 1070a–25)

128. Newly redesignated § 694.15 is revised to read as follows:

§ 694.15 May a Partnership that does not award scholarships under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education using non-Federal funds?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds, and those funds may be used to satisfy the matching requirement.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

129. Section 694.16 is added to read as follows:

§ 694.16 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

The following requirements apply only to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008, and to any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements):

(a) Scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by eligible students as defined in § 694.14(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

(Authority: 20 U.S.C. 1070a–25(e))

130. Newly redesignated § 694.18 is revised to read as follows:

§ 694.18 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate to each student participating in its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

131. Newly redesignated § 694.19 is revised to read as follows:

§ 694.19 What priorities does the Secretary establish for a GEAR UP grant?

The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21(b))

132. New § 694.20 is added to read as follows:

§ 694.20 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an institution of higher education if the State or Partnership—

(1) Applies for and receives a new GEAR UP award after August 14, 2008, and

(2) In its application, requested a seventh year so that it may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort)

approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of higher education, provided that the grantee continues to provide all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee—

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services under this part to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

(Authority: 20 U.S.C. 1070a–21(b)(2))

133. New § 694.21 is added to read as follows:

§ 694.21 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to eligible participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who—

(1) Obtain a secondary school diploma, and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of a State grantee that has not received a 100-percent waiver under section 404E(b)(2) of the HEA, providing scholarships in accordance with section 404E of the HEA.

(Authority: 20 U.S.C. 1070a–24(a))

134. New § 694.22 is added to read as follows:

§ 694.22 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out one or more of the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership, and other activities that support participating students in—

(1) Meeting challenging State academic standards;

(2) Successfully applying for postsecondary education;

(3) Successfully applying for student financial aid; and

(4) Developing graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum.

(f) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(g) For Partnerships, providing scholarships described in section 404E of the HEA, and for all grantees providing appropriate administrative support for GEAR UP scholarships.

(h) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(i) Providing an intensive extended school day, school year, or summer program that offers—

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(j) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(k) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(l) Providing services to eligible students in the participating cohort described in § 694.3 through the first year of attendance at an institution of higher education.

(m) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(n) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(o) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, engaging other potential partners in a collaborative manner to provide matching resources and to participate in other activities authorized in §§ 694.21, 694.22, and 694.23.

(Authority: 20 U.S.C. 1070a–24(b))

135. New § 694.23 is added to read as follows:

§ 694.23 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§ 694.21 and 694.22, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to—

(1) Secondary schools that are located within the State; or

(2) Partnerships that are eligible to apply for a GEAR UP grant and that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f)(1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f)(2)(ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to—

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for individuals who have dropped out of high school that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

(Authority: 20 U.S.C. 1070a–24)

136. New § 694.24 is added to read as follows:

§ 694.24 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and § 694.20, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them. Examples of services that may be provided include—

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or though electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring, mentoring, and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.

(Authority: 20 U.S.C. 1070a–24)

137. New § 694.25 is added to read as follows:

§ 694.25 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

If a Partnership or State is awarded a GEAR UP grant on or after August 14, 2008 (*i.e.,* initial grant), the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and the grantee receives a new award in a subsequent GEAR UP competition (*i.e.,* new grant), the grantee must—

(a) Continue to provide services required by or authorized under §§ 694.21, 694.22, and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade; and

(b) Provide the services specified in paragraph (a) of this section by using Federal GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

(Authority: 20 U.S.C. 1070a–21(b)(3)(B) and 1070a–22(d)(1)(C))

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Federal Register

Tuesday,
March 23, 2010

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2010-0018]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce three 12–month findings on petitions to list three entities of the greater sage-grouse (*Centrocercus urophasianus*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that listing the greater sage-grouse (rangewide) is warranted, but precluded by higher priority listing actions. We will develop a proposed rule to list the greater sage-grouse as our priorities allow.

We find that listing the western subspecies of the greater sage-grouse is not warranted, based on determining that the western subspecies is not a valid taxon and thus is not a listable entity under the Act. We note, however, that greater sage-grouse in the area covered by the putative western subspecies (except those in the Bi-State area (Mono Basin), which are covered by a separate finding) are encompassed by our finding that listing the species is warranted but precluded rangewide.

We find that listing the Bi-State population (previously referred to as the Mono Basin area population), which meets our criteria as a distinct population segment (DPS) of the greater sage-grouse, is warranted but precluded by higher priority listing actions. We will develop a proposed rule to list the Bi-State DPS of the greater sage-grouse as our priorities allow, possibly in conjunction with a proposed rule to list the greater sage-grouse rangewide.

DATES: The finding announced in the document was made on March 23, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *www.fws.gov*. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009; telephone (307) 772-2374; facsimile (307) 772-2358. Please submit any new information, materials, comments, or questions concerning this species to the Service at the above address.

FOR FURTHER INFORMATION CONTACT: Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Ecological Services Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition containing substantial scientific or commercial information that the listing may be warranted, we make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding; that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Action

Greater Sage-Grouse

On July 2, 2002, we received a petition from Craig C. Dremann requesting that we list the greater sage-grouse (*Centrocercus urophasianus*) as endangered across its entire range. We received a second petition from the Institute for Wildlife Protection on March 24, 2003, requesting that the greater sage-grouse be listed rangewide. On December 29, 2003, we received a third petition from the American Lands Alliance and 20 additional conservation organizations (American Lands Alliance *et al.*) to list the greater sage-grouse as threatened or endangered rangewide. On April 21, 2004, we announced our 90–day petition finding in the **Federal Register** (69 FR 21484) that these petitions taken collectively, as well as information in our files, presented substantial information indicating that the petitioned actions may be warranted. On July 9, 2004, we published a notice to reopen the period for submitting comments on our 90–day finding, until July 30, 2004 (69 FR 41445). In accordance with section 4(b)(3)(A) of the Act, we completed a status review of the best available scientific and commercial information on the species. On January 12, 2005, we announced our not-warranted 12–month finding in the **Federal Register** (70 FR 2243).

On July 14, 2006, Western Watersheds Project filed a complaint in Federal district court alleging that the Service's 2005 12–month finding was incorrect and arbitrary and requested the finding be remanded to the Service. On December 4, 2007, the U.S. District Court of Idaho ruled that our 2005 finding was arbitrary and capricious, and remanded it to the Service for further consideration. On January 30, 2008, the court approved a stipulated agreement between the Department of Justice and the plaintiffs to issue a new finding in May 2009, contingent on the availability of a new monograph of information on the sage-grouse and its habitat (Monograph). On February 26, 2008, we published a notice to initiate a status review for the greater sage-grouse (73 FR 10218), and on April 29, 2008, we published a notice extending the request for submitting information to June 27, 2008 (73 FR 23172). Publication of the Monograph was delayed due to circumstances outside the control of the Service. An amended joint stipulation, adopted by the court on June 15, 2009, required the Service to submit the 12–month finding to the **Federal Register** by February 26, 2010; this due date was subsequently extended to March 5, 2010.

Western Subspecies of the Greater Sage-Grouse

The western subspecies of the greater sage-grouse (*Centrocercus urophasianus phaios*) was identified by the Service as a category 2 candidate species on September 18, 1985 (50 FR 37958). At the time, we defined Category 2 species as those species for which we possessed information indicating that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. On February 28, 1996, we discontinued the designation of category 2 species as candidates for listing under the Act (61 FR 7596), and consequently the western subspecies was no longer considered to be a candidate for listing.

We received a petition, dated January 24, 2002, from the Institute for Wildlife

Protection requesting that the western subspecies occurring from northern California through Oregon and Washington, as well as any western sage-grouse still occurring in parts of Idaho, be listed under the Act. The petitioner excluded the Mono Basin area populations in California and northwest Nevada since they already had petitioned this population as a distinct population segment (DPS) for emergency listing (see discussion of Bi-State area (Mono Basin) population below). The petitioner also requested that the Service include the Columbia Basin DPS in this petition, even though we had already identified this DPS as a candidate for listing under the Act (66 FR 22984, May 7, 2001) (see discussion of Columbia Basin below).

We published a 90–day finding on February 7, 2003 (68 FR 6500), that the petition did not present substantial information indicating the petitioned action was warranted based on our determination that there was insufficient evidence to indicate that the petitioned western population of sage-grouse is a valid subspecies or DPS. The petitioner pursued legal action, first with a 60–day Notice of Intent to sue, followed by filing a complaint in Federal district court on June 6, 2003, challenging the merits of our 90–day finding. On August 10, 2004, the U.S. District Court for the Western District of Washington ruled in favor of the Service (Case No. C03-1251P). The petitioner appealed and on March 3, 2006, the U.S. Court of Appeals for the Ninth Circuit reversed in part the ruling of the District Court and remanded the matter for a new 90–day finding (*Institute for Wildlife Protection* v. *Norton*, 2006 U.S. App. LEXIS 5428 9th Cir., March 3, 2006). Specifically, the Court of Appeals rejected the Service's conclusion that the petition did not present substantial information indicating that western sage-grouse may be a valid subspecies, but upheld the Service's determination that the petition did not present substantial information indicating that the petitioned population may constitute a DPS. The Court's primary concern was that the Service did not provide a sufficient description of the principles we employed to determine the validity of the subspecies classification. On April 29, 2008, we published in the **Federal Register** (73 FR 23170) a 90–day finding that the petition presented substantial scientific or commercial information indicating that listing western sage-grouse may be warranted and initiated a status review for western sage-grouse.

In a related action, the Service also has made a finding on a petition to list the eastern subspecies of the greater sage-grouse (*Centrocercus urophasianus urophasianus*). On July 3, 2002, we received a petition from the Institute for Wildlife Protection to list the eastern subspecies, identified in the petition as including all sage-grouse east of Oregon, Washington, northern California, and a small portion of Idaho. The petitioners sued the Service in U.S. District Court on January 10, 2003, for failure to complete a 90–day finding. On October 3, 2003, the Court ordered the Service to complete a finding. The Service published its not-substantial 90–day finding in the **Federal Register** on January 7, 2004 (69 FR 933), based on our determination that the eastern sage-grouse was not a valid subspecies. The not-substantial finding was challenged, and on September 28, 2004, the U.S. District Court ruled in favor of the Service, dismissing the plaintiff's case.

Columbia Basin (Washington) Population of the Western Subspecies

On May 28, 1999, we received a petition dated May 14, 1999, from the Northwest Ecosystem Alliance and the Biodiversity Legal Foundation. The petitioners requested that the Washington population of western sage-grouse (*C. u. phaios*) be listed as threatened or endangered under the Act. The petitioners requested listing of the Washington population of western sage-grouse based upon threats to the population and its isolation from the remainder of the taxon. Accompanying the petition was information relating to the taxonomy, ecology, threats, and the past and present distribution of western sage-grouse.

In our documents we have used "Columbia Basin population" rather than "Washington population" because we believe it more appropriately describes the petitioned entity. We published a substantial 90–day finding on August 24, 2000 (65 FR 51578). On May 7, 2001, we published our 12–month finding (66 FR 22984), which included our determination that the Columbia Basin population of the western sage-grouse met the requirements of our policy on DPSs (61 FR 4722) and that listing the DPS was warranted but precluded by other higher priority listing actions. As required by section 4(b)(3)(C) of the Act, we have subsequently made resubmitted petition findings, announced in conjunction with our Candidate Notices of Review, in which we continued to find that listing the Columbia Basin DPS of the western subspecies was warranted but precluded by other higher priority listing actions (66 FR 54811, 67 FR 40663, 69 FR 24887, 70 FR 24893, 74 FR 57803). Subsequent to the March 2006 decision by the court on our 90–day finding on the petition to list the western subspecies of the greater sage-grouse (described above), our resubmitted petition findings stated we were not updating our analysis for the DPS, but would publish an updated finding regarding the petition to list the Columbia Basin population of the western subspecies following completion of the new rangewide status review for the greater sage-grouse.

Bi-State Area (Mono Basin) Population of Sage-grouse

On January 2, 2002, we received a petition from the Institute for Wildlife Protection requesting that the sage-grouse occurring in the Mono Basin area of Mono County, California, and Lyon County, Nevada, be emergency listed as an endangered distinct population segment (DPS) of *Centrocercus urophasianus phaios*, which the petitioners considered to be the western subspecies of the greater sage-grouse. This request was for portions of Alpine and Inyo Counties and most of Mono County in California and portions of Carson City, Douglas, Esmeralda, Lyon, and Mineral Counties in Nevada. On December 26, 2002, we published a 90–day finding that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted (67 FR 78811). Our 2002 finding was based on our determination that the petition did not present substantial information indicating that the population of greater sage-grouse in this area was a DPS under our DPS policy (61 FR 4722; February 7, 1996), and thus was not a listable entity (67 FR 78811; December 26, 2002). Our 2002 finding also included a determination that the petition did not present substantial information regarding threats to indicate that listing the petitioned population may be warranted (67 FR 78811).

On November 15, 2005, we received a petition submitted by the Stanford Law School Environmental Law Clinic on behalf of the Sagebrush Sea Campaign, Western Watersheds Project, Center for Biological Diversity, and Christians Caring for Creation to list the Mono Basin area population of greater sage-grouse as a threatened or endangered DPS of the greater sage-grouse (*C. urophasianus*) under the Act. On March 28, 2006, we responded that emergency listing was not warranted and, due to court orders and settlement agreements for other listing actions, we would not be able to address the petition at that time.

On November 18, 2005, the Institute for Wildlife Protection and Dr. Steven G. Herman sued the Service in U.S. District Court for the Western District of Washington (*Institute for Wildlife Protection et al.* v. *Norton et al.*, No. C05-1939 RSM), challenging the Service's 2002 finding that their petition did not present substantial information indicating that the petitioned action may be warranted. On April 11, 2006, we reached a stipulated settlement agreement with both plaintiffs under which we agreed to evaluate the November 2005 petition and concurrently reevaluate the December 2001 petition (received in January 2002). The settlement agreement required the Service to submit to the **Federal Register** a 90–day finding by December 8, 2006, and if substantial, to complete the 12–month finding by December 10, 2007. On December 19, 2006, we published a 90–day finding that these petitions did not present substantial scientific or commercial information indicating that the petitioned actions may be warranted (71 FR 76058).

On August 23, 2007, the November 2005 petitioners filed a complaint challenging the Service's 2006 finding. After review of the complaint, the Service determined that we would revisit our 2006 finding. The Service entered into a settlement agreement with the petitioners on February 25, 2008, in which the Service agreed to a voluntary remand of the 2006 petition finding, and to submit for publication in the **Federal Register** a new 90–day finding by April 25, 2008. The agreement further stipulated that if the new 90–day finding was positive, the Service would undertake a status review of the Mono Basin area population of the greater sage-grouse and submit for publication in the **Federal Register** a 12–month finding by April 24, 2009.

On April 29, 2008, we published in the **Federal Register** (73 FR 23173) a 90–day petition finding that the petitions presented substantial scientific or commercial information indicating that listing the Mono Basin area population may be warranted and initiated a status review. Based on a joint stipulation by the Service and the plaintiffs to extend the due date for the 12–month finding, on April 23, 2009, the U.S. District Court, Northern District of California, issued an order that if the parties did not agree to a later alternative date, the Service would submit a 12–month finding for the Mono Basin population of the greater sage-grouse to the **Federal Register** no later than May 26, 2009. On May 27, 2009, the U.S. District Court, Northern District of California, issued an order accepting a joint stipulation between the Department of Justice and the plaintiffs, which states that the parties agree that the Service may submit to the **Federal Register** a single document containing the 12–month findings for the Mono Basin area population and the greater sage-grouse no later than by February 26, 2010. Subsequently, the due date for submission of the document to the **Federal Register** was extended to March 5, 2010.

Both the November 2005 and the December 2001 petitions as well as our 2002 and 2006 findings use the term "Mono Basin area" to refer to greater sage-grouse that occur within the geographic area of eastern California and western Nevada that includes Mono Lake. For conservation planning purposes, this same geographic area is referred to as the Bi-State area by the States of California and Nevada (Greater Sage-grouse Conservation Plan for Nevada and Eastern California, 2004, pp. 4–5). For consistency with ongoing planning efforts, we will adopt the "Bi-State" nomenclature hereafter in this finding.

Biology and Ecology of Greater Sage-Grouse

Greater Sage-Grouse Description

The greater sage-grouse (*Centrocercus urophasianus*) is the largest North American grouse species. Adult male greater sage-grouse range in length from 66 to 76 centimeters (cm) (26 to 30 inches (in.)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)). Adult females are smaller, ranging in length from 48 to 58 cm (19 to 23 in.) and weighing between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers forming a ruff around the neck and upper belly. During breeding displays, males exhibit olive-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, p. 2).

Taxonomy

Greater sage-grouse are members of the Phasianidae family. They are one of two congeneric species; the other species in the genus is the Gunnison sage-grouse (*Centrocercus minimus*). In 1957, the American Ornithologists' Union (AOU) (AOU 1957, p 139) recognized two subspecies of the greater sage-grouse, the eastern (*Centrocercus urophasianus urophasianus)* and western (*C. u. phaios)* based on information from Aldrich (1946, p. 129). The original subspecies designation of the western sage-grouse was based solely on differences in coloration (specifically, reduced white markings and darker feathering on western birds) among 11 museum specimens collected from 8 locations in Washington, Oregon, and California. The last edition of the AOU Check-list of North American Birds to include subspecies was the 5th Edition, published in 1957. Subsequent editions of the Check-list have excluded treatment of subspecies. Richard Banks, who was the AOU Chair of the Committee on Classification and Nomenclature in 2000, indicated that, because the AOU has not published a revised edition at the subspecies level since 1957, the subspecies in that edition, including the western sage-grouse, are still recognized (Banks 2000, pers. comm.). However, in the latest edition of the Check-list (7th Ed., 1998, p. xii), the AOU explained that its decision to omit subspecies, "carries with it our realization that an uncertain number of currently recognized subspecies, especially those formally named early in this century, probably cannot be validated by rigorous modern techniques."

Since the publication of the 1957 Check-list, the validity of the subspecies designations for greater sage-grouse has been questioned, and in some cases dismissed, by several credible taxonomic authorities (Johnsgard 1983, p. 109; Drut 1994, p. 2; Schroeder *et al.* 1999, p. 3; International Union for Conservation of Nature (IUCN) 2000, p. 62; Banks 2000, 2002 pers. comm.; Johnsgard 2002, p. 108; Benedict *et al.* 2003, p. 301). The Western Association of Fish and Wildlife Agencies (WAFWA), an organization of 23 State and provincial agencies charged with the protection and management of fish and wildlife resources in the western part of the United States and Canada, also questioned the validity of the western sage-grouse as a subspecies in its Conservation Assessment of Greater Sage-grouse and Sagebrush Habitats (Connelly *et al.* 2004, pp. 8-4 to 8-5). Furthermore, in its State conservation assessment and strategy for greater sage-grouse, the Oregon Department of Fish and Wildlife (ODFW) stated that "recent genetic analysis (Benedict *et al.* 2003) found little evidence to support this subspecies distinction, and this Plan refers to sage-grouse without reference to subspecies delineation in this document" (Hagen 2005, p. 5).

The Integrated Taxonomic Information System (ITIS), a database representing a partnership of U.S., Canadian, and Mexican agencies, other organizations, and taxonomic specialists designed to provide scientifically credible taxonomic information, lists the taxonomic status of western sage-grouse as "invalid – junior synonym" (ITIS 2010). In an evaluation of the historical classification of the western sage-grouse as a subspecies, Banks stated that it was "weakly characterized" but felt that it would be wise to continue to regard western sage-grouse as taxonomically valid "for management purposes" (Banks, pers. comm. 2000). This statement was made prior to the availability of behavioral and genetic information that has become available since 2000. In addition, Banks' opinion is qualified by the phrase "for Management purposes." Management recommendations and other considerations must be clearly distinguished from scientific or commercial data that indicate whether an entity may be taxonomically valid for the purpose of listing under the Act.

Although the Service had referred to the western sage-grouse in past decisions (for example, in the 12–month finding for a petition to list the Columbia Basin population of western sage-grouse, 66 FR 22984; May 7, 2001), this taxonomic reference was ancillary to the decision at hand and was not the focal point of the listing action. In other words, when past listing actions were focused on some other entity, such as a potential distinct population segment in the State of Washington, we accepted the published taxonomy for western sage-grouse because that taxonomy itself was not the subject of the review and thus not subject to more rigorous evaluation at the time.

Taxonomy is a component of the biological sciences. Therefore, in our evaluation of the reliability of the information, we considered scientists with appropriate taxonomic credentials (which may include a combination of education, training, research, publications, classification and/or other experience relevant to taxonomy) as qualified to provide informed opinions regarding taxonomy, make taxonomic distinctions, and/or question taxonomic classification.

There is no universally accepted definition of what constitutes a subspecies, and the use of subspecies may vary between taxonomic groups (Haig *et al.* 2006, pp. 1584-1594). The Service acknowledges the diverse opinions of the scientific community about species and subspecies concepts. However, to be operationally useful, subspecies must be discernible from one another (i.e., diagnosable); this element of "diagnosability," or the ability to consistently distinguish between populations, is a common thread that runs through all subspecies concepts. The AOU Committee on Classification and Nomenclature offers the following definition of a subspecies: "Subspecies should represent geographically discrete breeding populations that are diagnosable from other populations on the basis of plumage and/or measurements, but are not yet reproductively isolated. Varying levels of diagnosability have been proposed for subspecies, typically ranging from at least 75% to 95% * * * subspecies that are phenotypically but not genetically distinct still warrant recognition if individuals can be assigned to a subspecies with a high degree of certainty" (AOU 2010). In addition, the latest AOU Check-list of North American Birds describes subspecies as: "geographic segments of species' populations that differ abruptly and discretely in morphology or coloration; these differences often correspond with difference in behavior and habitat" (AOU 1998, p. xii).

In general, higher levels of confidence in the classification of subspecies may be gained through the concurrence of multiple morphological, molecular, ecological, behavioral, and/or physiological characters (Haig *et al.* 2006, p. 1591). The AOU definition of subspecies also incorporates this concept of looking for multiple lines of evidence, in referring to abrupt and discrete differences in morphology, coloration, and often corresponding differences in behavior or habitat as well (AOU 1998, p. xii). To assess subspecies diagnosability, we evaluated all the best scientific and commercial information available to determine whether the evidence points to a consistent separation of birds currently purported to be "western sage-grouse" from other populations of greater sage-grouse. This evaluation incorporated information that has become available since the AOU's last subspecies review in 1957, and included data on the geographic separation of the putative eastern and western subspecies, behavior, morphology, and genetics. If the assessment of these multiple characters provided a clear and consistent separation of the putative western subspecies from other populations of sage-grouse, such that any individual bird from the range of the western sage-grouse would likely be correctly assigned to that subspecies on the basis of the suite of characteristics analyzed, that would be considered indicative of a likely valid subspecies.

Geography

The delineation between eastern and western subspecies is vaguely defined and has changed over time from its original description (Aldrich 1946, p. 129; Aldrich and Duvall 1955 p. 12; AOU 1957, p. 139; Aldrich 1963, pp. 539-541). The boundary between the subspecies is generally described along a line starting on the Oregon–Nevada border south of Hart Mountain National Wildlife Refuge and ending near Nyssa, Oregon (Aldrich and Duvall 1955, p. 12; Aldrich 1963, pp. 539-541). Aldrich described the original eastern and western ranges in 1946 (Aldrich 1946, p. 129), while Aldrich and Duvall (1955, p. 12) and Aldrich (1963, pp. 539-541) described an intermediate form in northern California, presumably in a zone of intergradation between the subspecies. All of Aldrich's citations include a portion of Idaho within the western subspecies' range, but the 1957 AOU designation included Idaho as part of the eastern subspecies (AOU 1957, p. 139).

Our evaluation reveals that a boundary between potential western and eastern subspecies may be drawn multiple ways depending on whether one uses general description of historical placement, by considering topographic features, or in response to the differing patterns reported in studying sage-grouse genetics, morphology, or behavior. In their description of greater sage-grouse distribution, Schroeder *et al.* (2004, p. 369) noted the lack of evidence for differentiating between the purported subspecies, stating "We did not quantify the respective distributions of the eastern and western subspecies because of the lack of a clear dividing line (Aldrich and Duvall 1955) and the lack of genetic differentiation (Benedict *et al.* 2003)." Based on this information, there does not appear to be any clear and consistent geographic separation between sage-grouse historically described as "eastern" and "western."

Morphology

As noted above, the original description of the western subspecies of sage-grouse was based solely on differences in coloration (specifically, reduced white markings and darker feathering on western birds) among 11 museum specimens (10 whole birds, 1 head only) collected from 8 locations in Washington, Oregon, and California (Aldrich 1946, p. 129). By today's standards, this represents an extremely small sample size that would likely

yield little confidence in the ability to discriminate between populations on the basis of this character. Furthermore, the subspecies designation was based on this single characteristic; no other differences between the western and eastern subspecies of sage-grouse were noted in Aldrich's original description (Aldrich 1946, p. 129; USFWS 2010). Banks (1992) noted plumage color variation in the original specimens Aldrich (1946) used to make his subspecies designation, and agreed that the specimens from Washington, Oregon, and northern California did appear darker than the specimens collected in the eastern portion of the range. However, individual morphological variation in greater sage-grouse, such as plumage coloration, is extensive (Banks 1992). Further, given current taxonomic concepts, Banks (1992) doubted that most current taxonomists would identify a subspecies based on minor color variations from a limited number of specimens, as were available to Aldrich during the mid-1900s (Aldrich 1946, p. 129; Aldrich and Duvall 1955, p. 12; Aldrich 1963, pp. 539-541). Finally, the AOU Committee on Classification has stated that, because of discoloration resulting from age and poor specimen preparation, museum specimens "nearly always must be supplemented by new material for comprehensive systematic studies." (AOU, Check-list of North American Birds, 7th ed., 1998, p. xv.)

Schroeder (2008, pp. 1-19) examined previously collected morphological data across the species' range from both published and unpublished sources. He found statistically significant differences between sexes, age groups, and populations in numerous characteristics including body mass, wing length, tail length, and primary feather length. Many of these differences were associated with sex and age, but body mass also varied by season. There also were substantial morphometric (size and shape) differences among populations. Notably, however, these population differences were not consistent with any of the described geographic delineations between eastern and western subspecies. For example, sage-grouse from Washington and from Northern Colorado up to Alberta appeared to be larger than those in Idaho, Nevada, Oregon, and California (Schroeder 2008, p. 9). This regional variation was not consistent with differences in previously established genetic characteristics (Oyler-McCance *et al.* 2005, as cited in Schroeder 2008, p. 9). Thus our review revealed no clear basis for differentiating between the two described subspecies based on plumage or morphology.

Behavior

The only data available with respect to behavior are for strutting behavior on leks, a key component of mate selection. One recent study compared the male strut behavior between three sage-grouse populations that happen to include populations from both sides of the putative eastern-western line (Taylor and Young 2006, pp. 36-41). However, the classification of these populations changes depending on the description of western sage-grouse used. The Lyon/Mono population falls within the intermediate zone identified by Aldrich and Duvall (1955, p. 12) but would be classified as eastern under Aldrich (1963, p. 541). The Lassen population may be considered either western (Aldrich 1946, p. 129) or intermediate (Aldrich and Duvall 1955, p. 12; Aldrich 1963, p. 541). The Nye population falls within the range of the eastern sage-grouse (Aldrich and Duvall 1955, p. 12; Aldrich 1963, p. 541). The researchers found that male strut rates were not significantly different between populations, but that acoustic components of the display for the Lyon/Mono and Lassen populations (considered intermediate and/or western) were similar to each other, whereas the Nye population (eastern) was distinct. We consider these results inconclusive in distinguishing between eastern and western subspecies because of the inconsistent results and limited geographic scope of the study.

Schroeder (2008, p. 9) also examined previously collected data on strutting behavior on leks, including Taylor and Young (2006). He noted that, although there was regional variation in the strut rate of sage-grouse, it was not clear if this variation reflected population-level effects or some other unexplained variation. Based on the above limited information, we do not consider there to be any strong evidence of a clear separation of the western sage-grouse from other populations on the basis of behavioral differences.

Genetics

Genetic research can sometimes augment or refine taxonomic definitions that are based on morphology or behavior or both (discussed in Haig *et al.* 2006, p. 1586; Oyler-McCance and Quinn in press, p. 19). Benedict *et al.* (2003, p. 309) found no genetic data supporting a subspecies designation. To investigate taxonomic questions and examine levels of gene flow and connectedness among populations, Oyler-McCance *et al.* (2005, p. 1294) conducted a comprehensive examination of the distribution of genetic variation across the entire range of greater sage-grouse, using both mitochondrial and nuclear deoxyribonucleic acid (DNA) sequence data. Oyler-McCance *et al.* (2005, p. 1306) found that the overall distribution of genetic variation showed a gradual shift across the range in both mitochondrial and nuclear DNA data sets. Their results demonstrate that greater sage-grouse populations follow an isolation-by-distance model of restricted gene flow (gene flow resulting from movement between neighboring populations rather than being the result of long distance movements of individuals) (Oyler-McCance *et al.* 2005, p. 1293; Campton 2007, p. 4), and are not consistent with subspecies designations. Oyler-McCance and Quinn (in press, entire) reviewed available studies that used molecular genetic approaches, including Oyler-McCance *et al.* (2005). They examined the genetic data bearing on the delineation of the western and eastern subspecies of greater sage-grouse, and determined that the distinction is not supported by the genetic data (Oyler-McCance and Quinn in press, p. 4). The best available genetic information thus does not support the recognition of the western sage-grouse as a separate subspecies.

Summary: Taxonomic Evaluation of the Subspecies

The AOU has not revisited the question of whether the eastern and western subspecies are valid since their original classification in 1957. We have examined the best scientific information available regarding the putative subspecies of the greater sage-grouse and have considered multiple lines of evidence for the potential existence of western and eastern subspecies based on geographic, morphological, behavioral, and genetic data. In our evaluation, we looked for any consistent significant differences in these characters that might support recognition of the western or eastern sage-grouse as clear, discrete, and diagnosable populations, such that either might be considered a subspecies.

As described above, the boundaries distinguishing the two putative subspecies have shifted over time, and there does not appear to be any clear and consistent geographic separation between sage-grouse historically described as "eastern" and "western." Banks (1992) and Schroeder (2008, p. 9) both found morphological variations between individuals and populations, but Banks stated that the differences would not be sufficient to recognize

subspecies by current taxonomic standards, and Schroeder noted that the differences were not consistent with any of the described geographic or genetic delineations between putative subspecies. Schroeder (2008 p. 9) also noted regional behavior differences in strut rate, but stated it was not clear if this variation reflected population-level effects. Finally, the best available genetic information indicates there is no distinction between the putative western and eastern subspecies (Benedict *et al.* 2003, p. 309; Oyler-McCance and Quinn in press, p. 12).

Because the best scientific and commercial information do not support the taxonomic validity of the purported eastern or western subspecies, our analysis of the status of the greater sage-grouse (below) does not address considerations at the scale of subspecies. (See Findings section, below, for our finding on the petition to list the western subspecies of the greater sage-grouse.)

Life History Characteristics

Greater sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle, and are considered obligate users of several species of sagebrush (e.g., *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. t.* ssp. *vaseyana* (mountain big sagebrush), and *A. t. tridentata* (basin big sagebrush)) (Patterson 1952, p. 48; Braun *et al.* 1976, p. 168; Connelly *et al.* 2000a, pp. 970-972; Connelly *et al.* 2004, p. 4-1; Miller *et al.* in press, p. 1). Greater sage-grouse also use other sagebrush species such as *A. arbuscula* (low sagebrush), *A. nova* (black sagebrush), *A. frigida* (fringed sagebrush), and *A. cana* silver sagebrush (Schroeder *et al.* 1999, pp. 4-5; Connelly *et al.* 2004, p. 3-4). Thus, sage-grouse distribution is strongly correlated with the distribution of sagebrush habitats (Schroeder *et al.* 2004, p. 364). Sage-grouse exhibit strong site fidelity (loyalty to a particular area even when the area is no longer of value) to seasonal habitats, which includes breeding, nesting, brood rearing, and wintering areas (Connelly *et al.* 2004, p. 3-1). Adult sage-grouse rarely switch between these habitats once they have been selected, limiting their adaptability to changes.

During the spring breeding season, male sage-grouse gather together to perform courtship displays on areas called leks. Areas of bare soil, short-grass steppe, windswept ridges, exposed knolls, or other relatively open sites typically serve as leks (Patterson 1952, p. 83; Connelly *et al.* 2004, p. 3-7 and references therein). Leks are often surrounded by denser shrub-steppe cover, which is used for escape, thermal, and feeding cover. The proximity, configuration, and abundance of nesting habitat are key factors influencing lek location (Connelly *et al.*, 1981, and Connelly *et al.*, 2000 b, cited in Connelly *et al.*, in press a, p. 11). Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly *et al.* 2000a, p. 970), and, therefore, lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder 1999, p. 4). Nest sites are selected independent of lek locations, but the reverse is not true (Bradbury *et al.* 1989, p. 22; Wakkinen *et al.* 1992, p. 382). Thus, leks are indicative of nesting habitat.

Leks range in size from less than 0.04 hectare (ha) (0.1 acre (ac)) to over 36 ha (90 ac) (Connelly *et al.* 2004, p. 4-3) and can host from several to hundreds of males (Johnsgard 2002, p. 112). Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Although males are capable of breeding the first spring after hatch, young males are rarely successful in breeding on leks due to the dominance of older males (Schroeder *et al.* 1999, p. 14). Numerous researchers have observed that a relatively small number of dominant males account for the majority of copulations on each lek (Schroeder *et al.* 1999, p. 8). However, Bush (2009, p. 106) found on average that 45.9 percent (range 14.3 to 54.5 percent) of genetically identified males in a population fathered offspring in a given year, which indicates that males and females likely engage in off-lek copulations. Males do not participate in incubation of eggs or rearing chicks.

Females have been documented to travel more than 20 km (12.5 mi) to their nest site after mating (Connelly *et al.* 2000a, p. 970), but distances between a nest site and the lek on which breeding occurred is variable (Connelly *et al.* 2004, pp. 4-5). Average distance between a female's nest and the lek on which she was first observed ranged from 3.4 km (2.1 mi) to 7.8 km (4.8 mi) in five studies examining 301 nest locations (Schroeder *et al.* 1999 p. 12).

Productive nesting areas are typically characterized by sagebrush with an understory of native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Gregg 1991, p. 19; Schroeder *et al.* 1999, p. 4; Connelly *et al.* 2000a, p. 971; Connelly *et al.* 2004, pp. 4-17, 18; Connelly *et al.* in press b, p. 12). Sage-grouse also may use other shrub or bunchgrass species for nest sites (Klebenow 1969, p. 649; Connelly *et al.* 2000a, p. 970; Connelly *et al.* 2004, p. 4-4). Shrub canopy and grass cover provide concealment for sage-grouse nests and young, and are critical for reproductive success (Barnett and Crawford 1994, p. 116; Gregg *et al.* 1994, p. 164; DeLong *et al.*1995, p. 90; Connelly *et al.* 2004, p. 4-4). Published vegetation characteristics of successful nest sites included a sagebrush canopy cover of 15–25 percent, sagebrush heights of 30 to 80 cm (11.8 to 31.5 in.), and grass/forb cover of 18 cm (7.1 in.) (Connelly *et al.* 2000a, p. 977).

Sage-grouse clutch size ranges from 6 to 9 eggs with an average of 7 eggs (Connelly *et al.* in press a, pp. 14-15). The likelihood of a female nesting in a given year averages 82 percent in eastern areas of the range (Alberta, Montana, North Dakota, South Dakota, Colorado, Wyoming) and 78 percent in western areas of the range (California, Nevada, Idaho, Oregon, Washington, Utah) (Connelly *et al.* in press a, p. 15). Adult females have higher nest initiation rates than yearling females (Connelly *et al.* in press a, p. 15). Nest success (one or more eggs hatching from a nest), as reported in the scientific literature, varies widely (15–86 percent Schroeder *et al.* 1999, p. 11). Overall, the average nest success for sage-grouse in habitats where sagebrush has not been disturbed is 51 percent and for sage-grouse in disturbed habitats is 37 percent (Connelly *et al.*, in press a, p. 1). Re-nesting only occurs if the original nest is lost (Schroeder *et al.* 1999, p. 11). Sage-grouse re-nesting rates average 28.9 percent (based on 9 different studies) with a range from 5 to 41 percent (Connelly *et al.* 2004. p. 3-11). Other game bird species have much higher re-nesting rates, often exceeding 75 percent. The impact of re-nesting on annual productivity for most sage-grouse populations is unclear and thought to be limited (Crawford *et al.* 2004, p. 4). In north-central Washington State, re-nesting contributed to 38 percent of the annual productivity of that population (Schroeder 1997, p. 937). However, the author postulated that the re-nesting efforts in this population may be greater than anywhere else in the species' range because environmental conditions allow a longer period of time to successfully rear a clutch (Schroeder 1997, p. 939).

Little information is available on the level of productivity (number of chicks per hen that survive to fall) that is necessary to maintain a stable population (Connelly *et al.* 2000b, p.

970). However, Connelly *et al.* (2000b, p. 970, and references therein) suggest that 2.25 chicks per hen are necessary to maintain stable to increasing populations. Long-term productivity estimates of 1.40–2.96 chicks per hen across the species range have been reported (Connelly and Braun 1997, p. 20). Productivity declined slightly after 1985 to 1.21–2.19 chicks per hen (Connelly and Braun 1997, p. 20). Despite average clutch sizes of 7 eggs (Connelly *et al.* in press a, p. 15) due to low chick survival and limited renesting, there is little evidence that populations of sage-grouse produce large annual surpluses (Connelly *et al.* in press a, p. 24).

Hens rear their broods in the vicinity of the nest site for the first 2–3 weeks following hatching (within 0.2–5 km (0.1–3.1 mi)), based on two studies in Wyoming (Connelly *et al.* 2004, p. 4-8). Forbs and insects are essential nutritional components for chicks (Klebenow and Gray 1968, p. 81; Johnson and Boyce 1991, p. 90; Connelly *et al.* 2004, p. 4-9). Therefore, early brood-rearing habitat must provide adequate cover (sagebrush canopy cover of 10 to 25 percent; Connelly *et al.* 2000a, p. 977) adjacent to areas rich in forbs and insects to ensure chick survival during this period (Connelly *et al.* 2004, p. 4-9).

All sage-grouse gradually move from sagebrush uplands to more mesic areas (moist areas such as streambeds or wet meadows) during the late brood-rearing period (3 weeks post-hatch) in response to summer desiccation of herbaceous vegetation (Connelly *et al.* 2000a, p. 971). Summer use areas can include sagebrush habitats as well as riparian areas, wet meadows, and alfalfa fields (Schroeder *et al.* 1999, p. 4). These areas provide an abundance of forbs and insects for both hens and chicks (Schroeder *et al.* 1999, p. 4; Connelly *et al.* 2000a, p. 971). Sage-grouse will use free water although they do not require it since they obtain their water needs from the food they eat. However, natural water bodies and reservoirs can provide mesic areas for succulent forb and insect production, thereby attracting sage-grouse hens with broods (Connelly *et al.* 2004, p. 4-12). Broodless hens and cocks also will use more mesic areas in close proximity to sagebrush cover during the late summer, often arriving before hens with broods (Connelly *et al.* 2004, p. 4-10).

As vegetation continues to desiccate through the late summer and fall, sage-grouse shift their diet entirely to sagebrush (Schroeder *et al.* 1999, p. 5). Sage-grouse depend entirely on sagebrush throughout the winter for both food and cover. Sagebrush stand selection is influenced by snow depth (Patterson 1952, p. 184; Hupp and Braun 1989, p. 827), availability of sagebrush above the snow to provide cover (Connelly *et al.* 2004, pp. 4-13, and references therein) and, in some areas, topography (e.g., elevation, slope and aspect; Beck 1977, p. 22; Crawford *et al.* 2004, p. 5).

Many populations of sage-grouse migrate between seasonal ranges in response to habitat distribution (Connelly *et al.* 2004, p. 3-5). Migration can occur between winter and breeding and summer areas, between breeding, summer, and winter areas, or not at all. Migration distances of up to 161 km (100 mi) have been recorded (Patterson 1952, p.189); however, distances vary depending on the locations of seasonal habitats (Schroeder *et al.* 1999, p. 3). Migration distances for female sage-grouse generally are less than for males (Connelly *et al.* 2004, p. 3-4), but in one study in Colorado, females traveled farther than males (Beck 1977, p. 23). Almost no information is available regarding the distribution and characteristics of migration corridors for sage-grouse (Connelly *et al.* 2004, p. 4-19). Sage-grouse dispersal (permanent moves to other areas) is poorly understood (Connelly *et al.* 2004, p. 3-5) and appears to be sporadic (Dunn and Braun 1986, p. 89). Estimating an "average" home range for sage-grouse is difficult due to the large variation in sage-grouse movements both within and among populations. This variation is related to the spatial availability of habitats required for seasonal use, and annual recorded home ranges have varied from 4 to 615 square kilometers (km^2) (1.5 to 237.5 square miles (mi^2)) (Connelly *et al.*, in press a, p. 10).

Sage-grouse typically live between 3 and 6 years, but individuals up to 9 years of age have been recorded in the wild (Connelly *et al.* 2004, p. 3-12). Hens typically survive longer due to a disproportionate impact of predation on leks to males (Schroeder *et al.* 1999, p. 14). Juvenile survival (from hatch to first breeding season) is affected by food availability, habitat quality, harvest, and weather. Based on a review of many field studies, juvenile survival rates range from 7 to 60 percent (Connelly *et al.* 2004, p. 3-12). The variation in juvenile mortality rates may be associated with gender, weather, harvest rates, age of brood female (broods with adult females have higher survival), and with habitat quality (rates increase in poor habitats) (Schroeder *et al.* 1999, p. 14; Connelly *et al.*, in press a, p. 20). The average annual survival rate for male sage-grouse (all ages combined) documented in various studies ranged from 38 to 60 percent and 55 to 75 percent for females (Schroeder *et al.* 1999, p. 14). Higher female survival rates account for a female-biased sex ratio in adult birds (Schroeder 1999, p. 14; Johnsgard 2002, p. 621). The sex ratio of sage-grouse breeding populations varies widely with values between 1.2 and 3 females per male being reported (Connelly *et al.*, in press a, p. 23). Although seasonal patterns of mortality have not been thoroughly examined, over-winter mortality appears to be low (Connelly *et al.* 2000b, p. 229; Connelly *et al.* 2004, p. 9-4). While both males and females are capable of breeding the first spring after hatch, young males are rarely successful due to the dominance of older males on the lek (Schroeder *et al.* 1999, p. 14). Nesting rates of yearling females are 25 percent less than adult females (Schroeder *et al.* 1999, p. 13).

Habitat Description and Characteristics

Sage-grouse are dependent on large areas of contiguous sagebrush (Patterson 1952, p. 48; Connelly *et al.* 2004, p. 4-1; Connelly *et al.* in press a, p. 10; Wisdom *et al.* in press, p. 4), and large-scale characteristics within surrounding landscapes influence sage-grouse habitat selection (Knick and Hanser in press, p. 26). Sagebrush is the most widespread vegetation in the intermountain lowlands in the western United States (West and Young 2000, p. 259) and is considered one of the most imperiled ecosystems in North America (Knick *et al.* 2003, p. 612; Miller *et al.* in press, p. 4, and references therein). Scientists recognize 14 species and 13 subspecies of sagebrush (Connelly *et al.* 2004, p. 5-2; Miller *et al.* in press, p. 8), each with unique habitat requirements and responses to perturbations (West and Young 2000, p. 259). Sagebrush species and subspecies occurrence in an area is dictated by local soil type, soil moisture, and climatic conditions (West 1983, p. 333; West and Young 2000, p. 260; Miller *et al.* in press, pp. 8-11). The degree of dominance by sagebrush varies with local site conditions and disturbance history. Plant associations, typically defined by perennial grasses, further define distinctive sagebrush communities (Miller and Eddleman 2000, pp. 10-14; Connelly *et al.* 2004, p. 5-3), and are influenced by topography, elevation, precipitation, and soil type. These ecological conditions influence the response and resiliency of sagebrush and their associated understories to natural and human-caused changes.

Sagebrush is typically divided into two groups, big sagebrush and low sagebrush, based on their affinities for

different soil types (West and Young 2000, p. 259). Big sagebrush species and subspecies, such as *A. tridentata* ssp. *wyomingensis*, are limited to coarse-textured and/or well-drained sediments. Low sagebrush, such as *A. nova,* typically occur where erosion has exposed clay or calcified soil horizons (West 1983, p. 334; West and Young 2000, p. 261). Reflecting these soil differences, big sagebrush will die if surfaces are saturated long enough to create anaerobic conditions for 2 to 3 days (West and Young 2000, p. 259). Some low sagebrush are more tolerant of occasionally supersaturated soils, and many low sage sites are partially flooded during spring snowmelt. None of the sagebrush taxa tolerate soils with high salinity (West 1983, p. 333; West and Young 2000, p. 257). Sagebrush that provide important annual and seasonal habitats for sage-grouse include three subspecies of big sagebrush (*A. t.* ssp. *wyomingensis, A. t.* ssp. *tridentata* and *A. t.* ssp. *vaseyana*), two low forms of sagebrush (*A. arbuscula* (little sagebrush) and *A. nova*), and *A. cana* ssp. *cana* (Miller *et al.* in press, p. 8).

All species of sagebrush produce large ephemeral leaves in the spring, which persist until reduced soil moisture occurs in the summer. Most species also produce smaller, over-wintering leaves in the late spring that last through summer and winter. Sagebrush have fibrous tap root systems, which allow the plants to draw surface soil moisture, and also to access water deep within the soil profile when surface water is limited (West and Young 2000, p. 259). Most sagebrush flower in the fall. However, during years of drought or other moisture stress, flowering may not occur. Although seed viability and germination are high, seed dispersal is limited. Sagebrush seeds, depending on the species, remain viable for 1 to 3 years. However, Wyoming big sagebrush seeds do not persist beyond the year of their production (West and Young 2000, p. 260).

Sagebrush is long-lived, with plants of some species surviving up to 150 years (West 1983, p. 340). They produce allelopathic chemicals that reduce seed germination, seedling growth, and root respiration of competing plant species and inhibit the activity of soil microbes and nitrogen fixation. Sagebrush has resistance to environmental extremes, with the exception of fire and occasionally defoliating insects (e.g., webworm (*Aroga* spp.); West 1983, p. 341). Most species of sagebrush are killed by fire (West 1983, p. 341; Miller and Eddleman 2000, p. 17; West and Young 2000, p. 259), and historic fire-return intervals were as long as 350 years, depending on sagebrush type and environmental conditions (Baker in press, p. 16). Natural sagebrush recolonization in burned areas depends on the presence of adjacent live plants for a seed source or on the seed bank, if present (Miller and Eddleman 2000, p. 17), and requires decades for full recovery.

Plants associated with the sagebrush understory vary, as does their productivity. Both plant composition and productivity are influenced by moisture availability, soil characteristics, climate, and topographic position (Miller *et al.*, in press, pp. 8-14). Forb abundance can be highly variable from year to year and is largely affected by the amount and timing of precipitation.

Very little sagebrush within its extant range is undisturbed or unaltered from its condition prior to EuroAmerican settlement in the late 1800s (Knick *et al.* 2003, p. 612, and references therein). Due to the disruption of primary patterns, processes, and components of sagebrush ecosystems since EuroAmerican settlement (Knick *et al.* 2003, p. 612; Miller *et al.* in press, p. 4), the large range of abiotic variation, the minimal short-lived seed banks, and the long generation time of sagebrush, restoration of disturbed areas is very difficult. Not all areas previously dominated by sagebrush can be restored because alteration of vegetation, nutrient cycles, topsoil, and living (cryptobiotic) soil crusts has exceeded recovery thresholds (Knick *et al.* 2003, p. 620). Additionally, processes to restore sagebrush ecology are relatively unknown (Knick *et al.* 2003, p. 620). Active restoration activities are often limited by financial and logistic resources and lack of political motivation (Knick *et al.* 2003, p. 620; Miller *et al.* in press, p. 5) and may require decades or centuries (Knick *et al.* 2003, p. 620, and references therein). Meaningful restoration for greater sage-grouse requires landscape, watershed, or eco-regional scale context rather than individual, unconnected efforts (Knick *et al.* 2003, p. 623, and references therein; Wisdom *et al.* in press, p. 27). Landscape restoration efforts require a broad range of partnerships (private, State, and Federal) due to landownership patterns (Knick *et al.* 2003, p. 623; see discussion of landownership below). Except for areas where active restoration is attempted following disturbance (e.g., mining, wildfire), management efforts in sagebrush ecosystems are usually focused on maintaining the remaining sagebrush (Miller *et al.* in press, p. 5; Wisdom *et al.* in press, pp. 26, 30).

Greater sage-grouse require large, interconnected expanses of sagebrush with healthy, native understories (Patterson 1952, p. 9; Knick *et al.* 2003, p. 623; Connelly *et al.* 2004, pp. 4-15; Connelly *et al.* in press a, p. 10; Pyke in press, p. 7; Wisdom *et al.* in press, p. 4). There is little information available regarding minimum sagebrush patch sizes required to support populations of sage-grouse. This is due in part to the migratory nature of some but not all sage-grouse populations, the lack of juxtaposition of seasonal habitats, and differences in local, regional, and range-wide ecological conditions that influence the distribution of sagebrush and associated understories. Where home ranges have been reported (Connelly *et al.* in press a, p. 10 and references therein), they are extremely variable (4 to 615 km^2 range (1.5 to 237.5 mi^2)). Occupancy of a home range also is based on multiple variables associated with both local vegetation characteristics and landscape characteristics (Knick *et al.* 2003, p. 621). Pyke (in press, p. 18) estimated that greater than 4,000 ha (9,884 ac) was necessary for population sustainability. However, he did not indicate whether this value was for migratory or nonmigratory populations, nor if this included juxtaposition of all seasonal habitats. Large seasonal and annual movements emphasize the landscape nature of the greater sage-grouse (Knick *et al.* 2003, p. 624; Connelly *et al.* in press a, p. 10).

Range and Distribution of Sage-Grouse and Sagebrush

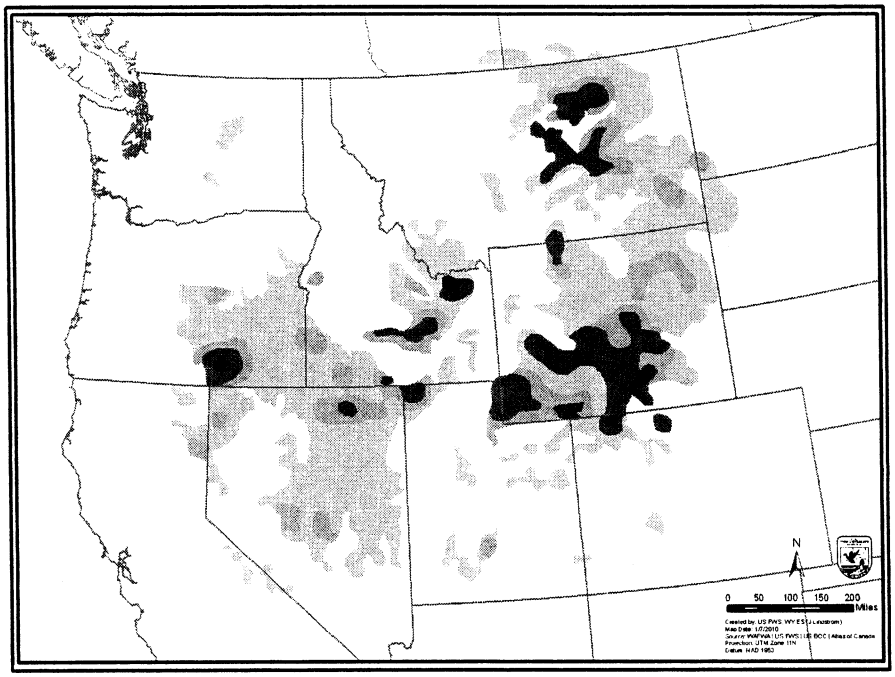
Prior to settlement of western North America by European immigrants in the 19th century, greater sage-grouse occurred in 13 States and 3 Canadian provinces—Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, North Dakota, Nebraska, Arizona, British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 1999, p. 2; Young *et al.* 2000, p. 445; Schroeder *et al.* 2004, p. 369). Sagebrush habitats that potentially supported sage-grouse occurred over approximately 1,200,483 km^2 (463,509 mi^2) before 1800 (Schroeder *et al.* 2004, p. 366). Currently, greater sage-grouse occur in 11 States (Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, and North Dakota), and 2 Canadian provinces (Alberta and Saskatchewan), occupying approximately 56 percent of their historical range (Schroeder *et al.* 2004, p. 369). Approximately 2 percent of the total range of the greater sage-grouse

occurs in Canada, with the remainder in the United States (Knick in press, p. 14).

Sage-grouse have been extirpated from Nebraska, British Columbia, and possibly Arizona (Schroeder *et al.* 1999, p. 2; Young *et al.* 2000 p. 445; Schroeder *et al.* 2004, p. 369). Current distribution of the greater sage-grouse is estimated at 668,412 km^2 (258,075 mi^2; Connelly *et al.* 2004, p. 6-9; Schroeder *et al.* 2004, p. 369). Changes in distribution are the result of sagebrush alteration and degradation (Schroeder *et al.* 2004, p. 363).

Sage-grouse distribution is associated with sagebrush (Schroeder *et al.* 2004; p. 364), although sagebrush is more widely distributed. However, sagebrush does not always provide suitable habitat due to fragmentation and degradation (Schroeder *et al.* 2004, pp. 369, 372). Very little of the extant sagebrush is undisturbed, with up to 50 to 60 percent having altered understories or having been lost to direct conversion (Knick *et al.* 2003, p. 612). There also are challenges in mapping altered and depleted understories, particularly in semi-arid regions, so maps depicting only sagebrush as a dominant cover type are deceptive in their reflection of habitat quality and, therefore, use by sage-grouse (Knick *et al.* 2003, p. 616). As such, variations in the quality of sagebrush habitats (from either abiotic or anthropogenic events) are reflected by sage-grouse distribution and densities (Figure 1).

Figure 1—Greater sage-grouse population densities based on average number of males per lek (from Stiver *et al.* 2006, p. 1-12). Darker areas indicate higher breeding population densities.



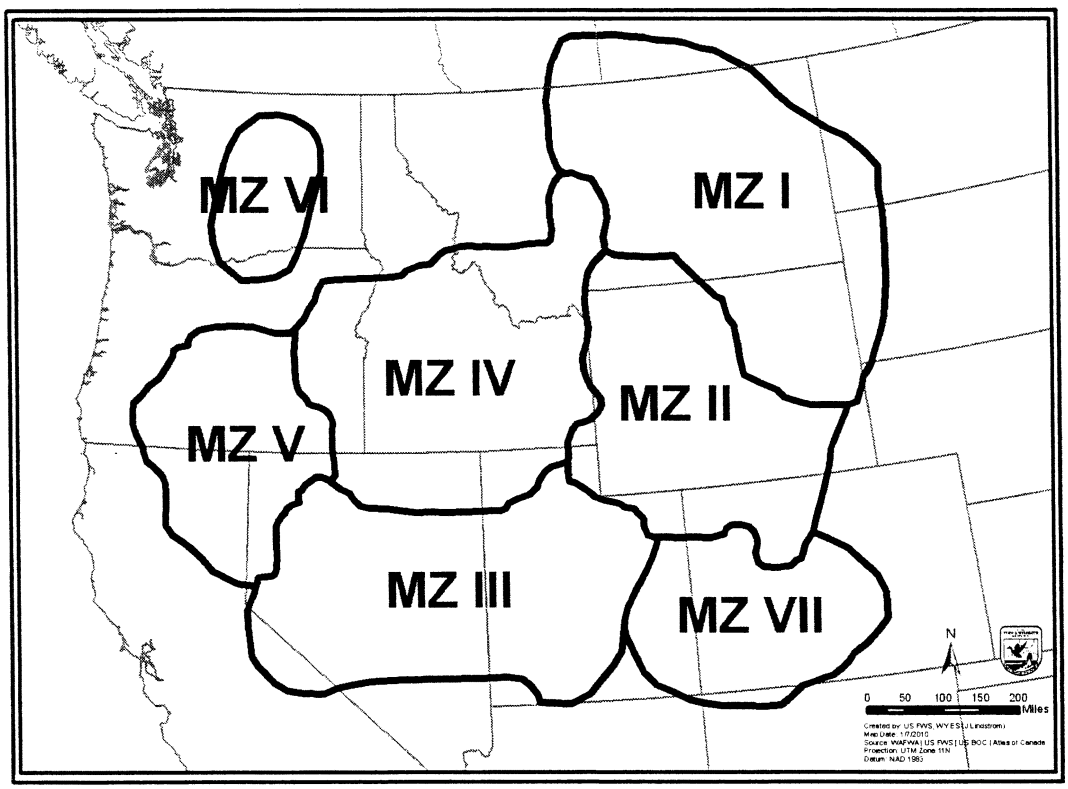
Sagebrush occurs in two natural vegetation types that are delineated by temperature and patterns of precipitation (Miller *et al.* in press, p. 7). Sagebrush steppe ranges across the northern portion of sage-grouse range, from British Columbia and the Columbia Basin, through the northern Great Basin, Snake River Plain, and Montana, and into the Wyoming Basin and northern Colorado. Great Basin sagebrush occurs south of sagebrush steppe, and extends from the Colorado Plateau westward into Nevada, Utah, and California (Miller *et al.* in press, p. 7). Other sagebrush types within greater sage-grouse range include mixed-desert shrubland in the Bighorn Basin of Wyoming, and grasslands in eastern Montana and Wyoming that also support *A. cana* and *A. filifolia* (sand sagebrush) (Miller *et al.* in press, p. 7).

Due to differences in the ecology of sagebrush across the range of the greater sage-grouse, the Western Association of Fish and Wildlife Agencies (WAFWA) delineated seven Management Zones (MZs I-VII) based primarily on floristic provinces (Figure 2; Table 1; Stiver *et al.* 2006, p. 1-6). The boundaries of these MZs were delineated based on their ecological and biological attributes rather than on arbitrary political boundaries (Stiver *et al.* 2006, p. 1-6). Therefore, vegetation found within a MZ is similar and sage-grouse and their habitats within these areas are likely to respond similarly to environmental factors and management actions. The WAFWA conservation strategy includes the Gunnison sage-grouse, and the boundary for MZ VII includes its range (Stiver *et al.* 2006, pp. 1-1, 1-8), which does not overlap with the range of the greater sage-grouse.

TABLE 1—THE MANAGEMENT ZONES OF THE GREATER SAGE-GROUSE AS DEFINED BY STIVER *et al.* (2006, PP. 1-7, 1-11).

MZ	STATES AND PROVINCES INCLUDED	FLORISTIC REGION
I	MT, WY, ND, SD, SK, AL	Great Plains
II	ID, WY, UT, CO	Wyoming Basin
III	UT, NV, CA	Southern Great Basin
IV	ID, UT, NV, OR	Snake River Plain
V	OR, CA, NV	Northern Great Basin
VI	WA	Columbia Basin
VII	CO, UT	Colorado Plateau

Figure 2—The Management Zones for sage-grouse as identified by Stiver *et al.* (2006, p. 1-11). (Delineation primarily based on floristic provinces and population boundaries.)



As stated above, due to the variability in habitat conditions, sage-grouse are not evenly distributed across the range (Figure 1). The MZs I, II, IV, and V encompass the core populations of greater sage-grouse and have the highest reported densities (Table 2, Figures 1, 2; Stiver *et al.* 2006, p. 1-12). The MZ III is composed of lower density populations in the Great Basin, while fewer numbers of more dispersed birds occur in MZ VI (Stiver *et al.* 2006, p. 1-7).

TABLE 2—RELATIVE ABUNDANCE OF GREATER SAGE-GROUSE LEKS, AND NUMBERS OF MALES ATTENDING LEKS BY MANAGEMENT ZONE, BASED ON THE MEAN NUMBER OF INDIVIDUAL LEKS AND MEAN MAXIMUM NUMBER OF MALES ATTENDING LEKS BY MZ DURING 2005–2007.

MZ	Relative Abundance of Leks	Relative Abundance of Males Attending Leks
I	0.17	0.15
II	0.48	0.50

TABLE 2—RELATIVE ABUNDANCE OF GREATER SAGE-GROUSE LEKS, AND NUMBERS OF MALES ATTENDING LEKS BY MANAGEMENT ZONE, BASED ON THE MEAN NUMBER OF INDIVIDUAL LEKS AND MEAN MAXIMUM NUMBER OF MALES ATTENDING LEKS BY MZ DURING 2005–2007.—Continued

MZ	Relative Abundance of Leks	Relative Abundance of Males Attending Leks
III	0.06	0.07
IV	0.19	0.18
V	0.09	0.10
VI	0.004	0.005
VII	0.003	0.003

Land Ownership of Habitats

Greater sage-grouse extant habitats have multiple surface ownerships, as reflected in Table 3. Most of the habitats occur on Federal surfaces, a reflection of land disposal practices during EuroAmerican settlement of the western United States (Knick in press, pp. 5-10). Lands dominated by sagebrush that were disposed to private ownership typically had deeper soils and greater available water capacity or access to water (valley bottoms), reflecting their capacity for agricultural development or increased grazing activities (Knick in press, p. 15). The lands remaining in Federal ownership were of poorer overall quality. The resulting low productivity on Federal surfaces affects their ability to recover from disturbance (Knick in press, p. 17).

Federal agencies manage almost two-thirds of the sagebrush habitats (Table 3). The Bureau of Land Management (BLM) manages just over half of sage-grouse habitats, while the U.S. Forest Service (USFS) is responsible for management of approximately 8 percent of sage-grouse habitat (Table 3). Other Federal agencies, including the Service, Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), National Park Service (NPS), Department of Defense (DOD), and Department of Energy (DOE) also are responsible for sagebrush habitats, but at a much smaller scale (Table 3). State agencies manage approximately 5 percent of sage-grouse habitats.

TABLE 3—PERCENT SURFACE OWNERSHIP OF TOTAL SAGEBRUSH AREA (KM^2 (MI^2)) WITHIN THE SAGE-GROUSE MANAGEMENT ZONES (FROM KNICK IN PRESS, P. 39). OTHER FEDERAL AGENCIES INCLUDE THE SERVICE, BOR, NPS, DOD, AND DOE. MZ VII INCLUDES BOTH GUNNISON AND GREATER SAGE-GROUSE.

Sage-grouse MZ	km^2	mi^2	Sagebrush Management and Ownership					
			BLM Percent	Private Percent	USFS Percent	State Percent	BIA Percent	Other Federal Percent
I Great Plains	50,264	19,407	17	66	2	7	4	3
II Wyoming Basin	108,771	41,996	49	35	4	7	4	1
III Southern Great Basin	92,173	35,588	73	13	10	3	1	0
IV Snake River Plain	134,187	51,810	53	29	11	6	1	0
V Northern Great Basin	65,536	25,303	62	21	10	1	1	6
VI Columbia Basin	12,105	4,674	6	64	2	12	13	3
VII Colorado Plateau	17,534	6,770	42	36	6	6	9	1
TOTALS	480,570	185,549	52	31	8	5	3	1

Population Size

Estimates of greater sage-grouse abundance were mostly anecdotal prior to the implementation of systematic surveys in the 1950s (Braun 1998, p. 139). Early reports suggested the birds were abundant throughout their range, with estimates of historical populations ranging from 1,600,000 to 16,000,000 birds (65 FR 51580, August 24, 2000). However, concerns about extinction were raised in early literature due to market hunting and habitat alteration (Hornaday 1916, pp. 181-185). Following a review of published literature and anecdotal reports, Connelly *et al.* (2004, ES-1-3) concluded that the abundance of sage-grouse has declined from presettlement (defined as 1800) numbers. Most of the historical

population changes were the result of local extirpations, which has been inferred from a 44 percent reduction in sage-grouse distribution described by Schroeder *et al.* 2004 (Connelly *et al.* 2004, p. 6-9).

Population numbers are difficult to estimate due to the large range of the species, physical difficulty in accessing some areas of habitat, the cryptic coloration and behavior of hens (Garton *et al.* in press, p. 6), and survey protocols. Problems with inconsistent sampling protocols for lek surveys (e.g., number of times a lek is counted, number of leks surveyed in a year, observer bias, observer experience, time counted) were identified by Walsh *et al.* (2006, pp. 61-64) and Garton *et al.* (in press, p. 6), and many of those problems still persist (Stiver *et al.* 2006, p. 3-1). Additionally, estimating population sizes using lek data is difficult as the relationship of those data to actual population size (e.g., ratio of males to females, percent unseen birds) is usually unknown (WAFWA 2008, p. 3). However, the annual counting of males on leks remains the primary approach to monitor long-term trends of populations (WAFWA 2008, p. 3), and standardized techniques are beginning to be implemented throughout the species' range (Stiver *et al.* 2006, pp. 3-1 to 3-16). The use of harvest data for estimating population numbers also is of limited value since both harvest and the population size on which harvest is based are estimates. Given the limitations of these data, States usually rely on a combination of actual counts of birds on leks and harvest data to estimate population size. Estimates of populations by State, generated from a variety of data sources, are provided in Table 4.

TABLE 4—SAGE-GROUSE POPULATION ESTIMATES BASED ON DATA FROM STATE WILDLIFE AGENCIES.

Location	Data Year	Source	Estimated Population
CA/NV	2004	California/Nevada Sage-grouse Conservation Team (2004, p. 26)	88,000
CO	2008	2007 CO Conservation plan, based on adjusted male lek counts (count + 1.6 multiplier, sex ratio females:males) (Colorado Greater Sage-grouse Steering Committee 2008, p. 56)	22,646
ID	2007	Calculated based on assumption of 5% of population is harvested (Service, unpublished data)	98,700
MT	2007	Calculated based on assumption of 5% of population is harvested (Service, unpublished data)	62,320
ND	2007	2008 lek counts adjusted (assumes 75% of males counted at lek, & sex ratio of 2:1) (A. Robinson, NDGFD, pers. comm., 2008)	308
OR	2003	2003 Oregon Conservation Plan Estimate (Hagen 2005, p. 27)	40,000
SD	2007	South Dakota Game and Fish web page (last updated in 2007)	1,500
UT	2002	Utah Division of Wildlife Resources (2002, p. 13)	12,999
WA	2003	Washington Division of Fish and Wildlife (Stinson *et al.* 2004, p. 21)	1,059
WY	2007	Calculated based on assumption of 5% of population is harvested (Service, unpublished data)	207,560
Canada	2006	Government of Canada 2010	450

Braun (1998, p. 141) estimated that the minimum 1998 rangewide spring population numbered about 157,000 sage-grouse, derived from numbers of males counted on leks. The same year, State wildlife agencies within the range of the species estimated the population was at least 515,000 based on lek counts and harvest data (Warren 2008, pers. comm.). In 2000, we estimated the rangewide abundance of sage-grouse was between a minimum of 100,000 (taken from Braun 1998, p. 141) up to 500,000 birds (based on harvest data from Idaho, Montana, Oregon, and Wyoming, with the assumption that 10 percent of the population is typically harvested) (65 FR 51578, August 24, 2000). In 2003, based on increased lek survey efforts, Connelly *et al.* (2004, p. 13-5) concluded that rangewide population numbers were likely much greater than the 157,000 estimated by Braun (1998, p. 141), but they were unable to generate a rangewide population estimate. Garton *et al.*, (in press, p. 2) estimated a rangewide minimum of 88,816 males counted on leks in 2007, the last year data were formally collated and reported. Estimates of historical populations range from 1,600,000 to 16,000,000 birds (65 FR 51580).

Population Trends

Although population numbers are difficult to estimate, the long-term data collected from counting males on leks provides insight to population trends. Periods of historical decline in sage-grouse abundance occurred from the late 1800s to the early-1900s (Hornaday 1916, pp. 179-221; Crawford 1982, pp. 3-6; Drut 1994, pp. 2-5; WDFW 1995; Braun 1998, p. 140; Schroeder *et al.* 1999, p. 1). Other noticeable declines in sage-grouse populations occurred in the 1920s and 1930s, and then again in the 1960s and 1970s (Connelly and Braun 1997, pp. 3-4; Braun 1998, p. 141). Declines in the 1920s and 1930s were attributed to hunting, and declines in the 1960s and 1970s were primarily as a result of loss of habitat quality and quantity (Connelly and Braun 1997, p. 2). State wildlife agencies were sufficiently concerned with the decline in the 1920s and 1930s that many closed their hunting seasons and others significantly reduced bag limits and season lengths as a precautionary measure (Patterson 1952, pp. 30-33; Autenrieth 1981, p. 10).

Using lek counts as an index for abundance, Connelly *et al.* (2004, p. 6-71) reported rangewide declines from 1965 through 2003. Declines averaged 2 percent per year from 1965 to 2003. The decline was more dramatic from 1965 through 1985, with an average annual change of 3.5 percent. The rate of decline rangewide slowed to 0.37 percent annually during 1986 to 2003 and some populations increased (Connelly *et al.* 2004, p. 6-71). Based on these analyses, Connelly *et al.* 2004 (p. 6-71) estimated that sage-grouse population numbers in the late 1960s and early 1970s were likely two to three times greater than current numbers (Connelly *et al.* 2004, p. 6-71). Using a statistical population reconstruction approach, Garton *et al.* (in press, p. 67) also demonstrated a pattern of higher numbers of sage-grouse in the late 1960s and early 1970s, which was supported by data from several other sources (Garton *et al.* in press, p. 68).

In 2008, WAFWA conducted new population trend analyses that incorporated an additional 4 years of data beyond the Connelly *et al.* 2004 analysis (WAFWA 2008, entire). Although the WAFWA analyses used different statistical techniques, lek counts also were used. WAFWA results were similar to Connelly *et al.* (2004) in that a long-term population decline was detected during 1965 to 2007 (average 3.1 percent annually; WAFWA 2008, p. 12). WAFWA attributed the decline to the reduction in number of active leks (WAFWA 2008, p. 51). Similar to Connelly *et al.* (2004), the WAFWA analyses determined that the rate of decline lessened during 1985 to 2007 (average annual change of 1.4 percent annually) (WAFWA 2008, p. 58). Garton *et al.* (in press, pp. 68-69) also had similar results. While the average annual rate of decline has lessened since 1985 (3.1 to 1.4 percent), population declines continue and populations are now at much lower levels than in the early 1980's. Therefore, these continuing negative trends at such low relative numbers are concerning regarding long-term population persistence. Similarly, short-term increases or stable trends, while on the surface seem encouraging, do not indicate that populations are recovering but may instead be a function of losing leks and not increases in numbers (WAFWA 2008, p.51). Population stability may also be compromised if cycles in sage-grouse populations (Schroeder *et al.* 1999, p. 15; Connelly *et al.* 2004, p.6-71) are lost, which current analyses suggest, minimizing the opportunities for population recovery if habitat were available (Garton 2009, pers. comm.).

Although the MZs were not formally adopted by WAFWA until 2006, the population trend analyses conducted by Connelly *et al.* (2004) included trend analyses based on the same floristic provinces used to define the zones. While the average annual rate of change was not presented, the results of those analyses indicated long-term declines in greater sage-grouse for MZs I, II, III, IV and VI. Population trends in MZs V and VII were increasing, but the trends were not statistically significant (Connelly *et al.* 2004, p. 6-71; Stiver *et al.* 2006, p. 1-7). WAFWA (2008) and Garton *et al.* (in press) population trend analyses did consider MZs. The WAFWA (2008, pp. 13-27) and Garton *et al.* (in press, pp. 22-62) reported that MZs I through VI had negative population trends from 1965 to 2007. All population trend analyses had similar results, with the exception of MZ VII (Table 5). However, this MZ has one of the highest proportions of inactive leks (Garton *et al.* in press, p. 65), which may imply that male numbers on the remaining leks are increasing as birds relocate. The analysis of this MZ also suffered from small sample sizes and therefore large confidence intervals (Garton *et al.* in press, p. 217), so the trend may not actually reflect the population status.

TABLE 5—LONG-TERM POPULATION TREND ESTIMATES FOR GREATER SAGE-GROUSE MANAGEMENT ZONES.

MZ	States and Provinces Included	Population Trend Estimates 1965-2003* (Connelly *et al.* 2004)	Population Trend Estimates Based on Annual Rates of Change (%) 1965-2007(WAFWA 2008)	Population Trend Estimates Based on Annual Rates of Change (%) 1965–2007 (Garton *et al.* in press)
I	MT, WY, ND, SD, SK, AL	Long-term decline	-2.9	-2.9
II	ID, WY, UT, CO	Long-term decline	-2.7	-3.5
III	UT, NV, CA	Long-term decline	-2.2	-10**
IV	ID, UT, NV, OR	Long-term decline	-3.8	-4**
V	OR, CA, NV	Change statistically undetectable	-3.3	-2**
VI	WA	Long-term decline	-5.1	-6.5
VII	CO, UT	Change statistically undetectable	No detectable trend	+34**

*Average annual rate of change was not reported.
**Due to sample inadequacies for the statistical analyses used, only data from 1995 to 2007 could be used.

Differences in the MZ trends observed between the three analyses are minimal, with the exception of MZs III, V, and VII. While the results of Connelly *et al.* (2004) and WAFWA (2008) were similar for MZ III, Garton *et al.* (in press) showed a larger rate of decline. This difference may be due to the shortened time period (12 versus 42 years) Garton *et al.* (in press) used for the analyses because some earlier data were not suitable for the statistical procedures used. This increased rate of decline was not observed for MZ IV where Garton *et al.*'s (in press) analyses also spanned only 12 years, suggesting that declines in MZ III may have recently accelerated. No explanation was offered by WAFWA (2008) about the difference between their analyses and Connelly *et al.* (2004) for MZ V. However, Garton *et al.* (in press) results are similar to WAFWA for the same area.

The difference in the annual rate of change between Connelly *et al.* (2004) and WAFWA (2008) as compared to Garton *et al.* (in press) for MZ VII is substantial (Table 5). Garton *et al.* (in press) did not offer an explanation of this difference, but Connelly *et al.*

(2004; as cited by (Stiver *et al.* 2006, p. 1-7)) indicated population trends were increasing in this MZ, although those increases were not statistically significant. However, Garton *et al.* (in press, pp. 62-63) reported that the number of leks in MZ VII declined by 39 percent during the same analysis period. The increase in annual rate of change may simply reflect increases on remaining leks as habitat became more limited.

In addition to calculating annual rates of change by MZ, Garton *et al* (in press) also reported the percent change in number of males per lek from 1965 to 2007, the percent change of active leks from 1965 to 2007, and minimum male population estimates in 2007 (Table 6). The percent change in number of males per lek and the percent change in active leks reflect population declines, and possibly habitat loss in all MZs.

TABLE 6—MINIMUM MALE GREATER SAGE-GROUSE POPULATION ESTIMATES IN 2007, PERCENT CHANGE IN NUMBER OF MALES PER LEK AND PERCENT CHANGE IN NUMBER OF ACTIVE LEKS BETWEEN 1965 AND 2007 BY MANAGEMENT ZONE (FROM GARTON *et al.* IN PRESS, PP. 22-64).

MZ	Min Population Est in 2007 (# of males)	Percent Change in # of Males per Lek (1965–2007)	Percent Change of Active Leks (1965–2007)
I	14,814	-17	-22
II	42,429	-30	-7
III	6,851	-24	-16 ***
IV	15,761	-54	-11***
V	6,925	-17**	-21**
VI	315	-76	-57
VII	241	-13	-39*

*1995 to 2007 — due to sample sizes, only data from this time period were used.
**1985 to 2007 — due to sample sizes, only data from this time period were used.
***1975 to 2007 — due to sample sizes, only data from this time period were used.

In summary, since neither presettlement nor current numbers of sage-grouse are accurately known, the actual rate and magnitude of decline since presettlement times is uncertain. However, three groups of researchers using different statistical methods (but the same lek count data) concluded that rangewide greater sage-grouse have experienced long-term population declines in the past 43 years, with that decline lessening in the past 22 years. Many of these declines are the result of loss of leks (WAFWA 2008, p. 51), indicating either a direct loss of habitat or habitat function (Connelly and Braun 1997, p. 2). A recent increase in the annual rate of change for MZ VII may simply be an anomaly of small population numbers, as other indicators suggest this area is suffering habitat losses. A delayed response of sage-grouse to changes in carrying capacity was identified by Garton *et al.* (in press, p.71).

Connectivity

Greater sage-grouse are a landscape-scale species, requiring large expanses of sagebrush to meet all seasonal habitat requirements. The loss of habitat from fragmentation and conversion decreases the connectivity between seasonal habitats potentially resulting in the loss of the population (Doherty *et al.* 2008, p. 194). Loss of connectivity also can increase population isolation (Knick and Hanser in press, p. 4, and references therein) and, therefore, the probability of loss of genetic diversity and extirpation from stochastic events.

Analyses of connectivity of greater sage-grouse across the sagebrush landscape were conducted by Knick and Hanser (in press, entire). Knick and Hanser (in press, p. 29) found that the average movement between population centers (leks) of sage-grouse rangewide was 16.6 km (10.3 mi), with a standard deviation of 7.3 km (4.5 mi). Leks within 18 km (11.2 mi) of each other had common features when compared to leks further than this distance (Knick and Hanser in press, p. 17). Therefore, they used a distance of 18 km (11.2 mi) between leks to assess connectivity (movement between populations), but cautioned that this distance may not accurately reflect genetic flow, or lack thereof, between populations (Knick and Hanser in press, p. 28). Genetic evidence suggests that exchange of individual birds has not been restricted, although there is a gradation of allelic frequencies across the species' range (Oyler-McCance and Quinn, in press, p. 14). This result suggests that widespread movements (e.g., across several States) are not occurring.

Population linkages primarily occurred within MZs, and connectivity between MZs was limited, with the exception of MZs I (Great Plains) and II (Wyoming Basin). Within MZs, the Wyoming Basin (MZ II) had the highest levels of connectivity, followed by MZ IV (Snake River Plain) and MZ I (Great Plains) (Knick and Hanser in press, p. 18). The MZ VI (Columbia Basin) and VII (Colorado Plateau) had the least internal connectivity, suggesting there was limited dispersal between leks and an existing relatively high degree of isolation (Knick and Hanser in press, p. 18). Areas along the edges of the sage-grouse range (e.g., Columbia Basin, Bi-State area) are currently isolated from other sage-grouse populations (Knick and Hanser in press, p. 28).

Connectivity between sage-grouse MZs and the populations within them declined across all three analysis periods examined: 1965–1974, 1980–1989, and 1998–2007. The decline in connectivity was due to the loss of leks and reduced population size (Knick and Hanser in press, p. 29). Historic leks with low connectivity also were lost (Knick and Hanser in press, p. 20), suggesting that current isolation of leks by distance (including habitat fragmentation) will likely result in their future loss (Knick and Hanser in press, p. 28). Small decreases in lek connectivity resulted in large increases in probability of lek abandonment (Knick and Hanser, in press, p. 29). Therefore, maintaining habitat connectivity and sage-grouse population numbers are essential for sage-grouse persistence.

Sagebrush distribution was the most important factor in maintaining connectivity (Knick and Hanser in press, p. 32). This result suggests that any activities that remove or fragment sagebrush habitats will contribute to loss of connectivity and population isolation. This conclusion is consistent with research from both Aldridge *et al.* (2008, p. 988) and Wisdom *et al.* (in press, p. 13), which independently identified the proximity of sagebrush patches and area in sagebrush cover as the best predictors for sage-grouse presence.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below information regarding the status and threats to the greater sage-grouse in relation to the five factors provided in section 4(a)(1) of the Act. Under section (4) of the Act, we may determine a species to be endangered or threatened on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Our evaluation of threats is based on information provided in the petition, available in our files, and other sources considered to be the best scientific and commercial information available, including published and unpublished studies and reports.

Differences in ecological conditions within each MZ affect the susceptibility of these areas to the various threats facing sagebrush ecosystems and its potential for restoration. For example, *Centaurea diffusa* (diffuse knapweed), an exotic annual weed, is most competitive within shrub-grassland communities where antelope bitterbrush is dominant (MZ VI), and *Bromus tectorum* (cheatgrass) is more dominant in areas with minimal summer precipitation (MZs III and V) (Miller *et al.*, in press, pp. 20-21). Therefore, we stratify our analyses by these MZs because they represent zones within which ecological variation is less than what it would be across the range of the species. This approach allows us to better assess the impact and benefits of actions occurring across the species' range and in turn more accurately assess the status of the species.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Several factors are contributing to the destruction, modification, or curtailment of the greater sage-grouse's habitat or range. Several recent studies have demonstrated that sagebrush area is one of the best landscape predictors of greater sage-grouse persistence (Aldridge *et al.* 2008, p. 987; Doherty *et al.* 2008, p. 191; Wisdom *et al.*, in press, p. 17). Sagebrush habitats are becoming increasingly degraded and fragmented due to the impacts of multiple threats, including direct conversion, urbanization, infrastructure such as roads and powerlines built in support of several activities, wildfire and the change in wildfire frequency, incursion of invasive plants, grazing, and nonrenewable and renewable energy development. Many of these threat factors are exacerbated by the effects of climate change, which may influence long-term habitat trends.

Habitat Conversion for Agriculture

Sagebrush is estimated to have covered roughly 120 million ha (296 million ac; Schroeder *et al.* 2004, p. 365) in western North America, but large portions of that area have been cultivated for the production of agricultural crops (e.g., potatoes, wheat; Schroeder *et al.* 1999, p. 16; 2000, p. 11). Western rangelands were converted to agricultural lands on a large scale beginning with the series of Homestead Acts in the 1800s (Braun 1998, p. 142, Hays *et al.* 1998, p. 26; Knick in press, p. 4; Knick *et al.* in press, p. 11), especially where suitable deep soil terrain and water were available (Rogers 1964, p.13, Schroeder and Vander Haegen, 2009, in press, p. 3). Connelly *et al.* (2004, p. 5-55) estimated that 24.9 million ha (61.5 million ac) within the sage-grouse conservation area (SGCA) used for their assessment area (historic range of Gunnison and greater sage-grouse plus a 50-km (31-mi) buffer) for sage-grouse is now comprised of agricultural lands, although some areas within the species' range are not sagebrush habitat, and the SGCA is larger than the sage-grouse current distribution. An estimated 10 percent of sagebrush steppe that existed prior to EuroAmerican settlement has been converted to agriculture (Knick *et al.* in press, p. 13). The remaining 90 percent is largely unsuited for agriculture because irrigation is not considered to be feasible, topography and soils are limiting, or temperatures are too extreme for many crops (West 1996 cited in Knick *et al.* in press, p. 13).

Habitat conversion results in loss of habitat available for sage-grouse use. The actual effect of this loss depends on the amount of sagebrush lost, the type of seasonal habitat affected, and the arrangement of habitat lost (large blocks or small patches) (Knick *et al.* in press, p. 15). Direct impacts to sage-grouse depend on the timing of conversion (e.g., loss of nests, eggs). Indirect effects of agricultural activities adjoining sagebrush habitats include increased predation with a resulting reduced sage-grouse nest success (Connelly *et al.* 2004, p. 7-23), increased human presence, and habitat fragmentation.

To estimate the area possibly influenced by these indirect effects, Knick *et al.* (in press, p. 13) applied a "high effective buffer" out to 6.9 km (4.3 mi) from agricultural lands, based on foraging distances of synathropic (ecologically associated with humans) predators (e.g. red foxes (*Vulpes vulpes*) and ravens (*Corvus corax*)). Given the distribution of agricultural activities across the sagebrush range, nearly three quarters of all sagebrush within range of sage-grouse has been influenced by agricultural activities (falls within the high effective buffer) (Knick *et al.* in press, p. 13). This influence includes foraging distances for synathropic predators (Leu *et al.* 2008, p. 1120; Knick *et al.* in press, p. 13), and associated features such as irrigation ditches. Extensive conversion of sagebrush to agriculture within a landscape has decreased abundance of sage-grouse in many portions of their range (Knick and Hanser in press, p. 30, and references therein).

Soil associations have resulted in disproportionate levels of habitat conversion across different sagebrush communities. For example, *Artemisia tridentata* ssp. *vaseyana* is found at lower elevations, in soils that retain moisture 2 to 4 weeks longer than in well-drained, but dry and higher elevation soils typical of *A. t.* ssp. *wyomingensis* locations. Therefore, sagebrush communities dominated by basin big sagebrush (*A. t.* ssp. *tridentata)* have been converted to agriculture more extensively than have communities on poorer soil sites (Winward 2004, p. 29) (also see discussion below).

Large losses of sagebrush shrub-steppe habitats due to agricultural conversion have occurred in some areas within the range of the greater sage-grouse. This loss has been especially apparent in the Columbia Basin of the Northwest (MZ VI), the Snake River Plain of Idaho (MZ IV) (Schroeder *et al.* 2004, p. 370), and the Great Plains (MZ

I) (Knick *et al.* in press, p. 13). Hironaka *et al.* (1983, p. 27) estimated that 99 percent of basin big sagebrush habitat in the Snake River Plain has been converted to cropland. Between 1975 and 1992 alone, 29,762 ha (73,543 ac) of sagebrush habitat were converted to cropland on the Upper Snake River Plain, a 74-percent increase in cropland (Leonard *et al.* 2000, p. 268). The loss of this primarily winter sage-grouse habitat is significantly related to subsequent sage-grouse declines (Leonard *et al.* 2000, p. 268).

Prior to EuroAmerican settlement in the 19th century, Washington had an estimated 42 million ha (103.8 million ac) of shrub-steppe (Connelly *et al.* 2004, p. 7-22). Approximately 60 percent of the original shrub-steppe habitat in Washington has been converted to primarily agricultural uses (Dobler 1994, p. 2). Deep soils supporting shrub-steppe communities in Washington within sage-grouse range continue to be converted to agricultural uses (Vander Haegen *et al.* 2000, p. 1156), resulting in habitat loss. Agriculture is the dominant land cover within sagebrush areas of Washington (42 percent) and Idaho (19 percent) (Miller *et al.*, in press, p. 18). In north-central Oregon (MZ V), approximately 2.6 million ha (6.4 million ac) of habitat were converted for agricultural purposes, essentially eliminating sage-grouse from this area (Willis *et al.* 1993, p. 35). More broadly, across the interior Columbia Basin of southern Idaho, northern Utah, northern Nevada, eastern Oregon (MZ IV), and Washington, approximately 6 million ha (14.8 million ac) of shrub-steppe habitat has been converted to agricultural crops (Altman and Holmes 2000, p. 10).

Braun concluded that development of irrigation projects to support agricultural production in areas where soils were sufficient to support agriculture, in some cases conjointly with hydroelectric dam construction, has resulted in additional sage-grouse habitat loss (Braun 1998, p. 142). The reservoirs formed by these projects impacted native shrub-steppe habitat adjacent to the rivers in addition to supporting the irrigation and direct conversion of shrub-steppe lands to agriculture. The projects precipitated conversion of large expanses of upland shrub-steppe habitat in the Columbia Basin for irrigated agriculture (65 FR 51578). The creation of these reservoirs also inundated hundreds of kilometers of riparian habitats used by sage-grouse broods (Braun 1998, p. 144). However, other small and isolated reclamation projects (4,000 to 8,000 ha (10,000 to 20,000 ac)) were responsible for three-fold localized increases in sage-grouse populations (Patterson 1952, pp. 266-274) by providing water in a semiarid environment, which provided additional insect and forb food resources (e.g., Eden Reclamation Project in Wyoming). Benefits of providing water through agricultural activities may now be negated due to the threat of West Nile virus (WNv) (Walker *et al.* 2004, p. 4).

Five percent of the areas occupied by Great Basin sagebrush have been converted to agriculture, urban or industrial areas (MZs III and IV) (Miller *et al.* in press, p. 18). Five percent has also been converted in the wheatgrass-needlegrass-shrubsteppe (MZ II, primarily in north-central Wyoming) (Miller *et al.*, in press, p. 18). In sagebrush-steppe habitats, 14 percent of sagebrush habitats had been converted to agriculture, urban or industrial activities (MZs II, IV, V, and VI) (Miller *et al.*, in press, pp. 17-18). Nineteen percent of the Great Plains area (MZ I) has been converted to agriculture (Knick *et al.* in press, p. 13). Conversions for sagebrush habitat types by State are detailed in Table 7.

TABLE 7—CURRENT SAGEBRUSH-STEPPE HABITAT AND AGRICULTURAL LANDS WITHIN GREAT BASIN SAGEBRUSH (AS DERIVED FROM LANDFIRE 2006 VEGETATION COVERAGE) (FROM MILLER *et al.* IN PRESS, PP. 17-18).

State	Percent Sagebrush	Percent Agriculture
Washington	23.7	42.4
Montana	56.2*	7.5*
Wyoming	66.0*	3.4*
Idaho	55.0	18.6
Oregon	64.5	8.6
Nevada	58.7	1.3
Utah	37.6	9.7
California	49.8	8.0
Colorado	40.6*	11.8*
TOTAL	55.4	10.0

*Analyses did not include sagebrush lands in the eastern portions of Colorado, Montana, and Wyoming.

Aldridge *et al.* (2008, pp. 990-991) reported that sage-grouse extirpations were more likely to occur in areas where cultivated crops exceeded 25 percent. Their results supported the conclusions of others (e.g., Schroeder 1997, p. 934; Braun 1998, p. 142; Aldridge and Brigham 2003, p. 30) that extensive cultivation and fragmentation of native habitats have been associated with sage-grouse population declines. Wisdom *et al.* (in press, p. 4) identified environmental factors associated with the regional extirpation of sage-grouse. Areas still occupied by sage-grouse have three times less area in agriculture and a mean human density 26 times lower than extirpated areas (Wisdom *et al.*, in press, p. 13). While sage-grouse may forage on agricultural crops (see discussion below), they avoid landscapes dominated by agriculture (Aldridge *et al.* 2008, p. 991). Conversions to croplands in southern Idaho have resulted in isolation of sagebrush-dominated landscapes into less productive regions north and south

of the Snake River Plain (Knick *et al.* 2003, p. 618). Therefore, formerly continuous populations in this area are now disconnected (Knick and Hanser in press, p. 52).

Sagebrush habitat continues to be converted for both dryland and irrigated crop production (Montana Farm Services Agency (FSA) in litt, 2009; Braun 1998, p. 142; 65 FR 51578, August 24, 2000). The increasing value of wheat and corn crops has driven new conversions in recent years. For example, the acres of sagebrush converted to tilled agriculture in Montana increased annually from 2005 to 2009, with approximately 10,259 ha (25,351 ac) converted, primarily in the eastern two-thirds of the State (MZ I) (Montana FSA in litt, 2009). In addition, in 2008, a single conversion in central Montana totaled between 3,345 and 10,000 ha (10,000 and 30,000 ac) (MZ I) (Hanebury 2008a, pers. comm.). Other large conversions occurred in the same part of Montana in 2008, although these were unquantified (Hanebury 2008b, pers. comm.). We were unable to gather any further information on crop conversions of sagebrush habitats as there are no systematic efforts to collect State or local data on conversion rates in the majority of the greater sage-grouse range (GAO 2007, p. 16).

In addition to crop conversion for traditional crops, recent interest in the development of crops for use as biofuels could potentially impact sage-grouse. For example, the 2008 Farm Bill authorized the Biomass Crop Assistance Program (BCAP), which provides financial incentives to agricultural producers that establish and produce eligible crops for conversion to bioenergy products (U.S. Department of Agriculture (USDA) 2009b, p. 1). Further loss of sagebrush habitats due to BCAP will negatively impact sage-grouse populations. However, currently we have no way of predicting the magnitude of BCAP impacts to sage-grouse (see discussion under Factor D, below).

Although conversion of shrub-steppe habitat to agricultural crops impacts sage-grouse through the loss of sagebrush on a broad scale, some studies report the use of agricultural crops (e.g., alfalfa) by sage-grouse. When alfalfa fields and other croplands are adjacent to extant sagebrush habitat, sage-grouse have been observed feeding in these fields, especially during brood-rearing (Patterson 1952, p. 203; Rogers 1964, p. 53; Wallestad 1971, p. 134; Connelly *et al.* 1988, p.120; Fischer *et al.* 1997, p. 89). Connelly *et al.* (1988, p. 120) reported seasonal movements of sage-grouse to agricultural crops as sagebrush habitats desiccated during the summer. However, use of irrigated crops may not be beneficial to greater sage-grouse if it increases exposure to pesticides (Knick *et al.* in press, p. 16) and WNv (Walker *et al.* 2004, p. 4).

Some conversion of cropland to sagebrush has occurred in former sage-grouse habitats through the USDA's voluntary Conservation Reserve Program (CRP) which pays landowners a rental fee to plant permanent vegetation on portions of their lands, taking them out of agricultural production. In Washington State (Columbia Basin, MZ VI), sage-grouse have declined precipitously in the Columbia Basin largely due to conversion of sagebrush habitats to cropland (Schroeder and Vander Haegen, in press, p. 4). Approximately 599,314 ha (1,480,937 ac) of converted farmland had been enrolled in the CRP, almost all of which was historically shrub-steppe (Schroeder and Vander Haegen in press, p. 5). Schroeder and Vander Haegen (in press, p. 20) found that CRP lands that have been out of production long enough to allow re-establishment of sagebrush and was juxtaposed to a relatively intact shrub-steppe landscape was most beneficial to sage-grouse. There appears to be some correlation with sage-grouse use of CRP and a slight increase in population size in north-central Washington (Schroeder and Vander Haegen in press, p. 21). Schroeder and Vander Haegen (in press, p. 21) concluded that the loss of CRP due to expiration of the program or incentives to produce biofuels would likely severely impact populations in the Columbia Basin.

Although estimates of the numbers of acres enrolled rangewide in CRP (and the number of acres soon to expire from CRP) are available, the extent of cropland conversion to habitats beneficial to sage-grouse (i.e., CRP lands planted with native grasses, forbs, and shrubs) is not known for any other area barring the Columbia Basin. Thus, outside this area, we cannot judge the overall impact of CRP land to sage-grouse persistence.

Direct habitat loss and conversion also occurs via numerous other landscape uses, including urbanization, livestock forage production, road building, and oil pads. These activities are described in greater detail below. Although we were unable to obtain an estimate of the total amount of sagebrush habitats that have been lost due to these activities, they have resulted in habitat fragmentation, as well as habitat loss.

Urbanization

Low densities of indigenous peoples have been present for more than 12,000 years in the historical range of sage-grouse. By 1900, less than 1 person per km^2 (1 person per 0.4 mi^2) resided in 51 percent of the 325 counties within the SGCA, and densities greater than 10 persons per km^2 (10 persons per 0.4 mi^2) occurred in 4 percent of the counties (Connelly *et al.* 2004, p. 7-24). By 2000, counties with less than 1 person per km^2 (1 person per 0.4 mi^2) occurred in 31 percent of the 325 counties and densities greater than 10 persons per km^2 (10 persons per 0.4 mi^2) occurred in 22 percent of the counties (Connelly *et al.* 2004, p. 7-25). Today, the Columbia Basin (MZ VI) has the highest density of humans while the Great Plains (MZ I) and Wyoming Basin (MZ II) have the lowest (Knick *et al.* in press, p. 19). Growth in the Great Plains (MZ I) continues to be slower than other areas. For example, population densities have increased since 1990 by 7 percent in the Great Plains (MZ I), by 19 percent in the Wyoming Basin (MZ II), and by 31 percent in the Colorado Plateau (MZ VII) (Knick *et al.* in press, p. 19).

The dominant urban areas in the sage-grouse range are located in the Bear River Valley of Utah, the portion of Bonneville Basin southeast of the Great Salt Lake, the Snake River Valley of southern Idaho, and the Columbia River Valley of Washington (Rand McNally Road Atlas 2003; Connelly *et al.* 2004, p. 7-25). Overall, approximately 1 percent of the amount of potential sagebrush (estimated historic range) is now covered by lands classified as urban (Miller *et al.*, in press, p. 18).

Knick *et al* (in press, p. 107) examined the influence of urbanization on greater sage-grouse MZs by adding a 6.9-km (4.3-mi) buffer (an estimate of the foraging distances of mammalian and corvid predators of sage-grouse) to the total area of urban land use. Based the estimates using this approach, the Columbia Basin (MZ VI) was influenced the most by urbanization with 48.4 percent of the sagebrush area affected. The Northern Great Basin (MZ V) was influenced least with 12.5 percent affected. Wyoming Basin (MZ II), which has the majority of sage-grouse in the range, was at 18.4 percent affected.

Since 1950, the western U.S. population growth rate has exceeded the national average (Leu and Hanser in press, p. 4). This growth has led to increases in urban, suburban, and rural development. Rural development has increased especially rapidly in recent decades. For example, the amount of uninhabited area in the Great Basin

ecoregion has decreased from 90,000 km² (34,749 mi²) in 1990 to less than 12,000 km² (4,633 mi²) in 2004 (Knick *et al.* in press, p. 20). Urbanization has directly eliminated some sage-grouse habitat (Braun 1998, p. 145). Interrelated effects from urbanization include construction of associated infrastructure (e.g., roads, powerlines, and pipelines) and predation threats from the introduction of domestic pets and increases in predators subsidized by human activities. In particular, municipal solid waste landfills (landfills) and roads have been shown to contribute to increases in common raven (*Corvus corax*) populations (Knight *et al.* 1993 p. 470; Restani *et al.* 2001, p. 403; Webb *et al.* 2004, p. 523). Ravens are known to be an important predator on sage-grouse nests and have been considered a restraint on sage-grouse population growth in some locations (Batterson and Morse 1948, p. 14; Autenrieth 1981, p. 45; Coates 2007, p. 26). Landfills (and roads) are found in every State within the greater sage-grouse range and a number of these are located within or adjacent to sage-grouse habitat.

Recent changes in demographic and economic trends have resulted in greater than 60 percent of the Rocky Mountain West's counties experiencing rural sprawl where rural areas are outpacing urban areas in growth (Theobald 2003, p. 3). In some Colorado counties, up to 50 percent of sage-grouse habitat is under rural subdivision development, and an estimated 3 to 5 percent of all sage-grouse historical habitat in Colorado has already been converted into urban areas (Braun 1998, p. 145). We are unaware of similar estimates for other States within the range of the greater sage-grouse and, therefore, cannot determine the effects of this factor on a rangewide basis. Rural development has increasingly taken the form of low-density (approximately 6 to 25 homes per km² (6 to 25 homes per 0.4 mi²)) home development or exurban growth (Hansen *et al.* 2005, p. 1894). Between 1990 and 2000, 120,000 km² (46,332 mi²) of land were developed at exurban densities nationally (Theobald 2001, p. 553). However, this value includes development nationwide, and we are unable to report values specifically for sagebrush habitats. However, within the Great Basin (including California, Idaho, Nevada, and Utah), human populations have increased 69 percent and uninhabited areas declined by 86 percent between 1990 and 2004 (Leu and Hanser in press, p. 19). Similar to higher density urbanization, exurban development has the potential to negatively affect sage-grouse populations through fragmentation or other indirect habitat loss, increased infrastructure, and increased predation.

In modeling sage-grouse persistence, Aldridge *et al.* (2008, pp. 991-992) found that the density of humans in 1950 was the best predictor of sage-grouse extirpation among the human population metrics considered (including increasing human population growth). Sage-grouse extirpation was more likely in areas having a moderate human population density of at least 4 people per km² (4 people per 0.4 mi²). Increasing human populations were not a good predictor of sage-grouse persistence, most likely because much of the growth occurred in areas that are already no longer suitable for sage-grouse. Aldridge *et al.* (2008, p. 990) also reported that, based on their models, sage-grouse require a minimum of 25 percent sagebrush for persistence in an area. A high probability of persistence required 65 percent sagebrush or more. This result is similar to the results by Wisdom *et al.* (in press, p. 18) who reported that human density was 26 times greater in extirpated sage-grouse areas than in currently occupied range. Therefore, human population growth that results in exurban development in sagebrush habitats will reduce the likelihood of sage-grouse persistence in the area. Given the current demographic and economic trends in the Rocky Mountain West, we believe that rates of urbanization will continue increasing, resulting in further habitat fragmentation and degradation and decreasing the probability of long-term sage-grouse persistence.

Infrastructure in Sagebrush Habitats

Habitat fragmentation is the separation or splitting apart of previously contiguous, functional habitat components of a species. Fragmentation can result from direct habitat losses that leave the remaining habitat in noncontiguous patches, or from alteration of habitat areas that render the altered patches unusable to a species (i.e., functional habitat loss). Functional habitat losses include disturbances that change a habitat's successional state or remove one or more habitat functions; physical barriers that preclude use of otherwise suitable areas; and activities that prevent animals from using suitable habitat patches due to behavioral avoidance.

Sagebrush communities exhibit a high degree of variation in their resistance and resilience to change, beyond natural variation. Resistance (the ability to withstand disturbing forces without changing) and resilience (the ability to recover once altered) generally increase with increasing moisture and decreasing temperatures, and also can be linked to soil characteristics (Connelly *et al.* 2004, p. 13-6). However, most extant sagebrush habitat has been altered since European immigrant settlement of the West (Baker *et al.* 1976, p. 168; Braun 1998, p. 140; Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 13-6), and sagebrush habitat continues to be fragmented and lost (Knick *et al.* 2003, p. 614) through the factors described below. The cumulative effects of habitat fragmentation have not been quantified over the range of sagebrush and most fragmentation cannot be attributed to specific land uses (Knick *et al.* 2003, p. 616). However, in large-scale analysis of the collective effect of anthropogenic features (or the "human footprint") in the western United States, Leu *et al.* (2008, p. 1130) found that 13 percent of the area was affected in some way by anthropogenic features (i.e., fragmentation). Areas with the lowest "human footprint" (i.e., no to slight development or use) experienced above-average human population growth between 1990 and 2000. There is significant evidence these areas will experience increasing habitat fragmentation in the future (Leu *et al.* 2008, p. 1133). Although the area covered by these estimates includes all western states, we believe the general points regarding effects of anthropogenic features apply to sage-grouse habitat.

Fragmentation of sagebrush habitats has been cited as a primary cause of the decline of sage-grouse populations because the species requires large expanses of contiguous sagebrush (Patterson 1952, pp. 192-193; Connelly and Braun 1997, p. 4; Braun 1998, p. 140; Johnson and Braun 1999, p. 78; Connelly *et al.* 2000a, p. 975; Miller and Eddleman 2000, p. 1; Schroeder and Baydack 2001, p. 29; Johnsgard 2002, p. 108; Aldridge and Brigham 2003, p. 25; Beck *et al.* 2003, p. 203; Pedersen *et al.* 2003, pp. 23-24; Connelly *et al.* 2004, p. 4-15; Schroeder *et al.* 2004, p. 368; Leu *et al.* in press, p. 19). The negative effects of habitat fragmentation have been well documented in numerous bird species, including some shrub-steppe obligates (Knick and Rotenberry 1995, pp. 1068-1069). However, prior to 2005, detailed data to assess how fragmentation influences specific greater sage-grouse life-history parameters such as productivity, density, and home range were not available. More recently, several studies have documented negative effects of fragmentation as a

result of oil and gas development and its associated infrastructure (see discussion of Energy Development below) on lek persistence, lek attendance, winter habitat use, recruitment, yearling annual survival rate, and female nest site choice (Holloran 2005, p. 49; Aldridge and Boyce 2007, pp. 517-523; Walker *et al.* 2007a, pp. 2651-2652; Doherty *et al.* 2008, p. 194). Wisdom *et al.* (in press, p. 18) reported that a variety of human developments, including roads, energy development, and other factors that contribute to habitat fragmentation have contributed to or been associated with sage-grouse extirpation. Estimating the impact of habitat fragmentation on sage-grouse is complicated by time lags in response to habitat changes (Garton *et al.*, in press, p. 71), particularly since these long-lived birds will continue to return to altered breeding areas (leks, nesting areas, and early brood-rearing areas) due to strong site fidelity despite nesting or productivity failures (Wiens and Rotenberry 1985, p. 666).

Powerlines

Power grids were first constructed in the United States in the late 1800s. The public demand for electricity has grown as human population and industrial activities have expanded (Manville 2002, p. 5), resulting in more than 804,500 km (500,000 mi) of transmission lines (lines carrying greater than 115,000 volts (115 kilovolts (kV)) by 2002 within the United States (Manville 2002, p. 4). A similar estimate is not available for distribution lines (lines carrying less than 69,000volts (69kV)), and we are not aware of data for Canada. Within the SGCA, Knick *et al.* (*in press*, p. 21) showed that powerlines cover a minimum of 1,089km^2 (420.5 mi).

Due to the potential spread of invasive species and predators as a result of powerline construction the impact from the powerline is greater than the actual footprint. Knick *et al.* (in press, p. 111) estimated these impacts may influence up to 39 percent of all sagebrush in the SGCA. Powerlines can directly affect greater sage-grouse by posing a collision and electrocution hazard (Braun 1998, pp. 145-146; Connelly *et al.* 2000a, p. 974), and can have indirect effects by decreasing lek recruitment (Braun *et al.* 2002, p. 10), increasing predation (Connelly *et al.* 2004, p. 13-12), fragmenting habitat (Braun 1998, p. 146), and facilitating the invasion of exotic annual plants (Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 7-25). In 1939, three adult sage-grouse died as a result of colliding with a telegraph line in Utah (Borell 1939, p. 85). Both Braun (1998, p. 145) and Connelly *et al.* (2000a, p. 974) report that sage-grouse collisions with powerlines occur, although no specific instances were presented. There was also an unpublished observation reported by Aldridge and Brigham (2003, p. 31). In 2009, two sage-grouse died from electrocution after colliding with a powerline in the Mono Basin of California (Gardner 2009, pers. comm.). We were unable to find any other documentation of other collisions or electrocution of sage-grouse resulting from powerlines.

In areas where the vegetation is low and the terrain relatively flat, power poles provide an attractive hunting and roosting perch, as well as nesting stratum for many species of raptors and corvids (Steenhof *et al.* 1993, p. 27; Connelly *et al.* 2000a, p. 974; Manville 2002, p. 7; Vander Haegen *et al.* 2002, p. 503). Power poles increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as territorial markers (Steenhof *et al.* 1993, p. 275; Manville 2002, p. 7). Raptors may actively seek out power poles where natural perches are limited. For example, within 1 year of construction of a 596-km (372.5-mi) transmission line in southern Idaho and Oregon, raptors and common ravens began nesting on the supporting poles (Steenhof *et al.* 1993, p. 275). Within 10 years of construction, 133 pairs of raptors and ravens were nesting along this stretch (Steenhof *et al.* 1993, p. 275). Raven counts have increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada within 5 years of construction (Atamian *et al.* 2007, p. 2). The increased abundance of raptors and corvids within occupied sage-grouse habitats can result in increased predation. Ellis (1985, p. 10) reported that golden eagle (*Aquila chryrsaetos*) predation on sage-grouse on leks increased from 26 to 73 percent of the total predation after completion of a transmission line within 200 meters (m) (220 yards (yd)) of an active sage-grouse lek in northeastern Utah. The lek was eventually abandoned, and Ellis (1985, p. 10) concluded that the presence of the powerline resulted in changes in sage-grouse dispersal patterns and caused fragmentation of the habitat.

Leks within 0.4 km (0.25 mi) of new powerlines constructed for coalbed methane development in the Powder River Basin of Wyoming had significantly lower growth rates, as measured by recruitment of new males onto the lek, compared to leks further from these lines, which were presumed to be the result of increased raptor predation (Braun *et al.* 2002, p. 10). Within the SGCA, Connelly *et al.* (2004, p. 7-26) estimated that the area potentially influenced by additional perches for corvids and raptors provided by powerlines, assuming a 5- to 6.9-km (3.1- to 4.3-mi) radius buffer around the perches based on the average foraging distance of these predators, was 672,644 to 837,390 km^2 (259,641 to 323,317 mi^2), or 32 to 40 percent of the SGCA. The actual impact on the area would depend on corvid and raptor densities within the area, the amount of cover to reduce predation risk at sage-grouse nests, and other factors (see discussion in Factor C, below).

The presence of a powerline may fragment sage-grouse habitats even if raptors are not present. Braun (1998, p. 146) found that use of otherwise suitable habitat by sage-grouse near powerlines increased as distance from the powerline increased for up to 600 m (660 yd) and, based on that unpublished data, reported that the presence of powerlines may limit sage-grouse use within 1 km (0.6 mi) in otherwise suitable habitat. Similar results were recorded for other grouse species. Pruett *et al.* (2009, p. 6) found that lesser and greater prairie-chickens (*Tympanuchus pallidicinctus* and *T. cupido*, respectively) avoided otherwise suitable habitat near powerlines. Additionally, both species also crossed powerlines less often than nearby roads, which suggests that powerlines are a particularly strong barrier to movement (Pruett *et al.* 2009, p. 6).

Sage-grouse also may avoid powerlines as a result of the electromagnetic fields (Wisdom *et al.* in press, p. 19). Electromagnetic fields have been demonstrated to alter the behavior, physiology, endocrine systems, and immune function in birds, with negative consequences on reproduction and development (Fernie and Reynolds 2005, p. 135). Birds are diverse in their sensitivities to electromagnetic field exposures, with domestic chickens being very sensitive. Many raptor species are less affected (Fernie and Reynolds 2005, p. 135).

Linear corridors through sagebrush habitats can facilitate the spread of invasive species, such as *Bromus tectorum* (Gelbard and Belnap 2003, pp. 424-426; Knick *et al.* 2003, p. 620; Connelly *et al.* 2004, p. 1-2). However, we were unable to find any information regarding the amount of invasive species incursion as a result of powerline construction.

Powerlines are common to nearly every type of anthropogenic habitat use, except perhaps some forms of agricultural development (e.g., livestock grazing) and fire. Although we were

unable to find an estimate of all future proposed powerlines within currently occupied sage-grouse habitats, we anticipate that powerlines will continue to increase into the foreseeable future, particularly given the increasing development of energy resources and urban areas. For example, up to 8,579 km (5,311 mi) of new powerlines are predicted for the development of the Powder River Basin coal-bed methane field in northeastern Wyoming (BLM 2003) in addition to the approximately 9,656 km (6,000 mi) already constructed in that area. In November 2009, nine Federal agencies signed a Memorandum of Understanding to expedite the building of new transmission lines on Federal lands. If these lines cross sage-grouse habitats, sage-grouse will likely be negatively affected.

Communication Towers

Within sage-grouse habitats, 9,510 new communication towers have been constructed within recent years (Connelly *et al.* 2004, p. 13-7). While millions of birds are killed annually in the United States through collisions with communication towers and their associated structures (e.g., guy wires, lights) (Shire *et al.* 2000, p. 5; Manville 2002, p. 10), most documented mortalities are of migratory songbirds. We were unable to determine if any sage-grouse mortalities occur as a result of collision with communication towers or their supporting structures, as most towers are not monitored and those that are lie outside the range of the species (Kerlinger 2000, p. 2; Shire *et al.* 2000 p. 19). Cellular towers have the potential to cause sage-grouse mortality via collisions, to influence movements through avoidance of a tall structure (Wisdom *et al.* in press, p. 20), or to provide perches for corvids and raptors (Steenhof *et al.* 1993, p. 275; Connelly *et al.* 2004, p. 13-7).

In a comparison of sage-grouse locations in extirpated areas of their range (as determined by museum species and historical observations) and currently occupied habitats, the distance to cellular towers was nearly twice as far from grouse locations in currently occupied habitats than extirpated areas (Wisdom *et al.* in press, p. 13). The results may have been influenced by location as many cellular towers are close to intensive human development. However, such associations with other indicators of development and cellular towers were low (Wisdom *et al.* in press, p. 20). High levels of electromagnetic radiation within 500 m (547 yd) of all towers have been linked to decreased populations and reproductive performance of some bird and amphibian species (Wisdom *et al.* in press, p. 19, and references therein). We do not know if greater sage-grouse are negatively impacted by electromagnetic radiation, or if their avoidance of these structures is a response to increased predation risk.

Fences

Fences are used to delineate property boundaries and for livestock management (Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974). The effects of fencing on sage-grouse include direct mortality through collisions, creation of predator (raptor) and corvid perch sites, the potential creation of predator corridors along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (Call and Maser 1985, p. 22; Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974; Beck *et al.* 2003, p. 211; Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 1-2).

More than 1,000 km (625 mi) of fences were constructed annually in sagebrush habitats from 1996 through 2002, mostly in Montana, Nevada, Oregon, and Wyoming (Connelly *et al.* 2004, p. 7-34). Over 51,000 km (31,690 mi) of fences were constructed on BLM lands supporting sage-grouse populations between 1962 and 1997 (Connelly *et al.* 2000a, p. 974). Sage-grouse frequently fly low and fast across sagebrush flats, and fences can create a collision hazard (Call and Maser 1985, p. 22). Thirty-six carcasses of sage-grouse were found near Randolph, Utah, along a 3.2-km (2-mi) fence within 3 months of its construction (Call and Maser 1985, p. 22). Twenty-one incidents of mortality through fence collisions near Pinedale, Wyoming, were reported in 2003 to the BLM (Connelly *et al.* 2004, p. 13-12). A recent study in Wyoming confirmed 146 sage-grouse fence strike mortalities over a 31–month period along a 7.6-km (4.6-mi) stretch of 3-wire BLM range fence (Christiansen 2009).

Not all fences present the same mortality risk to sage-grouse. Mortality risk appears to be dependent on a combination of factors including design of fencing, landscape topography, and spatial relationship with seasonal habitats (Christiansen 2009, unpublished data). Although the effects of direct strike mortality on populations are not understood, fences are ubiquitous across the landscape. In many parts of the sage-grouse range (primarily Montana, Nevada, Oregon, Wyoming) fences exceed densities of more than 2 km/km^2 (1.2 mi/0.4 mi^2; Knick *et al.* in press, p. 32). Fence collisions continue to be identified as a source of mortality for sage-grouse, and we expect this source of mortality to continue into the foreseeable future (Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974; Oyler-McCance *et al.* 2001, p. 330; Connelly *et al.* 2004, p. 7-3).

Fence posts create perching places for raptors and corvids, which may increase their ability to prey on sage-grouse (Braun 1998, p. 145; Oyler-McCance *et al.* 2001, p. 330; Connelly *et al.* 2004, p. 13-12). We anticipate that the effect on sage-grouse populations through the creation of new raptor perches and predator corridors into sagebrush habitats is similar to that of powerlines discussed previously (Braun 1998, p. 145; Connelly *et al.* 2004, p. 7-3). Fences and their associated roads also facilitate the spread of invasive plant species that replace sagebrush plants upon which sage-grouse depend (Braun 1998, p. 145; Connelly *et al.* 2000a, p. 973; Gelbard and Belnap 2003, p. 421; Connelly *et al.* 2004, p. 7-3). Greater sage-grouse avoidance of habitat adjacent to fences, presumably to minimize the risk of predation, effectively results in habitat fragmentation even if the actual habitat is not removed (Braun 1998, p. 145).

Roads

Interstate highways and major paved roads cover approximately 2,500 km^2 (965 mi^2) or 0.1 percent of the SGCA (Knick *et al.* in press, p. 21). Based on applying a 7-km (4.3-mi) buffer to estimate the potential impact of secondary effects from roads, interstates and highways are estimated to influence 851,044 km^2 (328,590 mi^2) or 41 percent of the SGCA. Additionally, secondary paved roads are heavily distributed throughout most of the SGCA, existing at densities of up to greater than 5 km/km^2 (3.1 mi/mi^2). Taken together, 95 percent of all sage-grouse habitats were within 2.5 km (1.5 mi) of a mapped road, and almost no area of sagebrush was greater the 6.9 km (4.3 mi) from a mapped road (Knick *et al.* in press, p. 21).

Impacts from roads may include direct habitat loss, direct mortality, barriers to migration corridors or seasonal habitats, facilitation of predators and spread of invasive vegetative species, and other indirect influences such as noise (Forman and Alexander 1998, pp. 207-231). Sage-grouse mortality resulting from collisions with vehicles does occur (Patterson 1952, p. 81), but mortalities are typically not monitored or recorded. Therefore, we are unable to determine the importance of this factor on sage-grouse populations. Data regarding how roads affect seasonal habitat availability

for individual sage-grouse populations by creating barriers and the ability of greater sage-grouse to reach these areas were not available. Road development within Gunnison sage-grouse (*C. minimus*) habitats impeded movement of local populations between the resultant patches, with grouse road avoidance presumably being a behavioral means to limit exposure to predation (Oyler-McCance *et al.* 2001, p. 330).

Roads can provide corridors for predators to move into previously unoccupied areas. For some mammalian species, dispersal along roads has greatly increased their distribution (Forman and Alexander 1998, p. 212; Forman 2000, p. 33). Corvids also use linear features such as primary and secondary roads as travel routes, expanding their movements into previously unused regions (Knight and Kawashima 1993, p. 268; Connelly *et al.* 2004, p. 12-3). In an analysis of anthropogenic impacts, at least 58 percent of the SGCA had a high or medium estimated presence of corvids (Connelly *et al.* 2004, p. 12-6). Corvids are important sage-grouse nest predators and in a study in Nevada were positively identified via video recorder as responsible for more than 50 percent of nest predations in the study area (Coates 2007, pp. 26-30). Bui (2009, p. 31) documented ravens following roads in oil and gas fields during foraging. Additionally, highway rest areas provide a source of food and perches for corvids and raptors, and facilitate their movements into surrounding areas (Connelly *et al.* 2004, p. 7-25).

The presence of roads increases human access and resulting disturbance effects in remote areas (Forman and Alexander 1998, p. 221; Forman 2000, p. 35; Connelly *et al.* 2004, pp. 7-6 to 7-25). Increases in legal and illegal hunting activities resulting from the use of roads built into sagebrush habitats have been documented (Hornaday 1916, p. 183; Patterson 1952, p. vi). However, the actual current effect of these increased activities on sage-grouse populations has not been determined. Roads also may facilitate access for rangeland habitat treatments, such as disking or mowing (Connelly *et al.* 2004, p. 7-25), resulting in subsequent direct habitat losses. New roads are being constructed to support development activities within the greater sage-grouse extant range. In the Powder River Basin of Wyoming, up to 28,572 km (17,754 mi) of roads to support coalbed methane development are proposed (BLM 2003).

The expansion of road networks contributes to exotic plant invasions via introduced road fill, vehicle transport, and road maintenance activities (Forman and Alexander 1998, p. 210; Forman 2000, p. 32; Gelbard and Belnap 2003, p. 426; Knick *et al.* 2003, p. 619; Connelly *et al.* 2004, p. 7-25). Invasive species are not limited to roadsides, but also encroach into surrounding habitats (Forman and Alexander 1998, p. 210; Forman 2000, p. 33; Gelbard and Belnap 2003, p. 427). In their study of roads on the Colorado Plateau of southern Utah, Gelbard and Belnap (2003, p. 426) found that improving unpaved four-wheel drive roads to paved roads resulted in increased cover of exotic plant species within the interior of adjacent plant communities. This effect was associated with road construction and maintenance activities and vehicle traffic, and not with differences in site characteristics. The incursion of exotic plants into native sagebrush systems can negatively affect greater sage-grouse through habitat losses and conversions (see further discussion in Invasive Plants, below).

Additional indirect effects of roads may result from birds' behavioral avoidance of road areas because of noise, visual disturbance, pollutants, and predators moving along a road. The absence of vegetation in arid and semiarid regions that may buffer these impacts further exacerbates the problem (Suter 1978, p. 6). Male sage-grouse lek attendance was shown to decline within 3 km (1.9 mi) of a methane well or haul road with traffic volume exceeding one vehicle per day (Holloran 2005, p. 40). Male sage-grouse depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985, p. 82; Gratson 1993, p. 692). If noise interferes with mating displays, and thereby female attendance, younger males will not be drawn to the lek and eventually leks will become inactive (Amstrup and Phillips 1977, p. 26; Braun 1986, pp. 229-230).

Dust from roads and exposed roadsides can damage vegetation through interference with photosynthetic activities. The actual amount of potential damage depends on winds, wind direction, the type of surrounding vegetation and topography (Forman and Alexander 1998, p. 217). Chemicals used for road maintenance, particularly in areas with snowy or icy precipitation, can affect the composition of roadside vegetation (Forman and Alexander 1998, p. 219). We were unable to find any data relating these potential effects directly to impacts on sage-grouse population parameters.

In a study on the Pinedale Anticline in Wyoming, sage-grouse hens that bred on leks within 3 km (1.9 mi) of roads associated with oil and gas development traveled twice as far to nest as did hens bred on leks greater than 3 km (1.9 mi) from roads. Nest initiation rates for hens bred on leks close to roads also were lower (65 versus 89 percent) affecting population recruitment (33 versus 44 percent) (Lyon 2000, p. 33; Lyon and Anderson 2003, pp. 489-490). Lyon and Anderson (2003, p. 490) suggested that roads may be the primary impact of oil and gas development to sage-grouse, due to their persistence and continued use even after drilling and production have ceased. Braun *et al.* (2002, p. 5) suggested that daily vehicular traffic along road networks for oil wells can impact sage-grouse breeding activities based on lek abandonment patterns.

In a study of 804 leks within 100 km (62.5 mi) of Interstate 80 in southern Wyoming and northeastern Utah, Connelly *et al.* (2004, p. 13-12) found that there were no leks within 2 km (1.25 mi) of the interstate and only 9 leks were found between 2 and 4 km (1.25 and 2.5 mi) along this same highway. The number of active leks increased with increasing distance from the interstate. Lek persistence and activity relative to distance from the interstate also were measured. The distance of a lek from the interstate was a significant predictor of lek activity, with leks further from the interstate more likely to be active. An analysis of long-term changes in populations between 1970 and 2003 showed that leks closest (within 7.5 km (4.7 mi)) to the interstate declined at a greater rate than those further away (Connelly *et al.* 2004, p. 13-13). Extirpated sage-grouse range was 60 percent closer to highways (Wisdom *et al.* in press, p. 18). What is not clear from these studies is what specific factor relative to roads (e.g., noise, changes in vegetation, etc.) sage-grouse are responding to. Connelly *et al.* (2004, p. 13-13) caution that they have not included other potential sources of indirect disturbance (e.g., powerlines) in their analyses.

Aldridge *et al.* (2008, p. 992) did not find road density to be an important factor affecting sage-grouse persistence or rangewide patterns in sage-grouse extirpation. However, the authors did not consider the intensity of human use of roads in their modeling efforts. They also indicated that their analyses may have been influenced by inaccuracies in spatial road data sets, particularly for secondary roads (Aldridge *et al.* 2008, p. 992). However, Wisdom *et al.* (in press, p. 18) found that extirpated range has a 25 percent higher density of roads than occupied range. Wisdom *et al.*'s (in press) rangewide analysis supports the findings of numerous local studies

showing that roads can have both direct and indirect impacts on sage-grouse distribution and individual fitness (e.g., Lyon and Anderson 2003, Aldridge and Boyce 2007).

Railroads

Railroads presumably have the same potential impacts to sage-grouse as do roads because they create linear corridors within sagebrush habitats. Railways and the cattle they transport were primarily responsible for the initial spread of *Bromus tectorum* in the intermountain region (Connelly *et al.* 2004, p. 7-25). *B. tectorum*, an exotic species that is unsuitable as sage-grouse habitat, readily invaded the disturbed soils adjacent to railroads. Fires created by trains facilitated the spread of *B. tectorum* into adjacent areas. Knick *et al.* (in press, p. 109) found that railroads cover 487 km^2 (188 mi^2) or less than 0.1 percent of the SGCA, but they estimated railroads could influence 10 percent of the SGCA based adding a 3-km (1.9-mi) buffer to estimate potential impacts from the exotic plants they can spread. Avian collisions with trains occur, although no estimates of mortality rates are documented in the literature (Erickson *et al.* 2001, p. 8).

Summary: Habitat Conversion for Agriculture; Urbanization; Infrastructure

Large losses of sagebrush shrub-steppe habitats due to agricultural conversion have occurred range wide, but have been especially significant in the Columbia Basin of Washington (MZ VI), the Snake River Plain of Idaho (MZ IV), and the Great Plains (MZ I). Conversion of sage brush habitats to cropland continues to occur, although quantitative data is available only for Montana. We do not know the current rate of conversion, but most areas suitable for agricultural production were converted many years ago. The current rate of conversion is likely to increase in the future if incentives for crop production for use as biofuels continue to be offered. Urban and exurban development also have direct and indirect negative effects on sage-grouse, including direct and indirect habitat losses, disturbance, and introduction of new predators and invasive plant species. Given current trends in the Rocky Mountain west, we expect urban and exurban development to continue. Infrastructure such as powerlines, roads, communication towers, and fences continue to fragment sage-grouse habitat. Past and current trends lead us to believe this source of fragmentation will increase into the future. Fragmentation of sagebrush habitats through a variety of mechanisms including those listed above has been cited as a primary cause of the decline of sage-grouse populations (Patterson 1952, pp. 192-193; Connelly and Braun 1997, p. 4; Braun 1998, p. 140; Johnson and Braun 1999, p. 78; Connelly *et al.* 2000a, p. 975; Miller and Eddleman 2000, p. 1; Schroeder and Baydack 2001, p. 29; Johnsgard 2002, p. 108; Aldridge and Brigham 2003, p. 25; Beck *et al.* 2003, p. 203; Pedersen *et al.* 2003, pp. 23-24; Connelly *et al.* 2004, p. 4-15; Schroeder *et al.* 2004, p. 368; Leu *et al.* in press, p. 19). The negative effects of habitat fragmentation on sage-grouse are diverse and include reduced lek persistence, lek attendance, winter habitat use, recruitment, yearling annual survival, and female nest site choice (Holloran 2005, p. 49; Aldridge and Boyce 2007, pp. 517-523; Walker *et al.* 2007a, pp. 2651-2652; Doherty *et al.* 2008, p. 194). Since fragmentation is associated with most anthropogenic activities, the effects are ubiquitous across the species range (Knick *et al.* in press, p. 24). We agree with the assessment that habitat fragmentation is a primary cause of sage-grouse decline and in some areas has already led to population extirpation. We also conclude that habitat fragmentation will continue into the foreseeable future and will continue to threaten the persistence of greater sage-grouse.

Fire

Many of the native vegetative species of the sagebrush-steppe ecosystem are killed by wildfires, and recovery requires many years. As a result of this loss of habitat, fire has been identified as a primary factor associated with greater sage-grouse population declines (Hulet 1983, *in* Connelly *et al.* 2000a, p. 973; Crowley and Connelly 1996, *in* Connelly *et al.* 2000c, p. 94; Connelly and Braun 1997, p. 232; Connelly *et al.* 2000a, p. 973; Connelly *et al.* 2000c, p. 93; Miller and Eddlemen 2000, p. 24; Johnson *et al.*, in press, p. 12; Knick and Hanser, in press, pp. 29-30). In nesting and wintering sites, fire causes direct loss of habitat due to reduced cover and forage (Call and Maser 1985, p. 17). For example, prescribed fires in mountain big sagebrush at Hart Mountain National Antelope Refuge caused a short-term increase in certain forbs, but reduced sagebrush cover, making habitat less suitable for nesting (Rowland and Wisdom 2002, p. 28). Similarly, Nelle *et al.* (2000, p. 586) and Beck *et al.* (2009, p. 400) reported nesting habitat loss from fire, creating a long-term negative impact that will require 25 to 150 years of sagebrush regrowth before sufficient canopy cover becomes available for nesting birds.

In southeastern Idaho, sage-grouse populations were generally declining across the entire study area, but declines were more severe in post-fire years (Connelly *et al.* 2000c, p. 93). Further, Fischer *et al.* (1997, p. 89) concluded that habitat fragmentation caused by fire may influence distribution or migratory patterns in sage-grouse. Hulet (1983, in Connelly *et al.* 2000a, p. 973) documented the loss of leks from fire.

Fire within 54 km (33.6 mi) of a lek is one of two primary factors in predicting lek extirpation (Knick and Hanser in press, p. 26). Small increases in the amount of burned habitat surrounding a lek had a large influence on the probability of lek abandonment (Knick and Hanser, in press, pp. 29-30). Additionally, fire had a negative effect on lek trends in the Snake River Plain (MZ IV) and Southern Great Basin (MZ III) (Johnson *et al.* in press, p.12). Several recent studies have demonstrated that sagebrush area is one of the best landscape predictors of greater sage-grouse persistence (Aldridge *et al.* 2008, p. 987; Doherty *et al.* 2008, p. 191; Wisdom *et al.*, in press, p. 17). While there may be limited instances where burned habitat is beneficial, these gains are lost if sagebrush habitat is not readily available (Woodward 2006, p. 65).

Herbaceous understory vegetation plays a critical role throughout the breeding season as a source of forage and cover for sage-grouse females and chicks. The response of herbaceous understory vegetation to fire varies with differences in species composition, pre-burn site condition, fire intensity, and pre- and post-fire patterns of precipitation. In general, when not considering the synergistic effects of invasive species, any short-term flush of understory grasses and forbs is lost after only a few years and little difference is apparent between burned and unburned sites (Cook *et al.* 1994, p. 298; Fischer *et al.* 1996, p. 196; Crawford 1999, p. 7; Wrobleski 1999, p. 31; Nelle *et al.* 2000, p. 588; Paysen *et al.* 2000, p. 154; Wambolt *et al.* 2001, p. 250). Independent of the response of perennial grasses and forbs to fire, the most important and widespread sagebrush species for greater sage-grouse (i.e., big sagebrush) are killed by fire and require decades to recover. Prior to recovery, these sites are of limited to no use to sage-grouse (Fischer *et al.* 1996, p. 196; Connelly *et al.* 2000c, p. 90; Nelle *et al.* 2000, p. 588; Beck *et al.* 2009, p. 400). Therefore, fire results in direct, long-term habitat loss.

In addition to altering plant community structure, fires can influence invertebrate food sources

(Schroeder *et al.* 1999, p. 5). Ants (Hymenoptera), grasshoppers (Orthoptera), and beetles (Coleoptera) are an essential component of juvenile greater sage-grouse diets, especially in the first 3 weeks of life (Johnson and Boyce 1991, p. 90). Crawford and Davis (2002, p. 56) reported that the abundance of arthropods did not decline following wildfire. Pyle (1992, p. 14) reported no apparent effect of prescribed burning to beetles. However, Fischer *et al.* (1996, p. 197) found that the abundance of insects was significantly lower 2–3 years post-burn. Additionally, grasshopper abundance declined 60 percent in burned plots versus unburned plots 1 year post-burn, but this difference disappeared the second year (Bock and Bock 1991, p. 165). Conversely, Nelle *et al.* (2000, p. 589) reported the abundance of beetles and ants was significantly greater in 1–year-old burns, but returned to pre-burn levels by years 3 to 5. The effect of fire on insect populations likely varies due to a host of environmental factors. Because few studies have been conducted and the results of those available vary, the specific magnitude and duration of the effects of fire on insect communities is still uncertain, as is the effect any changes may have on greater sage-grouse populations.

The few studies that have suggested fire may be beneficial for greater sage-grouse were primarily conducted in mesic areas used for brood-rearing (Klebenow 1970, p. 399; Pyle and Crawford 1996, p. 323; Gates 1983, *in* Connelly *et al.* 2000c, p. 90; Sime 1991, *in* Connelly *et al.* 2000a, p. 972). In this habitat, small fires may maintain a suitable habitat mosaic by reducing shrub encroachment and encouraging understory growth. However, without available nearby sagebrush cover, the utility of these sites is questionable. For example, Slater (2003, p. 63) reported that sage-grouse using burned areas were rarely found more than 60 m (200 ft) from the edge of the burn and may preferentially use the burned and unburned edge habitat. However, Byrne (2002, p. 27) reported avoidance of burned habitat by nesting, brood-rearing, and broodless females. Both Connelly *et al.* (2000c, p. 90) and Fischer *et al.* (1996, p. 196) found that prescribed burns did not improve brood-rearing habitat in Wyoming big sagebrush, as forbs did not increase and insect populations declined. Hence, fires in these locations may negatively affect brood-rearing habitat rather than improve it (Connelly and Braun 1997, p. 11).

The nature of historical fire patterns in sagebrush communities, particularly in *Artemisia tridentata* var. *wyomingensis*, is not well understood and a high degree of variability likely occurred (Miller and Eddleman 2000, p. 16; Zouhar *et al.* 2008, p. 154; Baker in press, p. 16). However, as inferred by several lines of reasoning, fire in sagebrush systems was historically infrequent (Baker in press, pp. 15-16). This conclusion is evidenced by the fact that most sagebrush species have not developed evolutionary adaptations such as re-sprouting and heat-stimulated seed germination found in other shrub-dominated systems, like chaparral, exposed to relatively frequent fire events. Baker (in press, p. 17) suggests natural fire regimes and landscapes were typically shaped by a few infrequent large fire events that occurred at intervals approaching the historical fire rotation (50 to 350 years – see discussion below). The researcher concludes that the historical sagebrush systems likely consisted of extensive sagebrush habitat dotted by small areas of grassland and that this condition was maintained by long interludes of numerous small fires, accounting for little burned area, punctuated by large fire events that consumed large expanses. In general, fire extensively reduces sagebrush within burned areas, and big sagebrush varieties, the most widespread species of sagebrush, can take up to 150 years to reestablish an area (Braun 1998, p. 147; Cooper *et al.* 2007, p. 13; Lesica *et al.* 2007, p. 264; Baker, in press, pp. 15-16).

Fire rotation, or the average amount of time it takes to burn once through a particular landscape, is difficult to quantify in large sagebrush expanses. Because sagebrush is killed by fire, it does not record evidence of prior burns (i.e., fire scars) as do forested systems. As a result, a clear picture of the complex spatial and temporal pattern of historical fire regimes in most sagebrush communities is not available. Widely variable estimates of historical fire rotation have been described in the literature. Depending on the species of sagebrush and other site-specific characteristics, fire return intervals from 10 to well over 300 years have been reported (McArthur 1994, p. 347; Peters and Bunting 1994, p. 33; Miller and Rose 1999, p. 556; Kilpatrick 2000, p. 1; Frost 1998, *in* Connelly *et al.* 2004, p. 7-4; Zouhar *et al.* 2008, p. 154; Baker in press, pp. 15-16). In general, mean fire return intervals in low-lying, xeric, big sagebrush communities range from over 100 to 350 years, and return intervals decrease from 50 to over 200 years in more mesic areas, at higher elevations, during wetter climatic periods, and in locations associated with grasslands (Baker 2006, p. 181; Mensing *et al.* 2006, p. 75; Baker, in press, pp. 15-16; Miller *et al.*, in press, p. 35).

The invasion of exotic annual grasses, such as *Bromus tectorum* and *Taeniatherum asperum* (medusahead), has been shown to increase fire frequency within the sagebrush ecosystem (Zouhar *et al.* 2008, p. 41; Miller *et al.* in press, p. 39). *B. tectorum* readily invades sagebrush communities, especially disturbed sites, and changes historical fire patterns by providing an abundant and easily ignitable fuel source that facilitates fire spread. While sagebrush is killed by fire and is slow to reestablish, *B. tectorum* recovers within 1 to 2 years of a fire event (Young and Evans 1978, p. 285). This annual recovery leads to a readily burnable fuel source and ultimately a reoccurring fire cycle that prevents sagebrush reestablishment (Eiswerth *et al.* 2009, p. 1324). In the Snake River Plain (MZ IV), for example, Whisenant (1990, p. 4) suggests fire rotation due to *B. tectorum* establishment is now as low as 3–5 years. It is difficult and usually ineffective to restore an area to sagebrush after annual grasses become established (Paysen *et al.* 2000, p. 154; Connelly *et al.* 2004, pp. 7-44 to 7-50; Pyke, in press, p. 25). Habitat loss from fire and the subsequent invasion by nonnative annual grasses have negatively affected sage-grouse populations in some locations (Connelly *et al.* 2000c, p. 93).

Evidence exists of a significant relationship between an increase in fire occurrence caused by *Bromus tectorum* invasion in the Snake River Plain and Northern Great Basin since the 1960s (Miller *et al.*, in press, p. 39) and in northern Nevada and eastern Oregon since 1980 (MZs IV and V). The extensive distribution and highly invasive nature of *B. tectorum* poses substantial increased risk of fire and permanent loss of sagebrush habitat, as areas disturbed by fire are highly susceptible to further invasion and ultimately habitat conversion to an altered community state. For example, Link *et al.* (2006, p. 116) show that risk of fire increases from approximately 46 to 100 percent when ground cover of *B. tectorum* increases from 12 to 45 percent or more. In the Great Basin Ecoregion (defined as east-central California, most of Nevada, and western Utah, MZs IV and V), approximately 58 percent of sagebrush habitats are at moderate to high risk of *B. tectorum* invasion during the next 30 years (Suring *et al.* 2005, p. 138). The BLM estimated that approximately 11.9 million ha (29 million ac) of public

lands in the western distribution of the greater sage-grouse (Washington, Oregon, Idaho, Nevada, Utah) were infested with weeds as of 2000 (BLM 2007a, p. 3-28). The most dominant invasive plants consist of grasses in the *Bromus* genus, which represent nearly 70 percent of the total infested area (BLM 2007a, p. 3-28).

Conifer woodlands have expanded into sagebrush ecosystems over the last century (Miller *et al.* in press, p. 34). Woodlands can encroach into sagebrush communities when the interval between fires becomes long enough for seedlings to establish and trees to mature and dominate a site (Miller *et al.* in press, p. 36). However, historical fire rotation appears to have been sufficiently long to allow woodland invasion, and yet extensive stands of mature sagebrush were evident during settlement times (Vale 1975, p. 33; Baker, in press, pp. 15-16). This suggests that causes other than active fire suppression must largely explain recent tree invasions into sagebrush habitats (Baker in press, p. 21, 24). Baker (in press, p. 24) and Miller *et al.* (in press, p. 37) offer a suite of causes, acting in concert with fire exclusion that may better explain the dramatic expansion of conifer woodlands over the last century. These causes include alterations due to domestic livestock grazing (such as reduced competition from native grasses and forbs and facilitation of tree regeneration by increased shrub cover and enhanced seed dispersal), climatic fluctuations favorable to tree regeneration, enhanced tree growth due to increased water use efficiency associated with carbon dioxide fertilization, and recovery from past disturbance (both natural and anthropogenic). Regardless of the cause of conifer woodland encroachment, the rate of expansion is increasing and is resulting in the loss and fragmentation of sagebrush habitats (see discussion in Pinyon-juniper section below).

Between 1980 and 2007, the number of fires and total area burned increased in all MZs across the greater sage-grouse's range except the Snake River Plain (MZ IV) (Miller *et al.*, in press, p. 39). Additionally, average fire size increased in the Southern Great Basin (MZ III) during this same period. However, predicting the amount of habitat that will burn during an "average fire" year is difficult due to the highly variable nature of fire seasons. For example, the approximate area burned on or adjacent to BLM-managed lands varied from 140,000 ha (346,000 ac) in 1998 to a 6-fold increase in 1999 (814,200 ha; 2 million ac) returning back down to approximately the 1998 level in 2002 (157,700 ha; 384,743 ac) before rising again 10-fold in 2006 (1.4 million ha; 3.5 million ac) (Miller *et al.*, in press, pp. 39-40).

From 1980 to 2007, wildfires have burned approximately 8.7 million ha (21.5 million ac) of sagebrush, or approximately 18 percent of the estimated 47.5 million ha (117.4 million ac) of sagebrush habitat occurring within the delineated MZs (Baker, in press, p. 43). Additionally, the trend in total acreage burned since 1980 has primarily increased (Miller *et al.*, in press, p. 39). Although fire alters sagebrush habitats throughout the greater sage-grouse's range, fire disproportionately affects the Great Basin (Baker *et al.* in press, p. 20) (i.e., Utah, Nevada, Idaho, and eastern Oregon; MZ III, IV, and V) and will likely influence the persistence of greater sage-grouse populations in the area. In these three MZs combined, nearly 27 percent of sagebrush habitat has burned since 1980 (Baker, in press, p. 43). A primary reason for this disproportionate influence in this region is due to the presence of burned sites and their subsequent susceptibility to invasion by exotic annual grasses.

According to one review, range fires destroyed 30 to 40 percent of sage-grouse habitat in southern Idaho (MZ IV) in a 5–year period (1997–2001) (Signe Sather-Blair, BLM, *in* Healy 2001). This amount included about 202,000 ha (500,000 ac), which burned between 1999 and 2001, significantly altering the largest remaining contiguous patch of sagebrush in the State (Signe Sather-Blair, BLM, *in* Healy 2001). Between 2003 and 2007, Idaho lost an additional 267,000 ha (660,000 ac) of sage-grouse habitat, or approximately 7 percent of the total estimated remaining habitat in the State. Over nine fire seasons in Nevada (1999–2007), about 1 million ha (2.5 million ac) of sagebrush were burned, representing approximately 12 percent of the State's extant sagebrush habitat (Espinosa and Phenix 2008, p. 3). Most of these fires occurred in northeast Nevada (MZ IV) within quality habitat that has traditionally supported high densities of sage-grouse, which also is highly susceptible to *Bromus tectorum* invasion.

Baker (in press, p. 20) calculated recent fire rotation by MZ and compared these to estimates of historical fire rotations. Based on this analysis, the researcher suggests that increased fire rotations since 1980 are presumably outside the historic range of variability and far shorter in floristic regions where Wyoming big sagebrush is common (Baker in press, p. 20). This analysis included MZs III, IV, V, and VI, all of which have extensive *Bromus tectorum* invasions.

In addition to wildfire, land managers are using prescribed fire as well as mechanical and chemical treatments to obtain desired management objectives for a variety of wildlife species and domestic ungulates in sagebrush habitats throughout the range of the greater sage-grouse. While the efficacy of treatments in sagebrush habitats to enhance sage-grouse populations is questionable (Peterson 1970, p. 154; Swensen *et al.* 1987, p. 128; Connelly *et al.* 2000c, p. 94; Nelle *et al.* 2000, p. 590; WAFWA 2009, p. 12; Connelly *et al.* in press c, p. 8), as with wildland fire, an immediate and potentially long-term result is the loss of habitat (Beck *et al.* 2009, p. 400).

Knick *et al.* (in press, p. 33) report that more than 370,000 ha (914,000 ac) of public lands were treated with prescribed fire to address management objectives for many different species between 1997 and 2006, mostly in Oregon and Idaho, and an additional 124,200 ha (306,900 ac) were treated with mechanical means over this same time period, primarily in Utah and Nevada. However, these acreages represent all habitat types and thus overestimate negative impacts to greater sage-grouse. Quantifying the amount of sagebrush-specific habitat treatments is difficult due to the fact that centralized reporting is not typically categorized by habitat. However, agencies under the Department of the Interior (DOI) report species of special interest, including greater sage-grouse, which may occur in proximity to a prescribed treatment. Between 2003 and 2008, approximately 133,500 ha (330,000 ac) of greater sage-grouse habitat have been burned by land managers within the DOI or approximately 22,000 ha (55,000 ac) annually. This acreage does not reflect lands burned by agencies under the USDA (e.g., USFS). Although much of the land under USFS jurisdiction lies outside greater sage-grouse range, this agency manages approximately 8 percent of sagebrush habitats. Ultimately, the amount of sagebrush habitat treated by land managers appears to represent a relatively minor loss when compared to loss incurred by wildfire. However, in light of the significant habitat loss due to wildfire, and the preponderance of evidence that suggests these treatments are not beneficial to sage-grouse, the rationale for using such treatments to improve sage-grouse habitat deserves further scrutiny.

Sagebrush recovery rates are highly variable, and precise estimates are often

hampered by limited data from older burns. Factors contributing to the rate of shrub recovery include the amount of and distance from unburned habitat, abundance and viability of seed in soil seed bank (depending on species, sagebrush seeds are typically viable for one to three seasons), rate of seed dispersal, and pre- and post-fire weather, which influences seedling germination and establishment (Young and Evans 1989, p. 204; Maier *et al.* 2001, p. 701; Ziegenhagen and Miller 2009, p. 201). Based on a review of existing literature, Baker (in press, pp. 14-15) reports that full recovery to pre-burn conditions in *Artemisia tridentata* ssp. *vaseyana* communities ranges between 25 and 100 years and in *A. t.* ssp. *wyomingensis* communities between 50 and 120 years. However, the researcher cautions that data pertaining to the latter community is sparse. What is known is that by 25 years post-fire, *A. t.* ssp. *wyomingensis* typically has less than 5 percent pre-fire canopy cover (Baker in press, p. 15).

A variety of techniques have been employed to restore sagebrush communities following a fire event (Cadwell *et al.* 1996, p. 143; Quinney *et al.* 1996, p. 157; Livingston 1998, p. 41). The extent and efficacy of restoration efforts is variable and complicated by limitations in capacity (personnel, equipment, funding, seed availability, and limited seeding window), incomplete knowledge of appropriate methods, invasive plant species, and abiotic factors, such as weather, that are largely outside the control of land managers (Hemstrom *et al.* 2002, pp. 1250-1251; Pyke, in press, p. 29). While post-fire rehabilitation efforts have benefited from additional resources in recent years, resulting in an increase of treated acres from 28,100 ha (69,436 ac) in 1997 to 1.6 million ha (3.9 million ac) in 2002 (Connelly *et al.* 2004, p. 7-35), acreage treated annually remains far outpaced by acreage disturbed. For example, of the more than 1 million ha (2.5 million ac) of sage-grouse habitat burned during the 2006 and 2007 fire seasons on BLM-managed lands, about 40 percent or 384,000 ha (950,000 ac) had some form of active post-fire restoration such as reseeding. More specifically, Eiswerth *et al.* (2009, p. 1321) report that over the past 20 years within the BLM's Winnemucca District in Nevada, approximately 12 percent of burned areas have been actively reseeded.

The main purpose of the Burned Area Emergency Stabilization and Rehabilitation program (BLM 2007b, pp. 1-2), designed to rehabilitate areas following fire, is to stabilize soils and maintain site productivity rather than to regain site suitability for wildlife (Pyke, in press, p. 24). Consequently, in areas that experience active post-fire restoration efforts, an emphasis is often placed on introduced grasses that establish quickly. Only recently has a modest increase in the use of native species for burned area rehabilitation been reported (Richards *et al.* 1998, p. 630; Pyke, in press, p. 24). Further complicating our understanding of the effectiveness of these treatments is that most managers do not keep track of monitoring data in a routine or systematic fashion (GAO 2003, p. 5). Assuming complete success of restoration efforts on targeted areas, however unlikely, the return of a shrub-dominated community will still require several decades, and landscape restoration may require centuries or longer (Knick 1999, p. 55; Hemstrom *et al.* 2002, p. 1252). Even longer periods may be required for greater sage-grouse to use recovered or restored landscapes (Knick *et al.*, in press, p. 65).

The loss of habitat due to wildland fire is anticipated to increase due to the intensifying synergistic interactions among fire, people, invasive species, and climate change (Miller *et al.*, in press, p. 50). The recent past- and present-day fire regimes across the greater sage-grouse distribution have changed with a demonstrated increase in the more arid Wyoming big sagebrush communities and a decrease across many mountain big sagebrush communities. Both scenarios of altered fire regimes have caused significant losses to greater sage-grouse habitat through facilitating conifer expansion at high-elevation interfaces and exotic weed encroachment at lower elevations (Miller *et al.*, in press, p. 47). In the face of climate change, both of these scenarios are anticipated to worsen (Baker, in press, p. 24; Miller *et al.*, in press, p. 48). Predicted changes in temperature, precipitation, and carbon dioxide are all anticipated to influence vegetation dynamics and alter fire patterns resulting in the increasing loss and conversion of sagebrush habitats (Neilson *et al.* 2005, p. 157). Further, many climate scientists suggest that in addition to the predicted change in climate toward a warmer and generally wetter Great Basin, variability of interannual and interdecadal wet-dry cycles will increase and likely act in concert with fire, disease, and invasive species to further stress the sagebrush ecosystem (Neilson *et al.* 2005, p. 152). The anticipated increase in suitable conditions for wildland fire will likely further interact with people and infrastructure. Human-caused fires have reportedly increased and been shown to be correlated with road presence (Miller *et al.*, in press. p. 40). Given the popularity of off-highway vehicles (OHV) and the ready access to lands in the Great Basin, the increasing trend in both fire ignitions by people and loss of habitat will likely continue.

While multiple factors can influence sagebrush persistence, fire is the primary cause of recent large-scale losses of habitat within the Great Basin, and this stressor is anticipated to intensify. In addition to loss of habitat and its influence on greater sage-grouse population persistence, fragmentation and isolation of populations presents a higher probability of extirpation in disjunct areas (Knick and Hanser, in press, p. 20; Wisdom *et al.*, in press, p. 22). Knick and Hanser (in press, p. 31) suggest extinction is currently more probable than colonization for many great sage-grouse populations because of their low abundance and isolation coupled with fire and human influence. As areas become isolated through disturbances such as fire, populations are exposed to additional stressors and persistence may be hampered by the limited ability of individuals to disperse into areas that are otherwise not self-sustaining. Thus, while direct loss of habitat due to fire has been shown to be a significant factor associated with population persistence, the indirect effect posed by loss of connectivity among populations may greatly expand the influence of this threat beyond the physical fire perimeter.

Summary: Fire

Fire is one of the primary factors linked to population declines of greater sage-grouse because of long-term loss of sagebrush and conversion to monocultures of exotic grasses (Connelly and Braun 1997, p. 7; Johnson *et al.*, in press, p. 12; Knick and Hanser, in press, pp. 29-30). Loss of sagebrush habitat to wildfire has been increasing in western areas of the greater sage-grouse range for the past three decades. The change in fire frequency has been strongly influenced by the presence of exotic annual grasses and significantly deviates from extrapolated historical regimes. Restoration of these communities is challenging, requires many years, and may, in fact, never be achieved in the presence of invasive grass species. Greater sage-grouse are slow to recolonize burned areas even if structural features of the shrub community may have recovered (Knick *et al.*, in press, p. 46). While it is not currently possible to predict the extent or location of future fire events, the best

scientific and commercial information available indicates that fire frequency is likely to increase in the foreseeable future due to increases in cover of *Bromus tectorum* and the projected effects of climate change (see Invasive plants (annual grasses and other noxious weeds), below, and also Climate Change, below).

An analysis of previously extirpated sage-grouse habitats has shown that the extent and abundance of sagebrush habitats, proximity to burned habitat, and degree of connectivity among sage-grouse groups strongly affects persistence (Aldridge *et al.* 2008, p. 987; Knick and Hanser, in press, pp. 29-30; Wisdom *et al.*, in press, p. 17). The loss of habitat caused by fire and the functional barrier burned habitat can pose to movement and dispersal compounds the influence this stressor can have on populations and population dynamics. Barring alterations to the current fire pattern, as well as the difficulties associated with restoration, the concerns presented by this threat will continue and likely strongly influence persistence of the greater sage-grouse, especially in the western half of its range within the foreseeable future.

Invasive Plants (Annual Grasses and Other Noxious Weeds)

For the purposes of our analysis in this section, we consider invasive plants (invasives) to be any nonnative plant that negatively impacts sage-grouse habitat, including annual grasses and other noxious weeds. However, in the literature that we reviewed, the terms noxious weeds and invasives were not consistently defined or applied. Consequently, both terms are used in our discussion to reflect the original use in the sources we cite. In the source material, it was often unclear whether discussions about noxious weeds included invasive annual grasses (e.g., *Bromus tectorum*), referred solely to invasive forbs and invasive perennial grasses, or only referenced species that are listed on State and Federal noxious weed lists (many of which do not consider *B. tectorum* a noxious weed). Nonetheless, all of these can be categorized as nonnative plants that have a negative impact on sage-grouse habitat and thus meet our definition of invasive plants.

Invasives alter plant community structure and composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7) and may cause declines in native plant populations through competitive exclusion and niche displacement, among other mechanisms (Mooney and Cleland 2001, p. 5446). Invasive plants reduce and, in cases where monocultures occur, eliminate vegetation that sage-grouse use for food and cover. Invasives do not provide quality sage-grouse habitat. Sage-grouse depend on a variety of native forbs and the insects associated with them for chick survival, and sagebrush, which is used exclusively throughout the winter for food and cover. Invasives impact the entire range of sage-grouse, although not all given species are distributed across the entire range. Leu *et al.* (2008, pp. 1119-1139) modeled the risk of invasion by exotic plant species for the entire range of sage-grouse. Areas at high risk for invasion were distributed throughout the range, but were especially concentrated in eastern Washington (MZ VI), southern Idaho (MZ IV), central Utah (MZ III), and northeast Montana (MZ I).

Along with replacing or removing vegetation essential to sage-grouse, invasives fragment existing sage-grouse habitat. They can create long-term changes in ecosystem processes, such as fire-cycles (see discussion under Fire above) and other disturbance regimes that persist even after an invasive plant is removed (Zouhar *et al.* 2008, p. 33). A variety of nonnative annuals and perennials are invasive to sagebrush ecosystems (Connelly *et al.* 2004, pp. 7-107 and 7-108; Zouhar *et al.* 2008, p 144). *Bromus tectorum* is considered most invasive in *Artemisia tridentata* ssp. *wyomingensis* communities, while *Taeniatherum asperum* fills a similar niche in more mesic communities with heavier clay soils (Connelly *et al.* 2004, p. 5-9). Some other problematic rangeland weeds include *Euphorbia esula* (leafy spurge), *Centaurea solstitialis* (yellow starthistle), *Centaurea maculosa* (spotted knapweed), *Centaurea diffusa* (diffuse knapweed), and a number of other *Centaurea* species (DiTomaso 2000, p. 255; Davies and Svejcar 2008, pp. 623-629).

Nonnative annual grasses (e.g., *Bromus tectorum* and *Taeniatherum asperum*) have caused extensive sagebrush habitat loss in the Intermountain West and Great Basin (Connelly *et al.* 2004, pp. 1-2 and 4-16). They impact sagebrush ecosystems by shortening fire intervals to as low as 3 to 5 years, perpetuating their own persistence and intensifying the role of fire (Whisenant 1990, p. 4). Connelly *et al.* (2004, p. 7-5) suggested that fire intervals are shortened to less than 10 years. Although nonnative annual grasses occur throughout the sage-grouse's range, they are more problematic in western States (MZs III, IV, V, and VI) than Rocky Mountain States (MZs I and II) (Connelly *et al.* 2004, p. 5-9).

Quantifying the total amount of sage-grouse habitat impacted by invasives is problematic due to differing sampling methodologies, incomplete sampling, inconsistencies in species sampled, and varying interpretations of what constitutes an infestation (Miller *et al.*, in press, p. 19). Widely variable estimates of the total acreage of weed infestations have been reported. BLM (1996, p. 6) estimated invasives (which may or may not have included *Bromus tectorum* in their estimate) covered at least 3.2 million ha (8 million ac) of BLM lands as of 1994, and predicted 7.7 million ha (19 million ac) would be infested by 2000. However, a qualitative 1991 BLM survey covering 40 million ha (98.8 million ac) of all BLM-managed land in Washington, Oregon, Idaho, Nevada, and Utah (MZs III, IV, V, and VI) reported that introduced annual grasses were a dominant or significant presence on 7 million ha (17.2 million ac) of sagebrush ecosystems (Connelly *et al.* 2004, p. 5-10). An additional 25.1 million ha (62 million ac) had less than 10 percent *B. tectorum* in the understory, but were considered to be at risk of *B. tectorum* invasion (Zouhar 2003, p. 3, in reference to the same survey). More recently, BLM reported that as of 2000, noxious weeds and annual grasses occupied 11.9 million ha (29.4 million ac) of BLM lands in Washington, Oregon, Idaho, Nevada, and Utah (BLM 2007a, p. 3-28). However, when considering all States within the current range of sage-grouse, this number increases to 14.8 million ha (36.5 million ac). Although estimates of the total area infested by *B. tectorum* vary widely, it is clear that *B. tectorum* is a significant presence in western rangelands.

The Landscape Fire and Resource Management Planning Tools Project (LANDFIRE) has a rangewide dataset documenting annual grass distribution. Based on 1999–2002 imagery, at least 885,990 ha (2.2 million ac) of annual grasses occur within the current range of sage-grouse (LANDFIRE 2007). Satellite data only map annual grass monocultures, and not areas where they occur in lower densities or even dominate the sagebrush understory (which is mapped as sagebrush). Therefore, the LANDFIRE dataset is a gross underestimate of the total acres of infestation. However, this dataset provides a rangewide comparison of annual grass monocultures and identifies the large extent of these monocultures in both the western and eastern part of the sage-grouse's range.

Approximately 80 percent of land in the Great Basin Ecoregion (MZs III, IV, and V) is susceptible to displacement by *Bromus tectorum* (including over 58 percent of sagebrush that is moderately or highly susceptible) within 30 years (Connelly *et al.* 2004, p. 7-17, Suring *et al.* 2005, p. 138). Due to the disproportionate abundance of *B. tectorum* in the Great Basin, suggesting an increased susceptibility to *B. tectorum* invasion than other parts of the sage-grouse's range, Connelly *et al.* (2004, p. 7-8) cautioned that a formal analysis of the risk of *B. tectorum* invasion in other areas was needed before such inferences are made. Also, while nonnative annual grasses are usually associated with lower elevations and drier climates (Connelly *et al.* 2004, p. 5-5), the ecological range of *B. tectorum* continues to expand at low and high elevations (Ramakrishnan *et al.* 2006, pp. 61-62), both southward and eastward (Miller *et al.*, in press, p. 21). Local infestations of *B. tectorum* and other annual grasses occur in Montana, Wyoming, and Colorado (MZs I and II) (Miller *et al.*, in press, p. 21), and there is evidence that *B. tectorum* is impacting fire intervals in Wyoming. For example, 40,469 ha (100,000 ac) of sagebrush that burned in a wildfire southeast of Worland, Wyoming (MZ II), became infested with *B. tectorum*, accelerating the fire interval in this area (Wyoming Big Horn Basin Sage-grouse Local Working Group 2007, pp. 39-40).

Noxious weeds spread about 931 ha (2,300 ac) per day on BLM land and 1,862 ha (4,600 ac) per day on all public land in the West (BLM 1996, p. 1), or increase about 8 to 20 percent annually (*Federal Interagency Committee for the Management of Noxious and Exotic Weeds* 1997, p. v). Invasions are often associated with ground disturbances caused by wildfire, grazing, infrastructure, and other anthropogenic activity (Rice and Mack 1990, p. 84; Gelbard and Belnap 2003, p. 420; Zouhar *et al.* 2008, p. 23), but disturbance is not required for invasives to spread (Young and Allen 1997, p. 531; Roundy *et al.* 2007, p. 614). Invasions also may occur sequentially, where initial invaders (e.g., *Bromus tectorum*) are replaced by new exotics (Crawford *et al.* 2004, p 9; Miller *et al.*, in press, p. 20).

Based on data collected in the western half of the range, Bradley *et al.* (2009, pp. 1511-1521; Bradley 2009, pp. 196-208) predicted favorable conditions for *Bromus tectorum* across much of the sage-grouse's range under current and future (2100) climate conditions. A strong indicator for future *B. tectorum* locations is the proximity to current locations (Bradley and Mustard 2006, p. 1146) as well as summer, annual, and spring precipitation, and winter temperature (Bradley 2009, p. 196). Bradley *et al.* (2009, p. 1517) predicted that in the future some areas will become unfavorable for *B. tectorum* while others will become favorable. Specifically, Bradley *et al.* (2009, p. 1515) predicted that climatically suitable *B. tectorum* habitat will shift northwards, leading to expanded risk in Idaho, Montana, and Wyoming, but reduced risk in southern Nevada and Utah. Despite the potential for future retreat in Nevada and Utah, there will still be climatically suitable *B. tectorum* habitat in these States, well within the range of sage-grouse (see Figure 4b in Bradley *et al.* 2009, p. 1517). Bradley *et al.* (2009, p. 1511) noted that changes in climatic suitability may create restoration opportunities in areas that are currently dominated by invasives. We anticipate that *B. tectorum* will eventually disappear from areas that become climatically unsuitable for this species, but this transition is unlikely to occur suddenly. Also, Bradley *et al.* (2009, p. 1519) cautioned that areas that become unfavorable to *B. tectorum* may become favorable to other invasives, such as *B. rubens* (red brome) in the southern Great Basin, which is more tolerant of higher temperatures. Therefore, areas that become unsuitable for *B. tectorum* will not necessarily be returned to pre-invaded habitat conditions without significant effort. Bradley *et al.* (2009, p. 1519) suggested that modeling and experimental work is needed to assess whether native species could occupy these sites if invasives are reduced or eliminated by climate change.

LANDFIRE also has a rangewide dataset documenting other exotic grasses and forbs, including perennial grasses and annual, perennial, and biennial forbs. Like annual grasses, other invasive plants are grossly underestimated in the LANDFIRE dataset because the dataset only includes monocultures of these species. Based on 1999–2002 imagery, at least 1.3 million ha (3.3 million ac) of other exotic plants occur within the current range of sage-grouse (LANDFIRE 2007). Aside from LANDFIRE, the only other information documenting the specific distribution of invasives within the sage-grouse's range is at a presence–absence scale at the county level. DiTomaso (2000, p. 257) estimated that western rangelands are infested with 2,900,000 ha (7,166,027 ac) of *C. maculosa*, 1,300,000 ha (3,212,357 ac) of *C. diffusa*, 8,000,000 ha (19,768,352 ac) of *C. solstitialis*, and 1,100,000 ha (2,718,148 ac) of *Euphorbia esula,* but this estimate did not describe the distribution of invasives across the landscape. These estimates, combined with estimates of acres infested by *Bromus tectorum,* and the fact that LANDFIRE detected more acres of other noxious weeds than annual grasses, illustrate the severity of the invasives problem.

Invasives that are not annual grasses impact the entire range of sage-grouse, although not all given species are distributed across the entire range. Leu *et al.* (2008, pp. 1119-1139) modeled the risk of invasion by exotic plant species (which also would include annual grasses), for the entire range of sage-grouse. Areas at high risk for invasion were distributed throughout the range, but were especially concentrated in eastern Washington (MZ VI), southern Idaho (MZ IV), central Utah (MZ III), and northeastern Montana (MZ I). Like *Bromus tectorum*, the distribution of other invasives will likely shift with climate change. Bradley *et al.* (2009, p. 1518) predicts that the range of *C. maculosa* will expand in some areas, mainly in parts of Oregon, Idaho, western Wyoming, and Colorado, and will contract in other areas (e.g., eastern Montana). She also predicts that the range of *C. solstitialis* will expand eastward (Bradley *et al.* 2009, p. 1514) and that the invasion risk of *Euphorbia esula* will likely decrease in several States, including parts of Colorado, Oregon, and Idaho (Bradley *et al.* 2009, pp. 1516-1518).

Many efforts are ongoing to restore or rehabilitate sage-grouse habitat affected by invasive species. Common rehabilitation techniques include first reducing the density of invasives using herbicides, defoliation via grazing, pathogenic bacteria and other forms of biocontrol, or prescribed fire (Tu *et al.* 2001; Larson *et al.* 2008, p. 250; Pyke, in press, pp. 25-26). Sites are then typically reseeded with grass and forb mixes, and sometimes planted with sagebrush plugs. Despite ongoing efforts to transform lands dominated by invasive annual grasses into quality sage-grouse habitat, restoration and rehabilitation techniques are considered to be mostly unproven and experimental (Pyke, in press, pp. 25-28, and see discussion on fire above).

Several components of the restoration process are being investigated with varying success (Pyke, in press, p. 25). Some techniques show promise, such as use of the herbicide Imazapic to control *Bromus tectorum*. However, further analyses of the benefit of this method still need to be conducted (Pyke, in

press, p. 27). Also, it will take time for sagebrush to establish and mature in areas currently dominated by annual grasses. Rehabilitation and restoration efforts also are hindered by cost and the ability to procure the equipment and seed needed for projects (Pyke, in press, pp. 29-30). Furthermore, while restoration projects for other species may depend on a single site or landowner, restoration of sage-grouse habitat requires partnerships across multiple ownerships in order to restore and maintain a connective network of intact vegetation (Pyke, in press, pp. 33-34).

Treatment success also depends on factors which are not controllable, such as precipitation received at the treatment site (Pyke, in press, p. 30). For example, only 3.3 to 33.6 percent of recent vegetation treatments conducted by the BLM in annual grassland monocultures were reported as successful (Carlson 2008b, pers. comm.). Areas with established annual grasses that receive less than 22.9 cm (9 in.) of annual precipitation are less likely to benefit from restoration (Connelly *et al.* 2004, p. 7-17, Carlson 2008b, pers. comm.). Consequently, BLM focuses most (98 percent) of their restoration efforts in areas receiving more than 22.9 cm (9 in.) of annual precipitation where there is greater chance of success. Of the BLM treatments in annual grasslands, only 10 percent of acres treated in areas receiving less than 22.9 cm (9 in.) of annual precipitation were considered to be effectively treated. In areas receiving between 22.9 cm (9 in.) and 30.5 cm (12 in.) of annual precipitation, 33.6 percent of the acres were treated effectively, and 3.3 percent of the acres were treated effectively in areas receiving greater than 30.5 cm (12 in.) of annual precipitation (Carlson 2008b, pers. comm.). Since the BLM treatments in annual grassland monocultures included both the reestablishment of native shrub and grass species and greenstripping efforts to reduce the frequency of fires in annual grassland monocultures, it is unclear how many of these successfully treated acres are attributed to restoration versus prevention.

A variety of regulatory mechanisms and nonregulatory measures to control invasive plants exist. However, the extent to which these mechanisms effectively ameliorate the current rate of invasive expansion is unclear. If noxious weeds are spreading at a rate of 931 ha (2,300 ac) per day on BLM lands (BLM 1996, p. 1), this amounts to 339,815 ha (839,500 ac) per year, which includes both suitable and nonsuitable habitat for sage-grouse. It is unclear whether this estimate is limited to noxious weeds or if it includes other invasives (e.g., *Bromus tectorum*). Still, we can compare this estimate to the area of all invasives (excluding conifers) treated by the BLM between October 2005 and September 2007, which totaled 259,897 ha (642,216 ac), i.e., approximately 86,632 ha (214,072 ac) treated annually.

The number of acres treated annually (86,632 ha; 214,072 ac) is not keeping pace with the rate of spread (339,815 ha; 839,500 ac) especially when considering the inability to treat the problem. We acknowledge that the rate of spread on BLM lands also includes areas that are not sage-grouse habitat. However, the rate of spread may not have included *B. tectorum* and only part of the invasive treatments completed by BLM (23.6 percent of treatments in annual grassland monocultures and 7.5 percent of treatments in sagebrush with annual grassland understories) were considered to be effective by the BLM (Carlson 2008b, pers. comm.). Also, treatments are typically considered to be successful based on whether native vegetation was reestablished, maintained, or enhanced, and not based on a positive population response of sage-grouse to the treatment. Therefore, the effectiveness of treatments for sage-grouse is likely much less than reported for vegetation.

The National Invasive Species Council (2008, p. 8) acknowledges that there has been a significant increase in activity and awareness, but that much remains to be done to prevent and mitigate the problems caused by invasive species. As an example, the State of Montana has made much progress through partnerships in reducing noxious weeds in the State from 3.2 million ha (8 million ac) in 2000 to 3.1 million ha (7.6 million ac) in 2008 (Montana Weed Control Association 2008). However, the Montana Noxious Weed Summit Advisory Council Weed Management Task Force (2008, p. III) estimates that to slow weed spread and reduce current infestations by 5 percent annually, they require 2.6 times the current level of funding from a variety of private, local, State, and Federal sources (or $55.8 million versus $21.2 million). In addition to funding, other factors that potentially limit ability to control invasives include the amount of available native seed sources, the time it takes to restore sagebrush to an area once it is removed from a site, and the existence of treatments that are known to be effective in the long-term. Monitoring is limited in many cases and, where it occurs, monitoring typically does not document the population response of sage-grouse to these treatments.

Invasives are a serious rangewide threat, and one of the highest risk factors for sage-grouse based on the plants' ability to out-compete sagebrush, the inability to effectively control them once they become established, and the synergistic interaction between them and other risk factors on the landscape (e.g., wildfire, infrastructure construction). Invasives reduce and eliminate vegetation that is essential for sage-grouse to use as food and cover. Their presence on the landscape has removed and fragmented sage-grouse habitat. Because invasives are widespread, have the ability to spread rapidly, occur near areas susceptible to invasion, and are difficult to control, we anticipate that invasives will continue to replace and reduce the quality of sage-grouse habitat across the range in the foreseeable future. There have been many studies addressing effective invasive control methods, as well as conservation actions to control invasives, with varied success. While some efforts appear successful at smaller scales, prevention (e.g., early detection and fire prevention) appears to be the only known effective tool to preclude or minimize large-scale habitat loss from invasive species in the future.

Pinyon-Juniper Encroachment

Pinyon-juniper woodlands are a native habitat type dominated by pinyon pine (*Pinus edulis*) and various juniper species (*Juniperus* spp.) that can encroach upon, infill, and eventually replace sagebrush habitat. These two woodland types are often referred to collectively as pinyon-juniper; however, some portions of the sage-grouse's range are only impacted by juniper encroachment. Commons *et al.* (1999, p. 238) found that the number of male Gunnison sage-grouse (*C. minimus*) on leks in southwestern Colorado doubled after pinyon-juniper removal and mechanical treatment of mountain sagebrush and deciduous brush. Hence, we infer that some greater sage-grouse populations have been negatively affected by pinyon-juniper encroachment and that some populations will decline in the future due to projected increases in the pinyon-juniper type, especially in areas where pinyon-juniper encroachment is a large-scale threat (parts of MZs III, IV, and V). Doherty *et al.* (2008, p. 187) reported a strong avoidance of conifers by female greater sage-grouse in the winter, further supporting our previous inference. Also, Freese's (2009, pp. 84-85, 89-90) 2–year telemetry study in central Oregon found that sage-grouse

used areas with less than 5 percent juniper cover more often in the breeding and summer seasons than similar habitat that had greater than 5 percent juniper cover. Therefore, pinyon-juniper encroachment into occupied sage-grouse habitat reduces, and likely eventually eliminates, sage-grouse occupancy in these areas.

Pinyon-juniper woodlands are often associated with sagebrush communities and currently occupy at least 18 million ha (44.6 million ac) of the Intermountain West within the sage-grouse's range (Crawford *et al.* 2004, p. 8; Miller *et al.* 2008, p. 1). Pinyon-juniper extent has increased 10-fold in the Intermountain West since European settlement causing the loss of many bunchgrass and sagebrush-bunchgrass communities (Miller and Tausch 2001, pp. 15-16). This expansion has been attributed to the reduced role of fire, the introduction of livestock grazing, increases in global carbon dioxide concentrations, climate change, and natural recovery from past disturbance (Miller and Rose 1999, pp. 555-556; Miller and Tausch 2001, p. 15; Baker, in press, p. 24; see also discussion under Fire above).

Connelly *et al.* (2004, pp. 7-8 to 7-14) estimated that approximately 60 percent of sagebrush in the Great Basin was at low risk of displacement by pinyon-juniper in 30 years, 6 percent at moderate risk, and 35 percent at high risk. Mountain big sagebrush appears to be most at risk of pinyon-juniper displacement (Connelly *et al.* 2004, pp. 7-13). When juniper increases in mountain big sagebrush communities, shrub cover declines and the season of available succulent forbs is shortened due to soil moisture depletion (Crawford *et al.* 2004, p. 8). As with *Bromus tectorum*, the Great Basin appears more susceptible to pinyon-juniper invasion than other areas of the sage-grouse's range; however, Connelly *et al.* (2004, pp. 7-8) cautioned that a formal analysis of the risks posed in other locations was needed before such inferences could be made.

Annual encroachment rates that were reported in five studies ranged from 0.3 to 31 trees per hectare (0.7 to 77 trees per acre) (Sankey and Germino 2008, p. 413). For the three studies that measured the percent increase in juniper cover per year, cover increased between 0.4 and 4.5 percent annually (Sankey and Germino 2008, p. 413). Sankey and Germino (2008, p. 413) compared juniper encroachment rates from previous research to their study. Their estimate that juniper cover increased 0.7 to 1.5 percent annually was based on a 22 to 30 percent increase in cover between 1985 and 2005 at their southeastern Idaho study site (Sankey and Germino 2008, pp. 412-413).

Pinyon-juniper expansion into sagebrush habitats, with subsequent replacement of sagebrush communities, has been well documented (Miller *et al.* 2000, p. 575; Connelly *et al.* 2004, p. 7-5; Crawford *et al.* 2004, p. 2; Miller *et al.* 2008, p. 1). However, few studies have documented woodland dynamics at the landscape level across different ecological provinces, creating some uncertainty regarding the total amount of expansion that has occurred in sagebrush communities (Miller *et al.* 2008, p. 1). Regardless, we know that up to 90 percent of existing woodlands in the sagebrush-steppe and Great Basin sagebrush vegetation types were previously dominated by sagebrush vegetation prior to the late 1800s (Miller *et al.*, in press, pp. 23-24). Based on past trends and the current distribution of pinyon-juniper relative to sagebrush habitat, we anticipate that expansion will continue at varying rates across the landscape and cause further loss of sagebrush habitat within the western part of the sage-grouse's range, especially in parts of MZs III, IV, and V.

While pinyon-juniper expansion appears less problematic in the eastern portion of the range (MZs I, II and VII) and silver sagebrush areas (primarily MZ I), woodland encroachment is a threat mentioned in Wyoming, Montana, and Colorado State sage-grouse conservation plans, indicating that this is of some concern in these States as well (Stiver *et al.* 2006, p. 2-23). Colorado's State plan mapped areas threatened by pinyon-juniper encroachment in northwestern Colorado, and specifically attributed some sage-grouse habitat loss in Colorado to pinyon-juniper expansion (Colorado Greater Sage-grouse Steering Committee 2008, pp. 179, 182). Furthermore, LANDFIRE (2007) data illustrates extensive coverage of pinyon-juniper woodlands in parts of northwestern Colorado within the range of sage-grouse. These data also show limited pinyon-juniper coverage in Montana and Wyoming; however, LANDFIRE data could be a major underestimate of juniper because it is difficult to classify pinyon-juniper woodlands with satellite imagery when the trees occur at low densities (Hagen 2005, p. 142).

Recently, many conservation actions have addressed this threat using a variety of techniques (e.g., mechanical, herbicide, cutting, burning) to remove conifers in sage-grouse habitat. The effectiveness of these treatments varies with the technique used and proximity of the site to invasive plant infestations, among other factors. We are not aware of any study documenting a direct correlation between these treatments and increased greater sage-grouse productivity; however, we infer some level of positive response based on Commons *et al.*'s (1999) Gunnison sage-grouse study and the documented avoidance, or reduced use, by sage-grouse of areas where pinyon-juniper has encroached upon sagebrush communities (Doherty *et al.* 2008, p. 187; Freese 2009, pp. 84-85, 89-90). However, since the effectiveness of treatments for sage-grouse is usually based on a short-term, anecdotal evaluation of whether pinyon-juniper was successfully removed from a site, it is unclear whether pinyon-juniper removal has a positive long-term population-level impact for sage-grouse. In most cases it is still too early to measure a population response to these treatments (Oregon Department of Fish and Wildlife (ODFW) 2008, p. 3). Consequently, we do not know if these efforts are effectively ameliorating the threat of pinyon-juniper expansion at the site-level.

Furthermore, while many acres have been treated since 2004, treatments are not likely keeping pace with the current rate of pinyon-juniper encroachment, at least in parts of the range. For example, while Oregon has treated approximately 8,094 ha (20,000 ac) of juniper to restore native sagebrush habitat between 2003 and early 2008 (about 1,619 ha or 4,000 ac per year; ODFW 2008, p. 3), LANDFIRE data show at least 106,882 ha (264,110 ac) of juniper occur within 4.8 km (3 mi) of Oregon leks. This distance (4.8 km; 3 mi) reflects the upper estimate of a typical pinyon seed dispersal event, although seeds may be dispersed shorter distances and up to at least 10 km (6.2 mi) (Chambers *et al.* 1999, p. 12). At this rate, it would take approximately 60 years to remove the threat of juniper encroachment within 3 miles of sage-grouse leks in Oregon, assuming expansion does not continue.

Again, LANDFIRE data provides a gross underestimate of pinyon-juniper since it misses single, large trees. This underestimate suggests that it will take longer than 60 years to fully address the threat of juniper encroachment in Oregon, if conservation actions continue to occur at the current rate. Furthermore, not all treatments are effective. Of the 38,780 ha (95,826 ac) treated by BLM in Fiscal Year (FY) 2006 and FY 2007, only 21,598 ha (53,369 ac), or 55.7 percent were considered to be effective by the BLM (Carlson 2008b, pers. comm.). Again, the measure of effectiveness typically refers to whether

vegetation was treated successfully, and not whether sage-grouse use an area that has been treated.

Summary: Invasive Plants and Pinyon-Juniper Encroachment

Invasives plants negatively impact sage-grouse primarily by reducing or eliminating native vegetation that sage-grouse require for food and cover, resulting in habitat loss and fragmentation. A variety of nonnative annuals and perennials (e.g., Bromus tectorum, Euphorbia esula) and native conifers (e.g., pinyon pine, juniper species) are invasive to sagebrush ecosystems. Nonnative invasives, including annual grasses and other noxious weeds, continue to expand their range, facilitated by ground disturbances such as wildfire, grazing, and infrastructure. Pinyon and juniper and some other native conifers are expanding and infilling their current range mainly due to decreased fire return intervals, livestock grazing, and increases in global carbon dioxide concentrations associated with climate change, among other factors.

Collectively, invasives plants impact the entire range of sage-grouse, although they are most problematic in the Intermountain West and Great Basin (MZs III, IV, V, and VI). A large portion of the Great Basin is at risk of *B. tectorum* invasion or pinyon-juniper encroachment within the next 30 years. Approximately 80 percent of land in the Great Basin Ecoregion (MZs III, IV, and V) is susceptible to displacement by *B. tectorum* within 30 years (Connelly *et al.* 2004, p. 7-17, Suring *et al.* 2005, p. 138). Connelly *et al.* (2004, pp. 7-8 to 7-14) estimated that approximately 35 percent of sagebrush in the Great Basin was at high risk of displacement by pinyon-juniper in 30 years. *Bromus tectorum* is widespread at lower elevations and pinyon-juniper woodlands tend to expand into higher elevation sagebrush habitats, creating an elevational squeeze from both low and high elevations. Climate change will likely alter the range of individual invasive species, increasing fragmentation and habitat loss of sagebrush communities. Despite the potential shifting of individual species, invasive plants will persist and continue to spread rangewide in the foreseeable future.

A variety of restoration and rehabilitation techniques are used to treat invasive plants, but they can be costly and are mostly unproven and experimental. The success of treatments, particularly for annual grassland restoration, depends on uncontrollable factors (e.g., precipitation). While some efforts appear successful at smaller scales, prevention appears to be the only known effective tool to preclude large-scale habitat loss from invasive annuals and perennials in the future. Pinyon-juniper treatments, particularly when done in the early stages of encroachment when sagebrush and forb understory is still intact, have the potential to provide an immediate benefit to sage-grouse. However, studies have not yet documented a correlation between pinyon-juniper treatments and increased greater sage-grouse productivity.

Grazing

Native herbivores, such as pronghorn antelope (*Antilocapra americana*), mule deer (*Odocoileus hemionus*), bison (*Bison bison*), and other ungulates were present in low numbers on the sagebrush-steppe region prior to European settlement of western States (Osborne 1953, p. 267; Miller *et al.* 1994, p. 111), and sage-grouse co-evolved with these animals. However, mass extinction of the majority of large herbivores occurred 10,000 to 12,000 years ago (Knick *et al.* 2003, p. 616; Knick *et al.*, in press, p. 40). From that period up until European settlement, many areas of sagebrush-steppe still did not support herds of large ungulates and grazing pressure was likely sporadic and localized (Miller *et al.* 1994, p. 113; Plew and Sundell 2000, p. 132; Grayson 2006, p. 921). Additionally, plants of the sagebrush-steppe lack traits that reflect a history of large ungulate grazing pressure (Mack and Thompson 1982, pp. 757). Therefore, native vegetation communities within the sagebrush ecosystem evolved in the absence of significant grazing presence (Mack and Thompson 1982, p. 768). With European settlement of western States (1860 to the early 1900s), unregulated numbers of cattle, sheep, and horses rapidly increased, peaking at the turn of the century (Oliphant 1968, p. vii; Young *et al.* 1976, pp. 194-195, Carpenter 1981, p. 106; Donahue 1999, p. 15) with an estimated 19.6 million cattle and 25 million sheep in the West (BLM 2009a, p. 1).

Excessive grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, significantly impacted sagebrush ecosystems (Knick *et al.* 2003, p. 616). Long-term effects from this overgrazing, including changes in plant communities and soils, persist today (Knick *et al.* 2003, p.116). Currently, livestock grazing is the most widespread type of land use across the sagebrush biome (Connelly *et al.* 2004, p. 7-29); almost all sagebrush areas are managed for livestock grazing (Knick *et al.* 2003, p. 616; Knick *et al.*, in press, p. 27).

Although little direct experimental evidence links grazing practices to population levels of greater sage-grouse (Braun 1987, p. 137; Connelly and Braun 1997, p. 231), the impacts of livestock grazing on sage-grouse habitat and on some aspects of the life cycle of the species have been studied. Sage-grouse need significant grass and shrub cover for protection from predators, particularly during nesting season, and females will preferentially choose nesting sites based on these qualities (Hagen *et al.* 2007, p. 46). The reduction of grass heights due to livestock grazing in sage-grouse nesting and brood-rearing areas has been shown to negatively affect nesting success when cover is reduced below the 18 cm (7 in.) needed for predator avoidance (Gregg *et al.* 1994, p. 165). Based on measurements of cattle foraging rates on bunchgrasses both between and under sagebrush canopies, the probability of foraging on under-canopy bunchgrasses depends on sagebrush morphology, and consequently, the effects of grazing on nesting habitats might be site specific (France *et al.* 2008, pp. 392-393).

Several authors have noted that grazing by livestock could reduce the suitability of breeding and brood-rearing habitat, negatively affecting sage-grouse populations (Braun 1987, p. 137; Dobkin 1995, p. 18; Connelly and Braun 1997, p. 231; Beck and Mitchell 2000, pp. 998-1000). Exclosure studies have demonstrated that domestic livestock grazing reduces water infiltration rates and cover of herbaceous plants and litter, as well as compacting soils and increasing soil erosion (Braun 1998, p. 147; Dobkin *et al.* 1998, p. 213). These impacts result in a change in the proportion of shrub, grass, and forb components in the affected area, and an increased invasion of exotic plant species that do not provide suitable habitat for sage-grouse (Mack and Thompson 1982, p. 761; Miller and Eddleman 2000, p. 19; Knick *et al.*, in press, p. 41).

Livestock also may compete directly with sage-grouse for rangeland resources. Cattle are grazers, feeding mostly on grasses, but they will make seasonal use of forbs and shrub species like sagebrush (Vallentine 1990, p. 226). Domestic sheep are intermediate feeders making high use of forbs, but also using a large volume of grass and shrub species like sagebrush (Vallentine 1990, pp. 240-241). Sheep consume rangeland forbs in occupied sage-grouse habitat (Pederson *et al.* 2003, p. 43) and, in general, forb consumption may reduce food availability for sage-grouse. This

impact is particularly important for pre-laying hens, as forbs provide essential calcium, phosphorus, and protein (Barnett and Crawford 1994, p. 117). A hen's nutritional condition affects nest initiation rate, clutch size, and subsequent reproductive success (Barnett and Crawford 1994, p.117; Coggins 1998, p. 30).

Other effects of direct competition between livestock and sage-grouse depend on condition of the habitat and the grazing practices. Thus, the effects vary across the range of the greater sage-grouse. For example, Aldridge and Brigham (2003, p. 30) suggest that poor livestock management in mesic sites, which are considered limited habitats for sage-grouse in Alberta (Aldridge and Brigham 2002, p. 441), results in a reduction of forbs and grasses available to sage-grouse chicks, thereby affecting chick survival.

Other consequences of grazing include several related to livestock trampling of grouse and habitat. Although the effect of trampling at a population level is unknown, outright nest destruction has been documented and the presence of livestock can cause sage-grouse to abandon their nests (Rasmussen and Griner 1938, p. 863; Patterson 1952, p. 111; Call and Maser 1985, p. 17; Holloran and Anderson 2003, p. 309; Coates 2007, p.28). Coates (2007, p. 28) documented nest abandonment following partial nest depredation by a cow. In general all recorded encounters between livestock and grouse nests resulted in hens flushing from nests, which could expose the eggs to predation; there is strong evidence that visual predators like ravens use hen movements to locate sage-grouse nests (Coates 2007, p.33). Livestock also may trample sagebrush seedlings, thereby removing a source of future sage-grouse food and cover (Connelly *et al.* 2004, p. 7-31). Trampling of soil by livestock can reduce or eliminate biological soil crusts making these areas susceptible to *Bromus tectorum* invasion (Mack 1981 as cited in Miller and Eddleman 2000, p. 21; Young and Allen 1997, p. 531).

Some livestock grazing effects may have positive consequences for sage-grouse. Evans (1986, p. 67) found that sage-grouse used grazed meadows significantly more during late summer than ungrazed meadows because grazing had stimulated the regrowth of forbs. Klebenow (1981, p. 121) noted that sage-grouse sought out and used openings in meadows created by cattle grazing in northern Nevada. Also, both sheep and goats have been used to control invasive weeds (Mosley 1996 as cited in Connelly *et al.* 2004, p. 7-49; Merritt *et al.* 2001, p. 4; Olsen and Wallander 2001, p. 30) and woody plant encroachment (Riggs and Urness 1989, p. 358) in sage-grouse habitat.

Sagebrush plant communities are not adapted to domestic grazing disturbance. Grazing changed the functioning of systems into less resilient, and in some cases, altered communities (Knick *et al.*, in press, p. 39). The ability to restore or rehabilitate areas depends on the condition of the area relative to its site potential (Knick *et al.*, in press, p. 39). For example, if an area has a balanced mix of shrubs and native understory vegetation, a change in grazing management can restore the habitat to its potential vigor (Pyke, in press, p. 11). Wambolt and Payne (1986, p. 318) found that rest from grazing had a better perennial grass response than other treatments. Active restoration would be required where native understory vegetation is much reduced (Pyke, in press, p. 15). But, if an area has soil loss and/or invasive species, returning the site to the native historical plant community may be impossible (Daubenmire 1970, p. 82; Knick *et al.*, in press, p. 39; Pyke, in press, p. 17). Aldridge *et al.* (2008, p. 990) did not find any relationship between sage-grouse persistence and livestock densities. However, the authors noted that livestock numbers do not necessarily correlate with range condition. They concluded that the intensity, duration, and distribution of livestock grazing are more influential on rangeland condition than the livestock density values used in their modeling efforts (Aldridge *et al.* 2008, p. 990).

Extensive rangeland treatment has been conducted by federal agencies and private landowners to improve conditions for livestock in the sagebrush-steppe region (Connelly *et al.* 2004, p. 7- 28; Knick *et al.*, in press, p. 28). By the 1970s, over 2 million ha (5 million ac) of sagebrush are estimated to have been mechanically treated, sprayed with herbicide, or burned in an effort to remove sagebrush and increase herbaceous forage and grasses (Crawford *et al.* 2004, p. 12). The BLM treated over 1,800,000 ha (4,447,897 ac) from 1940 to 1994, with 62 percent of the treatment occurring during the 1960s (Miller and Eddleman 2000, p. 20). Braun (1998, p. 146) concluded that, since European settlement of western North America, all sagebrush habitats used by greater sage-grouse have been treated in some way to reduce shrub cover. The use of chemicals to control sagebrush was initiated in the 1940s and intensified in the 1960s and early 1970s (Braun 1987, p. 138). Crawford *et al.* (2004, p. 12) hypothesized that reductions in sage-grouse habitat quality (and possibly sage-grouse numbers) in the 1970s may have been associated with extensive rangeland treatments to increase forage for domestic livestock.

Greater sage-grouse response to herbicide treatments depends on the extent to which forbs and sagebrush are killed. Chemical control of sagebrush has resulted in declines of sage-grouse breeding populations through the loss of live sagebrush cover (Connelly *et al.* 2000a, p. 972). Herbicide treatment also can result in sage-grouse emigration from affected areas (Connelly *et al.* 2000a, p. 973), and has been documented to have a negative effect on nesting, brood carrying capacity (Klebenow 1970, p. 399), and winter shrub cover essential for food and thermal cover (Pyrah 1972 and Higby 1969 as cited in Connelly *et al.* 2000a, p. 973). Conversely, small treatments interspersed with nontreated sagebrush habitats did not affect sage-grouse use, presumably due to minimal effects on food or cover (Braun 1998, p. 147). Also, application of herbicides in early spring to reduce sagebrush cover may enhance some brood-rearing habitats by increasing the coverage of herbaceous plant foods (Autenrieth 1981, p. 65).

Mechanical treatments are designed to either remove the aboveground portion of the sagebrush plant (mowing, roller chopping, and roto-beating), or to uproot the plant from the soil (grubbing, bulldozing, anchor chaining, cabling, railing, raking, and plowing; Connelly *et al.* 2004, p. l7-47). These treatments were begun in the 1930s and continued at relatively low levels to the late 1990s (Braun 1998, p. 147). Mechanical treatments, if carefully designed and executed, can be beneficial to sage-grouse by improving herbaceous cover, forb production, and sagebrush resprouting (Braun 1998, p. 147). However, adverse effects also have been documented (Connelly *et al.* 2000a, p. 973). For example, in Montana, the number of breeding males declined by 73 percent after 16 percent of the 202-km^2 (78- mi^2) study area was plowed (Swenson *et al.* 1987, p. 128). Mechanical treatments in blocks greater than 100 ha (247 ac), or of any size seeded with exotic grasses, degrade sage-grouse habitat by altering the structure and composition of the vegetative community (Braun 1998, p. 147).

The current extent to which mechanical, chemical, and prescribed fire methods are used to remove or control sagebrush is not known, particularly with regard to private lands. However, BLM has stated that with rare exceptions, they no longer are involved

in actions that convert sagebrush to other habitat types, and that mechanical or chemical treatments in sagebrush habitat on BLM lands currently focus on improving the diversity of the native plant community, reducing conifer encroachment, or reducing the risk of a large wildfire (see discussion of Fire above; BLM 2004, p. 15).

Historically, the elimination of sagebrush followed with rangeland seedings was encouraged to improve forage for livestock grazing operations (Blaisdell 1949, p. 519). Large expanses of sagebrush removed via chemical and mechanical methods have been reseeded with nonnative grasses, such as crested wheatgrass (*Agropyron cristatum*), to increase forage production on public lands (Pechanec *et al.* 1965 as cited in Connelly *et al.* 2004, p.7-28). These treatments reduced or eliminated many native grasses and forbs present prior to the seedings (Hull 1974, p. 217). Sage-grouse are affected indirectly through the loss of native forbs that serve as food and loss of native grasses that provide concealment or hiding cover (Connelly *et al.* 2004, p. 4-4).

Water developments for the benefit of livestock and wild ungulates on public lands are common (Connelly *et al.* 2004, p. 7-35). Development of springs and other water sources to support livestock in upland shrub-steppe habitats can artificially concentrate domestic and wild ungulates in important sage-grouse habitats, thereby exacerbating grazing impacts in those areas such as heavy grazing and vegetation trampling (Braun 1998, p. 147; Knick *et al.*, in press, p. 42). Diverting the water sources has the secondary effect of changing the habitat present at the water source before diversion. This impact could result in the loss of either riparian or wet meadow habitat important to sage-grouse as sources of forbs or insects. Water developments for livestock and wild ungulates also could be used as mosquito breeding habitat, and thus have the potential to facilitate the spread of West Nile virus (see discussion under Factor C: Disease and Predation).

Another indirect negative impact to sage-grouse from livestock grazing occurs due to the placement of thousands of miles of fences for livestock management purposes (see discussion above under Infrastructure). Fences cause direct mortality through collision and indirect mortality through the creation of predator perch sites, the potential creation of predator corridors along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (Call and Maser 1985, p. 22; Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974; Beck *et al.* 2003, p. 211; Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 1-2).

The impacts of livestock operations on sage-grouse depend upon stocking levels, season of use, and utilization levels. Cattle and sheep Animal Unit Months (AUMs) (the amount of forage required to feed one cow with calf, one horse, five sheep, or five goats for 1 month) on all Federal land have declined since the early 1900s (Laycock *et al.* 1996, p. 3). By the 1940s, AUMs on all Federal lands (not just areas occupied by sage-grouse) were estimated to be 14.6 million, increasing to 16.5 million in the 1950s, and gradually declining to 10.2 million by the 1990s (Miller and Eddleman 2000, p. 19). Although AUMs have decreased over time, we cannot assume that the net impact of grazing has decreased because the productivity of those lands has decreased (Knick *et al.*, in press, p. 42). As of 2007, the number of permitted AUMs for BLM lands in States where sage-grouse occur totaled 7,118,989 (Beever and Aldridge, in press, p. 19-20). We estimate that those permitted AUMs occur in approximately 18,783 BLM grazing allotments in sage-grouse habitat (Stoner 2008). Since 2005, 644 (3.4 percent) of those allotments have decreased the permitted AUMs (Service 2008a). However, BLM tracks the number of AUMs permitted rather than the number of AUMs actually used. The number permitted typically is higher than what is used, thus we do not know how the decrease on paper corresponds to the actual number of AUMs for the last four years.

Wild Horse and Burro Grazing

Free-roaming horses and burros have been a component of sagebrush and other arid communities since they were brought to North America at the end of the 16th century (Wagner 1983, p. 116; Beever 2003, p. 887). About 31,000 wild horses occur in 10 western States (including 2 states outside the range of the greater sage-grouse), with herd sizes being largest in Nevada, Wyoming, and Oregon, which are the States with the most extensive sagebrush cover (Connelly *et al.* 2004, p. 7-37). Of about 5,000 burros occur in five western States approximately 700 occur within the SGCA (Connelly *et al.* 2004, p.7-37). Beever and Aldridge (2009, in press, p. 7) estimate that about 12 percent (78, 389 km^2, 30,266 mi^2) of sage-grouse habitat is managed for free-roaming horses and burros. However, the extent to which the equids use land outside of designated management areas is difficult to quantify but may be considerable.

We are unaware of any studies that directly address the impact of wild horses or burros on sagebrush and sage-grouse. However, some authors have suggested that wild horses could negatively impact important meadow and spring brood-rearing habitats used by sage-grouse (Crawford *et al.* 2004, p. 11; Connelly *et al.* 2004, p. 7-37). Horses are generalists, but seasonally their diets can be almost wholly comprised of grasses (Wagner 1983, pp. 119-120). A comparison of areas with and without horse grazing showed 1.9 to 2.9 times more grass cover and higher grass density in areas without horse grazing (Beever *et al.* 2008 as cited Beever and Aldridge in press, p. 11). Additionally, sites with horse grazing had less shrub cover and more fragmented shrub canopies (Beever and Aldridge in press, p. 12). As noted above, sage-grouse need significant grass and shrub cover for protection from predators particularly during nesting season, and females will preferentially choose nesting sites based on these qualities (Hagen *et al.* 2007, p. 46). Sites with grazing also generally showed less plant diversity, altered soil characteristics, and 1.6 to 2.6 times greater abundance of nonnative *Bromus tectorum* (Beever *et al.* 2008 as cited in Beever and Aldridge 2009, in press, p. 13). These impacts combined indicate that horse grazing has the potential to result in an overall decrease in the quality and quantity of sage-grouse habitat in areas where such grazing occurs.

Currently, free-roaming equids consume an estimated 315,000 to 433,000 AUMs as compared to over 7 million AUMs for domestic livestock within the range of greater sage-grouse (Beever and Aldridge, in press, p. 21). Cattle typically outnumber horses by a large degree in areas where both occur; however, locally ratios of 2:1 (horse:cow) have been reported (Wagner 1983, p.126). The local effects of ungulate grazing depend on a host of abiotic and biotic factors (e.g., elevation, season, soil composition, plant productivity, and composition). Additional significant biological and behavioral differences influence the impact of horses as compared to cattle grazing on habitat (Beever 2003, pp. 888-890). For example, due to physiological differences, a horse must forage longer and consumes 20 to 65 percent more forage than would a cow of equivalent body mass (Wagner 1983, p. 121; Menard *et al.* 2002, p.127). Unlike cattle and other ungulates, horses can crop vegetation close to the ground, potentially limiting or delaying

recovery of plants (Menard *et al.* 2002, p.127). In addition, horses seasonally move to higher elevations, spend less time at water, and range farther from water sources than cattle (Beever and Aldridge in press, pp. 20, 21). Given these differences, along with the confounding factor of past range use, it is difficult to assess the overall magnitude of the impact of horses on the landscape in general, or on sage-grouse habitat in particular. In areas grazed by both horses and cattle, whether the impacts are synergistic or additive is currently unknown (Beever and Aldridge, in press, p. 21).

Wild Ungulate Herbivory

Native herbivores, such as elk (*Cervus elaphus*), mule deer, and pronghorn antelope coexist with sage-grouse in sagebrush ecosystems (Miller *et al.* 1994, p. 111). These ungulates are present in sagebrush ecosystems during various seasons based on dietary needs and forage availability (Kufeld 1973, p. 106-107; Kufeld *et al.* 1973 as cited in Wallmo and Regelin 1981, p. 387-396; Allen *et al.* 1984, p. 1). Elk primarily consume grasses but are highly versatile in consumption of forbs and shrubs when grasses are not available (Kufeld 1973, pp. 106-107; Vallentine 1990, p. 235). In the winter, heavy snow forces elk to lower-elevation sagebrush areas where they forage heavily on sagebrush (Wambolt and Sherwood 1999, p. 225). Mule deer utilize forbs, shrubs, and grasses throughout the year dependent upon availability and preference (Kufeld *et al.* 1973 as cited in Wallmo and Regelin 1981, pp. 389-396). Pronghorn antelope, most commonly associated with grasslands and sagebrush, consume a wide variety of available shrubs and forbs and consume new spring grass growth (Allen *et al.* 1984, p. 1; Vallentine 1990, p. 236).

We are unaware of studies evaluating the effects of native ungulate herbivory on sage-grouse and sage-grouse habitat. However, concentrated native ungulate herbivory may impact vegetation in sage-grouse habitat on a localized scale. Native ungulate winter browsing can have substantial, localized impacts on sagebrush vigor, resulting in decreased shrub cover or sagebrush mortality (Wambolt 1996, p. 502; Wambolt and Hoffman 2004, p. 195). Additionally, despite decreased habitat availability, elk and mule deer populations are currently higher than pre-European estimates (Wasley 2004, p. 3; Young and Sparks 1985, pp. 67-68). As a result, some States started small-scale supplemental feeding programs for deer and elk. In those localized areas, vegetation is heavily utilized from the concentration of animals (Doman and Rasmussen 1944, p. 319; Smith 2001, pp. 179-181). Unlike domestic ungulates, wild ungulates are not confined to the same area, at the same time each year. Therefore, the impacts from wild ungulates are spread more diffusely across the landscape, resulting in minimal long-term impacts to the vegetation community.

Summary: Grazing

Livestock management and domestic grazing can seriously degrade sage-grouse habitat. Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species. Once plant communities have an invasive annual grass understory dominance, successful restoration or rehabilitation techniques are largely unproven and experimental (Pyke, in press, p. 25). Massive systems of fencing constructed to manage domestic livestock cause direct mortality to sage-grouse in addition to degrading and fragmenting habitats. Livestock management also can involve water developments that can degrade important brood-rearing habitat and or facilitate the spread of WNv. Additionally, some research suggests there may be direct competition between sage-grouse and livestock for plant resources. However, although there are obvious negative impacts, some research suggests that under very specific conditions grazing can benefit sage-grouse.

Similar to domestic grazing, wild horses and burros have the potential to negatively affect sage-grouse habitats in areas where they occur by decreasing grass cover, fragmenting shrub canopies, altering soil characteristics, decreasing plant diversity, and increasing the abundance of invasive *Bromus tectorum*.

Native ungulates have coexisted with sage-grouse in sagebrush ecosystems. Elk and mule deer browse sagebrush during the winter and can cause mortality to small patches of sagebrush from heavy winter use. Pronghorn antelope, largely overlapping with sage-grouse habitat year around, consume grasses and forbs during the summer and browse on sagebrush in the winter. We are not aware of research analyzing impacts from these native ungulates on sage-grouse or sage-grouse habitat.

Currently there is little direct evidence linking grazing practices to population levels of greater sage-grouse. However, testing for impacts of grazing at landscape scales important to sage-grouse is confounded by the fact that almost all sage-grouse habitat has at one time been grazed and thus no non-grazed, baseline areas currently exist with which to compare (Knick *et al.* in press, p. 43). Although we cannot examine grazing at large spatial scales, we do know that grazing can have negative impacts to sagebrush and consequently to sage-grouse at local scales. However, how these impacts operate at large spatial scales and thus on population levels is currently unknown. Given the widespread nature of grazing, the potential for population-level impacts cannot be ignored.

Energy Development

Greater sage-grouse populations are negatively affected by energy development activities (primarily oil, gas, and coal-bed methane), especially those that degrade important sagebrush habitat, even when mitigative measures are implemented (Braun 1998, p. 144; Lyon 2000, pp. 25-28; Holloran 2005, pp. 56-57; Naugle *et al.* 2006, pp. 8-9; Walker *et al.* 2007a, p. 2651; Doherty *et al.* 2008, p. 192; Harju *et al.* in press, p. 22). Impacts can result from direct habitat loss, fragmentation of important habitats by roads, pipelines, and powerlines (Kaiser 2006, p. 3; Holloran *et al.* 2007, p. 16), noise (Holloran 2005, p. 56), and direct human disturbance (Lyon and Anderson 2003, p. 489). The negative effects of energy development often add to the impacts from other human development and activities and result in sage-grouse population declines (Harju *et al.* in press, p. 22; Naugle *et al.*, in press, p. 1). For example, 12 years of coal-bed methane gas development in the Powder River Basin of Wyoming has coincided with 79 percent decline in the sage-grouse population (Emmerich 2009, pers. comm.). Population declines associated with energy development result from the abandonment of leks (Braun *et al.* 2002, p. 5; Walker *et al.* 2007a, p. 2649; Clark *et al.* 2008, pp. 14, 16), decreased attendance at the leks that persist (Holloran 2005, pp. 38-39, 50; Kaiser 2006, p. 23; Walker *et al.* 2007a, p. 2648; Harju *et al.* in press, p. 22), lower nest initiation (Lyon 2000, p. 109; Lyon and Anderson 2003, p. 5), poor nest success and chick survival (Aldridge and Boyce 2007, p. 517), decreased yearling survival (Holloran *et al.*, in press, p. 6), and avoidance of energy infrastructure in important wintering habitat (Doherty *et al.* 2008, pp. 192-193).

Nonrenewable Energy Sources

Nonrenewable fossil fuel energy development (e.g., petroleum products, coal) has been occurring in sage-grouse habitats since the late 1800s (Connelly *et al.* 2004, p. 7-28). Interest in developing oil and gas resources in North America has been cyclic based on demand and market conditions (Braun *et al.* 2002, p. 2). Between 2004 and 2008, the exploration and development of fossil fuels in sagebrush habitats increased rapidly as prices and demand were spurred by geopolitical uncertainties and legislative mandates (National Petroleum Council 2007, pp. 5-7). Legislative mandates that were used to effect an increase in energy development include those of the Energy Policy and Conservation Act (EPCA) of 1975 (42 United States Code (U.S.C.) 6201 *et seq.*) to secure energy supplies and increase the availability of fossil fuels. Reauthorization and amendments to the EPCA have occurred through subsequent legislation including the Energy Policy Act of 2000 (Public Law (P.L.) 106-469) that mandates the inventory of Federal nonrenewable resources (42 U.S.C. 6217). The 2005 Energy Policy Act requires identification and resolution of impediments to timely granting of Federal leases and post-leasing development (42 U.S.C. 15851). In addition, the 2005 Energy Policy Act mandated the designation of corridors on Federal lands for energy transport (42 U.S.C. 15926), ordered the identification of renewable energy sources (e.g., wind, geothermal), and provided incentives for development of renewable energy sources (42 U.S.C. 15851).

Global recession starting in 2008 resulted in decreased energy demand and subsequently slowed rate of energy development (Energy Information Administration (EIA) 2009b, p. 2). However, the production of fossil fuels is predicted to regain and surpass the early 2008 levels starting in 2010 (EIA 2009b, p. 109). Forecasts to the year 2030 predict fossil fuels to continue to provide for the United States' energy needs while not necessarily in conventional forms or from present extraction techniques (EIA 2009b, pp. 2-4, 109). Recent concerns about curbing greenhouse gas emissions associated with fossil fuel use are being addressed through government policy, legislation, and advanced technologies and are likely to effect a transition in fuel form (EIA 2009b, pp. 2-3, 78).

The decline in use of conventional fossil fuels for power generation in the future is expected to be supplemented with biomass, unconventional oil and gas, and renewable sources—all of which are existing or potentially available in current sage-grouse habitats (U.S. Department of Energy (DOE) 2006, p. 3; National Petroleum Council 2007, p. 6; BLM 2005a, p. 2-4; National Renewable Energy Laboratory (NREL) 2008a, entire; Idaho National Engineering and Environmental Laboratory 2003, entire; EIA 2009b, pp. 2-4). For example, oil shale and tar sands are unconventional fossil fuel liquids predicted for increased development in the sage-grouse range. Shale sources providing 2 million barrels per day in 2007 are expected to contribute 5.6–6.1 million barrels by 2030 (EIA 2009b, p. 30). Extraction of this resource involves removal of habitat and disturbance similar to oil and gas development (see discussion below). National reserves of oil shale lie primarily in the Uinta–Piceance area of Colorado and Utah (MZs II, III, and VII), and the Green River and Washakie areas of southwestern Wyoming (MZ II). These 1.4 million ha (3.5 million ac) of Federal lands contain an estimated 1.23 trillion barrels of oil—more than 50 times the United States' proven conventional oil reserves (BLM 2008a, p. 2).

Available EPCA inventories detail energy resources in 11 geological basins (DOI *et al.* 2008, entire) in the greater sage-grouse conservation assessment area identified in the 2006 Conservation Strategy (Stiver *et al.* 2006, p. 1-11). Extensive oil and gas reserves are identified in the Williston Basin of western North Dakota, northwestern South Dakota, and eastern Montana; Montana Thrust Belt in west-central Montana; Powder River Basin of northeastern Wyoming and southeastern Montana; Wyoming Thrust Belt of extreme southwestern Wyoming, northern Utah, and southeastern Idaho; Southwest Wyoming Basin including portions of southwestern and central Wyoming, northeastern Utah, and northwestern Colorado; Uinta–Piceance Basin of west-central Colorado and east-central Utah; Eastern Great Basin in eastern Nevada, western Utah, and southern Idaho; and Paradox Basin in south-central and southeastern Utah. Although all these geological basins have some component of sage habitats, the Southwestern Wyoming Basin as defined by EPCA (DOI *et al.* 2008, p. 3-11) is highest in sagebrush-dominated landscapes (Knick *et al.* 2003, pp. 613, 615) and is located in MZ II as described in Stiver *et al.* 2006 (pp. 1-11).

Oil and gas development has occurred in the past, with historical well locations concentrated in MZs I, II, III, and VII of Wyoming, eastern Montana, western Colorado, and eastern Utah (IHS Incorporated 2006). Currently, oil, conventional gas, or coal-bed methane development occur across the eastern component of the SGCA. Four geological basins are most affected by a concentration of development—Powder River (MZ I), Williston (MZ I), Southwestern Wyoming (MZ II), and the Uinta–Piceance (MZs II, III, VII) coinciding with the highest proportion of high-density areas of sage-grouse, the greatest number of leks, and the highest male sage-grouse attendance at leks compared with any other area in the eastern part of the range (Doherty *et al.* in press, p. 11). The Powder River Basin in northeastern Wyoming and southeastern Montana is home to an important regional population of the larger Wyoming Basin populations, which represents 25 percent of the sage-grouse in the species' range (Connelly *et al.* 2004, p. A4-37). The Powder River Basin serves as a link to peripheral populations in eastern Wyoming and western South Dakota and between the Wyoming Basin and central Montana. The Pinedale Anticline Project is in the Greater Green River area of the Southwest Wyoming Basin where the subpopulation in southwestern Wyoming and northwestern Colorado has been a stronghold for sage-grouse with some of the highest estimated densities of males per square kilometer anywhere in the remaining range of the species (Connelly *et al.* 2004, pp. 6-62, A5-23). The southwestern Wyoming-northwestern Colorado subpopulation has historically supported more than 800 leks (Connelly *et al.* 2004, p. 6-62). The preservation of large contiguous blocks or interconnected patches of habitats that exist in southwestern Wyoming is considered a conservation priority for sage-grouse (Knick and Hanser in press, p. 31).

Extensive development and operations are occurring in sage-grouse habitats where the number of producing wells has tripled in the past 30 years (Naugle *et al.*, in press, p. 17). More than 8 percent of the distribution of sagebrush habitats is directly or indirectly affected by oil and gas development and associated pipelines (Knick *et al.* in press, p. 48). Forty-four percent of the 16-million-ha (39-million-ac) Federal mineral estate in MZs I and II is leased and authorized for exploration and development (Naugle *et al.* in press, pp. 17-18). Wyoming contains the highest percentage of the Federal mineral estate with 10.6 million ha (26.2 million ac); 52 percent of it is authorized for development (Naugle *et*

al., in press, pp. 17-18). Other Federal mineral estates in the eastern portion of the sage-grouse conservation assessment area that are authorized for development include at least 27 percent of Montana's 3.7 million ha (9.1 million ac), 50 percent of 915,000 ha (2.3 million ac) in Colorado, 25 percent of 405,000 ha (1.0 million ac) in Utah, and 14 percent of North and South Dakota's combined 365,000 ha (902,000 ac) (Naugle *et al.* in press, p. 38).

The Great Plains MZ (MZ I) contains all or portions of the 20.9-million-ha (51.7-million-ac) Powder River and Williston geological basins identified as significant oil and gas resources. The resource areas include 7.2 million ha (18.2 million ac) of sagebrush habitats. Oil and gas infrastructure and planned development occupies less than 1 percent of the land area in MZ I; however, the ecological effect is greater than 20 percent of the sagebrush habitat, based on applying a buffer zone to estimate the potential the distance of sage-grouse response to infrastructure (Lyon and Anderson 2003, p. 489; Knick *et al.*, in press, p. 133). Energy development is concentrated in the Powder River geologic basin in northeastern Wyoming and southeastern Montana. Coal-bed natural gas extraction is the most recent development in the Powder River Basin, which also is the largest actively producing coal basin in the United States (Wyoming Mining Association 2008, p. 2).

In 2002, the BLM in Wyoming proposed development of 39,367 coal-bed methane wells and 3,200 conventional oil or gas wells in the Powder River Basin in addition to an existing 12,024 coal-bed methane wells drilled or permitted (BLM 2002, pp. 2-3). Wells would be developed over a 10–year period with production lasting until 2019 (BLM 2002, p. 3). The BLM estimated 82,073 ha (202,808 ac) of surface disturbance from all activities such as well pads, pipelines, roads, compressor stations, and water handling facilities over a 3.2-million-ha (8-million-ac) project area (BLM 2002, p. 2). Roads and water handling facilities were expected to be long-term disturbances encompassing approximately 38,501 ha (95,140 ac) (BLM 2002, p. 3). Reclamation of well sites was expected to be complete by 2022 (BLM 2002, p. 3). It is not clear if this 2022 date takes into consideration the length of time necessary to achieve suitable habitat conditions for sage-grouse or if restoration of sage-grouse habitat is possible.

Between 1997 and 2007, approximately 35,000 producing wells were in place on Federal, State, and private holdings in the Powder River Basin area (Naugle *et al.*, in press, p. 7). In 2008, the BLM in Montana completed a supplement to the 2003 Environmental Impact Statement (EIS) and Record of Decision (ROD) to allow for 5,800–16,500 new coal bed methane wells in the Montana portion of the Powder River Basin over the pursuant 20 years (BLM 2008b, pp. 4.2, 4.4-4.5). The BLM estimated a direct impact of 0.8–1.3 ha (2–3.4 ac) per well site (BLM 2008b, p. 4.11). In addition to the well footprint, each additional group of 2–10 wells has been shown to increase the number of new roads, power lines, and other infrastructure (Naugle *et al.* in press, p. 7). Ranching, tillage agriculture, and energy development are the primary land uses in the Powder River Basin. The presence of human features and road densities are high in areas where all three activities coincide to the level that every 0.8 ha (0.5 mi) could be bounded by a road and bisected by a power line (Naugle *et al.* in press, p. 9).

The Powder River Basin serves as a link to peripheral sage-grouse populations in eastern Wyoming and western South Dakota and between the Wyoming basin and central Montana. This connectivity is expected to be lost in the near future because of the intensity of development in the region. Sage-grouse populations have declined in the Powder River Basin by 79 percent since the development of coal-bed methane resources (Emmerich 2009, pers. comm.). In the Powder River Basin between 2001 and 2005, sage-grouse lek-count indices declined by 82 percent inside gas fields compared to 12 percent outside development (Walker *et al.* 2007a, p. 2648). By 2004–2005, fewer leks remained active (38 percent) inside gas fields compared to leks outside fields (84 percent) (Walker *et al.* 2007a, p. 2648). Sage-grouse are less likely to use suitable wintering habitat with abundant sagebrush when coal-bed methane development is present (Doherty *et al.* 2008, p. 192). At current maximum permitted well density (12 wells per 359 ha (888 ac)), planned full-field development will impact the remaining wintering habitat in the basin (Doherty *et al.* 2008, pp. 192, 194) and lead to extirpation.

Energy development in the Powder River Basin is predicted to continue to actively reduce sage-grouse populations and sagebrush habitats over the next 20 years based on the length of development and production projects described in existing project and management plans. The BLM concluded that sage-grouse habitats would not be restored to pre-disturbance conditions for an extended time (BLM 2003, p. 4-268). Sagebrush restoration after development is difficult to achieve, and successful restoration is not assured as described above (Habitat Description and Characteristics).

The 9.6-million-ha (23.9-million-ac) Williston Basin underlies the northeastern corner of the current sage-grouse range in Montana, North and South Dakota. It is another energy resource area experiencing concentrated oil and gas development in MZ I. Oil production has occurred in the Williston Basin for at least 80 years with oil production peaking in the 1980s (Advanced Resources International 2006, p. 3-3). Advances in technology including directional drilling and coal-bed methane technology have boosted development of oil and gas in the basin (Advanced Resources International 2006, p. 3.2; Zander 2008, p. 1). Large, developed fields are concentrated in the Bowdoin Dome area of north-central Montana and the 193-km (120-mi) long Cedar Creek Anticline area of southeastern Montana, southwestern North Dakota, and northwestern South Dakota. Extensive energy development in the Cedar Creek Anticline area could be isolating the very small North Dakota population from sage-grouse populations in central Montana and the northern Powder River Basin.

One hundred and thirty-six wells were put into production in 2008–2009 in major oil and gas fields of the Williston Basin north of the Missouri River in the range of the Northern Montana sage-grouse population (Montana Department of Natural Resources 2009, entire) including the Bowdoin Dome area. The Bowdoin Dome area is populated by more than 1,500 gas wells with associated infrastructure, and an additional 1,200 new or replacement wells were approved in the remaining occupied active sage-grouse habitat (BLM 2008c, pp. 1, 3-127 to 3-129). Active drilling operations are expected to occur over 10–15 years, and gas production is expected to extend the project life 30–50 additional years (BLM 2008c, p. 1). The BLM's project description does not take into consideration the time period necessary to restore native sagebrush communities to suitability for sage-grouse. Energy extraction, ranching, and tillage agriculture coincide in this area of the State described by Leu and Hanser (in press, p. 44) as experiencing high-intensity human activity that is consistent with lek loss and population decline (Wisdom *et al.*, in press, p. 23). Energy development in Montana has contributed to post-settlement sage-

grouse range contraction and possibly the geographic separation of the existing subpopulations in northern Montana and Canada. Foreseeable development is expected to further reduce the remaining sage-grouse habitat within developed oil and gas fields, and contribute to future range and population reductions (Copeland *et al.* 2009, p. 5).

Southwestern and central Wyoming and northwestern Colorado in MZ II has been considered a stronghold for sage-grouse with some of the highest estimated densities of males anywhere in the remaining range of the species (Connelly *et al.* 2004, pp. 6-62, A5-23). Wisdom *et al.* (in press, p. 23) identified this high-density sagebrush area as one of the highest priorities for conservation consideration as it comprises one of two remaining areas of contiguous range essential for the long-term persistence of the species. The Southwestern Wyoming geological basin also is experiencing significant growth in energy development which, based on the conclusions of recent investigations on the effects of oil and gas development, is expected over time to reduce sage-grouse habitat, increase fragmentation, and decrease and isolate sage-grouse populations leading to extirpations.

Oil, gas, and coal-bed methane development is occurring across MZ II, and development is concentrated in some areas. Intensive development and production is occurring in the Greater Green River area in southwestern Wyoming and northern Colorado and northeastern Utah. The BLM published a ROD in 2000 for the Pinedale Anticline Project Area in southwestern Wyoming (BLM 2000, entire). The project description included up to 900 drill pads, including dry holes, over a 10- to 15–year development period (BLM 2008d, p. 4-4). By the end of 2005, approximately 457 wells on 322 well pads were under production (BLM 2008d, p. 6). In 2008, the BLM amended the project to accommodate an accelerated rate of development exceeding that in the 2002 project description (BLM 2008d, p. 4). Approximately 250 new well pads are proposed in addition to pipelines and other facilities (BLM 2008d, p. 36). Total initial direct disturbance acres for the entire Pinedale project are approximately 10,400 ha (25,800 ac) with more than 7,200 ha (18,000 ac) in sagebrush land cover type (BLM 2008d, p. 4-52).

The Jonah Gas Infill Project also is underway in the Pinedale Anticline area of the Southwest Wyoming Basin that expands on the Jonah Project started in 2000. In 2006, the BLM issued a ROD and EIS to extend the existing project to an additional 3,100 wells and up to 6,556 ha (16,200 ac) of new surface disturbance (BLM 2006, p. 2-4). In addition, at least 64 well pads would be situated per 259 ha (640 ac), and up to 761 km (473 mi) of pipeline and roads, 56 ha (140 ac) of additional disturbance for ancillary facilities (p. 2-5) also would occur. The project life of 76 years includes 13 years of development and 63 years of production (BLM 2006, p. 2-15). The project description requires reclamation of disturbed sites and establishment of stabilizing vegetation by 1 year post-reclamation (BLM 2006, p. 2-24) and standard lease stipulations to protect sage-grouse. This project is located in high-density sage-grouse habitat, but it is not clear from the project description if suitable sage-grouse habitat is the reclamation goal. Therefore, sagebrush habitats, and the associated sage-grouse are likely to be lost.

Knick *et al.* (in press, pp. 49, 128) reviewed BLM documents for the Greater Green River Basin area, which includes the Pinedale and Jonah projects, and reported that 6,185 wells have been drilled, and there are agency plans for more than 9,300 wells and associated infrastructure. Existing and planned energy development influences over 20 percent of the sagebrush area in the Wyoming Basin (MZ II) (Knick *et al.*, in press, p. 133). Drilling, gas production, and traffic on main haul roads have all been shown to affect lek attendance and lek persistence when it coincides with breeding habitat within 3.2 km (2 mi) (Holloran 2005, p. 40; Walker *et al.* 2007a, p. 2651). Using 2006 well point data and, therefore, a conservative estimate as oil exploration and development experienced significant growth between 2006 and 2008, we calculated that 21 to 35 percent of active breeding habitat for subpopulations in the Southwest Wyoming geological basin may be negatively impacted by the proximity of energy development (Service 2008b).

In the Greater Green River Basin area, yearling male sage-grouse reared near gas field infrastructure had lower survival rates and were less likely to establish breeding territories than males with less exposure to energy development; yearling female sage-grouse avoided nesting within 950 m (0.6 mi) of natural gas infrastructure (Holloran *et al.*, in press, p. 6). The fidelity of sage-grouse to natal sites may result in birds staying in areas with development but they do not breed (Lyon and Anderson 2003, p. 49; Walker *et al.* 2007a, p. 2651; Holloran *et al.*, in press, p. 6). The effect of energy development on sage-grouse population numbers may then take 4 to 5 years to appear (Walker *et al.* 2007a, p. 2651). Copeland *et al.* (2009, p. 5) depicted an extensive development scenario for southwest Wyoming, northern Colorado, and northeastern Utah based on known reserves and existing project plans that indicates an intersection between future oil and gas development and high-density sage-grouse core areas that could result in 6.3 to 24.1 percent decrease in sage-grouse numbers over the next 20 years in MZ II (Copeland 2010, pers. comm.).

The Greater Green River area of southwest Wyoming and the Uintah–Piceance basin (discussed below) also are, in addition to oil and gas, important reserves of oil shale and tar sands that are expected to supply more of the nation's resource needs in the future (EIA 2009b, p. 30). The Uintah–Piceance geologic basin includes the Colorado Plateau (MZ VII) and overlaps into the southern edge of the Wyoming Basin (MZ II). Sage-grouse in this part of the range are reduced to four small, isolated populations, a likely consequence of urban and agricultural development (Knick *et al.*, in press, pp. 106-107; Leu and Hanser, in press, p. 15). All four populations are threatened by environmental, demographic, and genetic stochasticity due to their small population sizes as well as housing and energy development, predation, disease, and conifer invasion (Garton *et al.*, in press, p. 7; Petch 2009, pers. comm.; Maxfield 2009, pers. comm.) although population data are limited for most of this area (Garton *et al.*, in press, p. 63).

Based on applying a 3 km (1.9 mi) buffer to construction areas, Knick *et al.* (in press, p. 133) estimate existing energy development affects over 30 percent of sagebrush habitats in this area. In the past 4 years, the number of oil and gas wells increased in sage-grouse habitats of northwestern Colorado and northeastern Utah by 325 and 870 wells, respectively (Service 2008c). More than 1,370 wells were completed in Uintah (location of the two Utah populations) and Duchesne Counties of northeast Utah between July 2008 and August 2009 (Utah Oil and Gas Program 2009, entire), and approximately 7,700 wells are active in the counties (Utah DNRC 2009, entire). We expect that the development of energy resources will continue based on available reserves and recent development history (Copeland *et al.* 2009, p. 5), and development will further stress the persistence of these small populations at the southern edge of the sage-grouse range.

Using GIS analysis, we calculated that 70 percent of the sage-grouse breeding habitat is potentially impacted by oil and gas development in the Powder River Basin (Service 2008b). The 70 percent figure was derived from well point data supplied by the BLM, buffered by 3.2 km (2 mi), and intersecting these areas with known lek locations buffered to 6.4 km (4 mi). The 70 percent figure is conservative because the most comprehensive well point data set available was 2 years old and did not reflect the rapid development that occurred in 2008. Breeding habitat is defined as a 6.4-km (4-mi) radius around known lek points and includes the range of the average distances between nests and nearest lek (Autenrieth 1981, p. 18; Wakkinen *et al.* 1992, p. 2).

The effects of oil and gas development, as described in detail later in this section, are likely to continue for decades even with the current protective or mitigative measures in place. Based on a review of project EISs, Connelly *et al.* (2004, p. 7-41) concluded that the economic life of a coal-bed methane well averages 12–18 years and 20–100 years for deep oil and gas wells. A recent review of energy projects in development, primarily gas and coal-bed methane, supports these timeframes (BLM 2008b, p. 4-2; 2008c, p. 2; 2009b, p. 2). In addition, many energy projects are tiered to the 20–year land use plans developed by individual BLM field offices or districts to guide development and other activities.

The BLM is the primary Federal agency managing the United States' energy resources and has the legal authority to regulate and condition oil and gas leases and permits. Although the restrictive stipulations that BLM applies to permits and leases are variable, a 0.4-km (0.25-mi) radius around sage-grouse leks is generally restricted to no surface occupancy (NSO) during the breeding season, and noise and development activities are often limited during the breeding season within a 0.8- to 3.2-km (0.5 to 2-mi) radius of sage-grouse leks. As stated above, the BLM's NSO buffer stipulation is ineffective in protecting sage-grouse (Walker *et al.* 2007a, p. 2651), and it is not applied or applicable to all development sites (see discussion under Factor D). We estimated the sage-grouse breeding habitat impacted within 0.4 km (0.25 mi) of a producing well or drilling site with an approved BLM permit using 2006 well-site locations (the most comprehensive data available to us). Figures derived from the 2006 data are conservative because the rapid pace of development in 2007 and 2008 is not reflected. Within 16.2 million ha (38 million ac) of sage-grouse breeding habitat in MZs I and II (where 65 percent of all sage-grouse reside), approximately 1.7 million ha (4.2 million ac) or 10 percent are within 0.4 km (0.25 mi) of a producing well, drilling operation or site (Service 2008d). Walker *et al.* (2007a, p. 2651) reported negative impacts on lek attendance of coal-bed methane development within 0.8 km (0.5 mi) and 3.2 km (2 mi) of a lek, and Holloran (2005, pp. 57-60) observed that the influence of producing well sites and mail haul roads on lek attendance extended to at least 3 km (2 mi). Expanding our analysis area from 0.4 km (0.25 mi) to include breeding habitat within 3 km (2 mi) of producing well or drilling sites with an approved BLM permit, we determined that 40 percent of the sage-grouse breeding habitat in MZs I and II is potentially affected by oil or gas development (Service 2008b).

In some cases, localized areas are experiencing higher levels of effects. Seventy percent of the sage-grouse breeding habitat is within 3 km (2 mi) of development in the Powder River Basin of northeastern Wyoming and southeastern Montana (Service 2008b), where Walker *et al.* (2007, p. 2651) concluded that full-field development would reduce the probability of lek persistence from 87 to 5 percent. Our analyses show that subpopulations of sage-grouse in MZ II have up to 35 percent of breeding habitat within 3.2 km (2 mi) of development, and where data are available for populations in the Uintah–Piceance Basin of Colorado and Utah, 100 percent of the breeding habitat is affected by oil and gas development (Service 2008b). Additionally these calculations do not take into account the added effects of loss of habitat or habitat effectiveness resulting from the increasing level of renewable energy development or other anthropogenic factors occurring in concert with oil and gas development, such as agricultural tillage, urban expansion, or predation, fire, and invasives (see discussions under those headings).

Energy development impacts sage-grouse and sagebrush habitats through direct habitat loss from well pad, access construction, seismic surveys, roads, powerlines, and pipeline corridors; indirectly from noise, gaseous emissions, changes in water availability and quality, and human presence; and the interaction and intensity of effects could cumulatively or individually lead to fragmentation (Suter 1978, pp. 6-13; Aldridge 1998, p. 12; Braun 1998, pp. 144-148; Aldridge and Brigham 2003, p. 31; Knick *et al.* 2003, pp. 612, 619; Lyon and Anderson 2003, pp. 489-490; Connelly *et al.* 2004, pp. 7-40 to 7-41; Holloran 2005, pp. 56-57; Holloran 2007, pp. 18-19; Aldridge and Boyce 2007, pp. 521-522; Walker *et al.* 2007a, pp. 2652-2653; Zou *et al.* 2006, pp. 1039-1040; Doherty *et al.* 2008, p. 193; Leu and Hanser, in press, p. 28).

The development of oil and gas resources requires surveys for economically recoverable reserves, construction of well pads and access roads, subsequent drilling and extraction, and transport of oil and gas, typically through pipelines. Ancillary facilities can include compressor stations, pumping stations, electrical generators, and powerlines (Connelly *et al.* 2004, p. 7-39; BLM 2007c, p. 2-110). Surveys for recoverable resources occur primarily through seismic activities, using vibroesis buggies (thumpers) or shothole explosives. Well pads vary in size from 0.10 ha (0.25 ac) for coal-bed natural gas wells in areas of level topography to greater than 7 ha (17.3 ac) for deep gas wells and multiwell pads (Connelly *et al.* 2004, p. 7-39; BLM 2007c, p. 2-123). Pads for compressor stations require 5–7 ha (12.4–17.3 ac) (Connelly *et al.* 2004, p. 7-39).

Well densities and spacing are typically designed to maximize recovery of the resource and are administered by State oil and gas agencies and the BLM, the Federal agency charged with administering the nation's Federal mineral estate (Connelly *et al.* 2004 pp. 7-39 to 7-40). Well density on BLM-administered lands is incorporated in land use plans and often based on the spacing decision of individual State oil and gas boards. Each geologic basin has a standard spacing, but exemptions are granted. Density of wells for current major developments in the sage-grouse range vary from 1 well per 2 ha (5ac) to 1 well per 64 ha (158 ac) (Knick *et al.*, in press, pp. 128). Greater sage-grouse respond to the density and distribution of infrastructure on the landscape. Holloran (2005, pp. 38-39, 50) reported that male sage-grouse attendance at leks decreased over 23 percent in gas fields where well density was 5 or more within 3 km (1.9 mi). Sage-grouse are less likely to occupy areas with wells at a 32 ha (80 ac) spacing than a 400 ha (988 ac) spacing (Doherty *et al.* 2008, p. 193).

Direct habitat loss from the human footprint contributes to decreased population numbers and distribution of the greater sage-grouse (Knick *et al.* 2003, p. 1; Connelly *et al.* 2004, p. 7-40; Aldridge *et al.* 2008, p. 983; Copeland *et al.* 2009, p. 6; Knick *et al.*, in press, p. 60; Leu and Hanser, in press, p. 5).

The footprint of energy development contributes to direct habitat loss from construction of well pads, roads, pipelines, powerlines, and through the crushing of vegetation during seismic surveys. The amount of direct habitat loss within an area is ultimately determined by well densities and the associated loss from ancillary facilities.

The ecological footprint is the extended effect of the infrastructure or activity beyond its physical footprint and determined by a physical or behavioral response of the sage-grouse. The physical footprint of oil and gas infrastructure including pipelines is estimated to be 5 million ha (1.2 million ac) and less than 1 percent of the SGCA (Knick *et al.*, in press, p. 133). However, the estimated ecological footprint is more than 13.8 million ha (34.2 million ac) or 6.7 percent of the SGCA (Knick *et al.*, in press, p. 133) based on applying a buffer zone to estimate potential avoidance, increased mortality risk, and lowered fecundity in the vicinity of development (Lyon and Anderson 2003, p. 459; Walker *et al.* 2007a, p. 2651; Holloran *et al.* in press, p. 6). Based on their method, Knick *et al.* (in press, p. 133) estimated more than 8 percent of sagebrush habitats within the SGCA are affected by energy development. The MZs with concentrations of oil and gas development have a higher estimated percentage of sagebrush habitats affected: 20 percent of the Great Plains (MZ I), 20 percent of the Wyoming Basin (MZ II), and 29 percent of the Colorado Plateau (MZ VII) (Knick *et al*, in press, p. 133). Copeland *et al.* (2009, p. 6) predict a scenario with a minimum of 2.3 million additional ha (5.7 million ac) directly impacted by oil and gas development by the year 2030. The corresponding ecological footprint is likely much larger. The projected increase in oil and gas energy development within the sage-grouse range could reduce the population by 7 to 19 percent from today's numbers (Copeland *et al.* 2009, p. 6). This projection does not reflect the effects of the increased development of renewable energy sources.

Roads associated with oil and gas development were suggested to be the primary impact to greater sage-grouse due to their persistence and continued use even after drilling and production ceased (Lyon and Anderson 2003, p. 489). Declines in male lek attendance were reported within 3 km (1.9 mi) of a well or haul road with a traffic volume exceeding one vehicle per day (Holloran 2005, p. 40; Walker *et al.* 2008a, p. 2651). Sage-grouse also may be at increased risk for collision with vehicles simply due to the increased traffic associated with oil and gas activities (Aldridge 1998, p. 14; BLM 2003, p. 4-222).

Habitat fragmentation resulting from oil and gas development infrastructure, including access roads, may have effects on sage-grouse greater than the associated direct habitat losses. The Powder River Basin infrastructure footprint is relatively small (typically 6-8 ha per 2.6 km^2 (15-20 ac per section)). Considering the mostly contiguous nature of the project area, the density of facilities could affect sage-grouse habitats on over 2.4 million ha (5.9 million ac). Energy development and associated infrastructure works cumulatively with other human activity or development to decrease available habitat and increase fragmentation. Walker *et al.* (2007, p. 2652) determined that leks had the lowest probability of persisting (40–50 percent) in a landscape with less than 30 percent sagebrush within 6.4 km (4 mi) of the lek. These probabilities were even less in landscapes where energy development also was a factor.

Noise can drive away wildlife, cause physiological stress, and interfere with auditory cues and intraspecific communication. Aldridge and Brigham (2003, p. 32) reported that, in the absence of stipulations to minimize the effects of noise, mechanical activities at well sites may disrupt sage-grouse breeding and nesting activities. Hens bred on leks within 3 km (1.9 mi) of oil and gas development in the upper Green River Basin of Wyoming selected nest sites with higher total shrub canopy cover and average live sagebrush height than hens nesting away from disturbance (Lyon 2000, p. 109). The author hypothesized that exposure to road noise associated with oil and gas drilling may have been one cause for the difference in habitat selection. However, noise could not be separated from the potential effects of increased predation resulting from the presence of a new road. In the Pinedale Anticline area of southwest Wyoming, lek attendance declined most noticeably downwind from a drilling rig indicating that noise likely affected male presence (Holloran 2005, p. 49).

Above-ground noise is typically not regulated to mitigate effects to sage-grouse or other wildlife (Connelly *et al.* 2004, p. 7-40). Ground shock from seismic activities may affect sage-grouse if it occurs during the lekking or nesting seasons (Moore and Mills 1977, p. 137). We are unaware of any research on the impact of ground shock to sage-grouse.

Water quality and quantity may be affected by oil and gas development. In many large field developments, the contamination threat is minimized by storing water produced by the gas dehydration process in tanks. Water also may be depleted from natural sources for drilling or dust suppression purposes. Concentrating wildlife and domestic livestock may increase habitat degradation at remaining water sources. Negative effects of changes in water quality, availability, and distribution are a reduction in habitat quality (e.g., trampling of vegetation, changes in water filtration rates), and habitat degradation (e.g., poor vegetation growth), which could result in brood habitat loss. However, we have no data to suggest that this, by itself, is a limiting factor to sage-grouse.

Water produced by coal-bed methane drilling may benefit sage-grouse through expansion of existing riparian areas and creation of new areas (BLM 2003, p. 4-223). These habitats could provide additional brood rearing and summering habitats for sage-grouse. However, the increased surface-water on the landscape may negatively impact sage-grouse populations by providing an environment for disease vectors (Walker and Naugle in press, p. 13). Based on the 2002 discovery of WNv in the Powder River Basin, and the resulting mortalities of sage-grouse (Naugle *et al.* 2004, p. 705), there is concern that produced water could have a negative impact if it creates suitable breeding reservoirs for the mosquito vector of this disease (see also discussion in Factor C, Disease and Predation). Produced water also could result in direct habitat loss through prolonged flooding of sagebrush areas, or if the discharged water is of poor quality because of high salt or other mineral content, either of which could result in the loss of sagebrush or grasses and forbs necessary for foraging broods (BLM 2003, p. 4-223).

Air quality could be affected where combustion engine emissions, fugitive dust from road use and wind erosion, natural gas-flaring, fugitive emissions from production site equipment, and other activities (BLM 2008d, p. 4-74) occur in sage-grouse habitats. Presumably, as with surface mining, these emissions are quickly dispersed in the windy, open conditions of sagebrush habitats (Moore and Mills 1977, p. 109), minimizing the potential effects on sage-grouse. However, high-density development could produce airborne pollutants that reach or exceed quality standards in localized areas for short periods of time (BLM 2008d, pp. 4-82 to 4-88). Walker (2008, entire) characterized emissions from well flaring in the Pinedale Anticline area of Sublette County, Wyoming. The

investigator suggested a comprehensive study be conducted by regulatory agencies of the potential health effects of alkali elements in combusted well-plume material (Walker 2008, entire). No information is available regarding the effects to sage-grouse of gaseous emissions produced by oil and gas development.

Increased human presence resulting from oil and gas development can impact sage-grouse either through avoidance of suitable habitat, disruption of breeding activities, or increased hunting and poaching pressure (Braun *et al.* 2002, pp. 4-5; Aldridge and Brigham 2003, pp. 30-31; Aldridge and Boyce 2007, p. 518; Doherty *et al.* 2008, p. 194). Sage-grouse also may be at increased risk for collision with vehicles simply due to the increased traffic associated with oil and gas activities (BLM 2003, p. 4-216).

Negative effects of direct habitat disturbance can be offset by successful reclamation. Reclamation of areas disturbed by oil and gas development can be concurrent with field development or conducted after the shut-in or abandonment of the well or field. Sage-grouse may repopulate the area as disturbed areas are reclaimed. However, there is no evidence that populations will attain their previous size, and reestablishment may take 20 to 30 years (Braun 1998, p. 144). For most developments, return to pre-disturbance population levels is not expected due to a net loss and fragmentation of habitat (Braun *et al.* 2002, p. 150). After 20 years, sage-grouse have not recovered to pre-development numbers in Alberta, even though well pads in these areas have been reclaimed (Braun *et al.* 2002, pp. 4-5). In some reclaimed areas, sage-grouse have not returned (Aldridge and Brigham 2003, p. 31).

Mining

Mining began in the range of the sage-grouse before 1900 (State of Wyoming, 1898; U.S. Census 1913, p. 187) and continues today. Currently, surface and subsurface mining activities for numerous resources are conducted in all 11 States across the sage-grouse range. We do not have comprehensive information on the number or surface extent of mines across the range, but the development of mineral resources is occurring in sage-grouse habitats and is important to the economies of a few of the States. Nevada (MZs III, IV, and V) is ranked second in the United States in terms of value of overall nonfuel mineral production in 2006 (USGS 2006, p. 10). Wyoming (MZs I and II) is the largest coal producer in the United States, and the top ten producing mines in the country are located in Wyoming's Powder River Basin (MZ I) (Wyoming Mining Association 2008, p. 2). A preliminary estimate of at least 9.9 km^2 (3.8 mi^2) of occupied sage-grouse habitat will be directly impacted by new or expanded mining operations, currently in the planning phase, for coal in Montana (MZ I) and Utah (MZ III), for phosphate in Idaho (MZ IV), and uranium in Nevada (MZ IV) and Wyoming (MZs I and II) (Service 2008b).

Uranium mining and milling has occurred in Wyoming, Utah, and Colorado, and Nevada within the greater sage-grouse conservation area; however, recent production has been very limited with only one operation in production in Wyoming (EIA 2009c, entire). Tax credits indicated in the 2005 Energy Policy Act and concerns for green-house gas emissions associated with fossil-fuel electricity generation are expected to increase nuclear power generation (EIA 2009b, p. 73) and stimulate the demand for uranium. Electricity supplied by nuclear plants is expected to increase 2–55 percent by 2030; the increase is dependent on variables such as construction costs and regulatory mandates (EIA 2009b, p. 52), which are difficult to predict. In 2009, industry announced the intent to pursue development (Peninsula Minerals 2009, entire), and the Nuclear Regulatory Commission announced the review of numerous new uranium facilities in Wyoming (74 FR 41174, Uaugust 14, 2009; 74 FR 45656, September 3, 2009). Areas in central Wyoming and Wyoming's Powder River Basin are considered major reserves of uranium coinciding with areas of high sage-grouse population densities (Finch 1996, pp. 19-20; Wyoming State Governor's Sage-grouse Implementation Team 2008, entire).

Bentonite mining has been conducted on over 85 km^2 (33 mi^2) in the Bighorn Basin of north-central Wyoming (EDAW, Inc. and BLM 2008, p. 1). Bentonite is a primary component of oil and gas drilling muds. The loss of sagebrush associated with bentonite mining has been intensive on a localized level and has contributed to altering 12 percent of the sagebrush habitats in the 2,173 km^2 (839 mi^2) Bighorn Basin (EDAW Inc., and BLM 2008, p. 2). Restoration efforts at mine sites have been mostly unsuccessful (EDAW, Inc. and BLM 2008, p. 1). The BLM foresees up to 89 additional km^2 (34 mi^2) to be disturbed by bentonite mining in the area through 2024, in addition to possible oil and gas and energy transmission disturbances (EDAW, Inc. and BLM 2008, p. 2; BLM 2009c, p. 5).

Between 2006 and 2007, surface coal production decreased 9 percent in Colorado while increasing by 1.6 and 4.4 percent in Wyoming (MZ I) and Montana (MZ I), respectively (EIA 2008a, entire). The number of Wyoming coal mines increased from 19 in 2005 to 23 in 2008 (Wyoming Mining Association 2005, p. 5). All of Wyoming's 23 coal mines are in sagebrush and in the SGCA. Sixteen of these mines are located in the Powder River Basin (MZ I) where oil and gas development is extensive (Wyoming Mining Association 2008, p. 2).

Coal mining in Montana is focused in the Powder River Basin just north of the Wyoming border, in sagebrush habitat. In Wyoming and Montana, an estimated 558 km^2 (215 mi^2) of sagebrush habitats have been disturbed by coal mines and associated facilities; disturbance increased approximately 170 km^2 (66 mi^2) between 2005 and 2007 (Service 2005, p. 75; Service 2008c; Wyoming Mining Association 2008, p. 7). Wyoming estimates that 275 km^2 ha (106 mi^2) of mine-disturbed land has been reclaimed (Wyoming Mining Association 2008, p. 7), but we have no knowledge of the effectiveness of these reclamation projects in providing functional sage-grouse habitat.

While western coal production has grown steadily since 1970, growth is predicted to increase through 2030, but at a much slower rate than in the past (EIA 2009b, p. 83). Coal production is projected to increase with the development of technology to reduce sulfur emissions and most of the future output of coal is expected from low-sulfur coal mines in Wyoming, Montana, and North Dakota (EIA 2009b, p. 83). We do not have information to quantify the footprint of future coal production; however, additional losses and deterioration of sage-grouse habitats are expected where mining activity occurs (described later in this section). The use of coal may be reduced if limitations on green-house gas emissions are enacted in the future. A transition would require development of lower emission sources, such as wind, solar, or nuclear, that may have their own impacts on sage-grouse environments.

Surface and subsurface mining for mineral resources (coal, uranium, copper, phosphate, aggregate, and others) results in direct loss of habitat if occurring in sagebrush habitats. The direct impact from surface mining is usually greater than it is from subsurface activity. Habitat loss from both types of mining can be exacerbated by the storage of overburden (soil removed to reach subsurface resource)

in otherwise undisturbed habitat. If the construction of mining infrastructure is necessary, additional direct loss of habitat could result from structures, staging areas, roads, railroad tracks, and powerlines. Sage-grouse and nests could be directly affected by trampling or vehicle collision. Sage-grouse also will likely be impacted indirectly from an increase in human presence, land use practices, ground shock, noise, dust, reduced air quality, degradation of water quality and quantity, and changes in vegetation and topography (Moore and Mills 1977, entire; Brown and Clayton 2004, p. 2).

An increase in human presence increases collision risk with vehicles and potentially exposes sage-grouse and other wildlife to pathogens introduced from septic systems and waste disposal (Moore and Mills 1977, pp. 114-116, 135). Water contamination also could occur from leaching of waste rock and overburden and nutrients from blasting chemicals and fertilizer (Moore and Mills 1977, pp. 115, 133). Altering of water regimes could lead to decreased surface water and eventual habitat degradation from wildlife or livestock concentrating at remaining sources. Sage-grouse do not require water other than what they obtain from plant resources (Schroeder *et al.* 1999, p. 6); therefore, local water quality deterioration or dewatering is not expected to have population-level impacts. Degradation of riparian areas could result in a loss of brood habitat.

Mining and associated activities creates an opportunity for invasion of exotic and noxious weed species that alter suitability for sage-grouse (Moore and Mills 1977, pp. 125, 129). Reclamation is required by State and Federal laws, but laws generally allow for a change in post-mining land use. Restoration of sagebrush is difficult to achieve and disturbed sites may never return to suitability for sage-grouse (refer to Habitat Description and Characteristics section).

Heavy equipment operations and use of unpaved roads produces dust that can interfere with plant photosynthesis and insect populations. Most large surface mines are required to control dust. Gaseous emissions generated from heavy equipment operation are quickly dispersed in open, windy areas typical of sagebrush (Moore and Mills 1977, p.109). Blasting, to remove overburden or the target mineral, produces noise and ground shock. The full effect of ground shock on wildlife is unknown. Repeated use of explosives during lekking activity could potentially result in lek or nest abandonment (Moore and Mills 1977, p. 137). Noise from mining activity could mask vocalizations resulting in reduced female attendance and yearling recruitment as seen in sharp-tailed grouse (*Pedioecetes phasianellus*) (Amstrup and Phillips 1977, pp. 23, 25-27). In this study, the authors found that the mining noise in the study area was continuous across days and seasons and did not diminish as it traveled from its source. The mechanism of how noise affects sage-grouse is not known, but it is known that sage-grouse depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985, pp. 81-82; Gratson 1993, pp. 693-694). Noise associated with oil and gas development may have played a factor in habitat selection and a decrease in lek attendance by sage-grouse (Holloran 2005, pp. 49, 56).

A few scientific studies specifically examine the effects of coal mining on greater sage-grouse. In a study in North Park, Colorado, overall sage-grouse population numbers were not reduced, but there was a reduction in the number of males attending leks within 2 km (0.8 mi) of three coal mines, and existing leks failed to recruit yearling males (Braun 1986, pp. 229-230; Remington and Braun 1991, pp. 131-132). New leks formed farther from mining disturbance (Remington and Braun 1991, p. 131). Additionally, some leks that were abandoned adjacent to mine areas were reestablished when mining activities ceased, suggesting disturbance rather than habitat loss was the limiting factor (Remington and Braun 1991, p.132). Hen survival did not decline in a population of sage-grouse near large surface coal mines in northeast Wyoming, and nest success appeared not to be affected by adjacent mining activity (Brown and Clayton 2004, p. 1). However, the authors concluded that continued mining would result in fragmentation and eventually impact sage-grouse persistence if adequate reclamation was not employed (Brown and Clayton 2004, p.16).

Surface coal mining and associated activities have negative short-term impacts on sage-grouse numbers and habitats near mines (Braun 1998, p. 143). Sage-grouse will reestablish on mined areas once mining has ceased, but there is no evidence that population levels will reach their previous size, and any population reestablishment could take 20 to 30 years based on observations of disturbance in oil and gas fields (Braun 1998, p. 144). Local sage-grouse populations could decline if several leks are affected by coal mining, but the loss of one or two leks in a regional area was likely not limiting to local populations in the Caballo Rojo Mine in northeastern Wyoming based on the presence of viable habitat elsewhere in the region (Hayden-Wing Associates 1983, p. 81).

As described above, mining directly removes habitat, may interfere with auditory clues important to mate selection, and results in a decrease of males and inhibits yearling recruitment at leks in proximity to mining activity. Sage-grouse habitat reestablishment and recovery of population numbers in an area post-disturbance is uncertain. Similar avoidance of disturbance has been noted in recent investigations of oil and gas development in Wyoming and discussed in detail in the Nonrenewable Energy section. The studies recounted here were conducted on a local scale that provides limited insight into impacts at a larger landscape perspective. In Wyoming specifically, the cumulative impacts of surface coal mine disturbance, concurrent increases in oil and gas development, increased development of renewable energy resources (discussed in the following section), and transmission infrastructure development could have significant impacts on sage-grouse in the Powder River Basin. The Powder River Basin is home to an important regional population of the larger Wyoming Basin populations covering most of Wyoming, northwestern Colorado, and northeastern Utah (Connelly *et al.* 2004, pp. 6-62 to 6-63).

Renewable Energy Sources

The demand for electricity from renewable energy sources is increasing. Electricity production from renewable sources increased from 6.4 quadrillion British thermal units (Btu) in 2005 to 6.9 quadrillion Btu in 2006. Production was down slightly in 2007, but energy production by renewables reached 7.3 quadrillion Btu by the end of 2008 (EIA 2009d, entire). Wind, geothermal, solar and biomass are renewable energy sources developable in sage-grouse habitats. Large-scale hydropower generation occurs in the sage-grouse range in parts of Washington State. Conventional hydropower electrical generation has actually decreased over the past 10 years (EIA 2009d, entire). In general, growth of the renewable energy industry is predictable based on legislated mandates to achieve target levels of renewable-produced electricity in many States within the sage-grouse range.

Wind

Areas of commercially viable wind generation have been identified by the NREL (2008b, entire) and BLM (2005, p.

2.4) in all 11 States in the greater sage-grouse range.

MZs III through VII each have approximately 1 to 14 percent of sagebrush habitats that are commercially developable for wind energy (Service 2008e, entire). Wind harvesting potentials are more concentrated and geographically extensive in sage-grouse MZs I and II that include parts of Montana, Wyoming, North Dakota, and South Dakota; areas of highest commercial potential include 59 percent of the available sagebrush habitats in these four States. Over 30 percent of the sagebrush lands in the sage-grouse range have high potential for wind power (Table 8).

TABLE 8—AREA OF SAGEBRUSH HABITAT WITH WIND ENERGY DEVELOPMENT POTENTIAL, BY MANAGEMENT ZONE. (DATA FROM SERVICE 2008E)

SAGE-GROUSE MZ	Area of Sagebrush with Developable Wind Potential		
	km^2	mi^2	Percent of MZ
I	137,733	53,179	76.02
II	46,835	18,083	42.16
III	3,028	1,169	3.23
IV	12,952	5,001	9.05
V	5,532	2,136	8.27
VI	2,660	1,027	14.44
VII	199	77	1.10
TOTAL	208,939	80,672	33.02

Commercial viability is based on wind intensity and consistency, available markets and access to transmission facilities. Consequently, current development is focused in areas with existing power transmission infrastructure associated with urban development, preexisting conventional energy resource development (e.g., coal and natural gas) and power generation. Growth of wind power development is expected to continue even in the current economic climate (EIA 2009b, p. 3), spurred by statutory mandates or financial incentives to use renewable energy sources in all 11 States in the range (Association of Fish and Wildlife Agencies (AFWA) and Service 2007, pp. 7, 8, 14, 28, 30, 36, 39, 43, 46, 49, 52; State of Oregon 2008, entire).

Wind generating facilities have increased in size and number, outpacing development of other renewable sources in the sage-grouse range. The BLM, the major land manager in the sage-grouse range, developed programmatic guidance to facilitate the use of BLM land for wind development (BLM 2005a, entire). The BLM wind policy permits granting private right-of-ways and leasing of public land for 3–year monitoring and testing facilities and long-term (30 to 35 years) commercial generating facilities (American Wind Energy Association (AWEA) 2008, p. 4-24). Active leases for wind energy development on BLM lands increased from 9.7 km^2 (3.7 mi^2) in 2002 to 5,113 km^2 (1,973 mi^2) in 2008, and an additional 5,381 km^2 (2,077 mi^2) of lease requests were pending approval in the sage-grouse range (Knick *et al.*, in press, p. 136).

A recent increase in wind energy development is most notable within the range of the south-central Wyoming subpopulation of greater sage-grouse in MZ II where 1,387 km^2 (535 mi^2) have active wind leases and an additional 2,828 km^2 (1,092 mi^2) are pending (Knick *et al.*, in press, p. 136). The south-central Wyoming subpopulation has a loose association with adjacent populations where there is accelerated oil, gas, and coal development in the State – the Powder River Basin (MZ I) to the northeast and Pinedale-Jonah Gas Fields in the southwest Wyoming Basin (MZ II) (Connelly *et al.* 2004, p. 6-62). As stated previously, the Powder River Basin is home to an important regional population of the larger Wyoming Basin populations (Connelly *et al.* 2004, p. 6-62). The subpopulation in southwest Wyoming and northwest Colorado is a stronghold for sage-grouse with some of the highest estimated densities of males anywhere in the remaining range of the species (Connelly *et al.* 2004, pp. 6-62, A5-23). The south-central Wyoming wind potential corridor is not only a geographical bridge between two important population areas but is home to a large population of sage-grouse (Connelly *et al.* 2004, p. A5-22) and core areas identified preliminarily as high density breeding areas for sage-grouse by the Wyoming State Governor's Executive Order (State of Wyoming 2008, entire). Although regulatory mechanisms are being developed for Wyoming's core areas (see regulatory mechanisms section below), they are still largely subject to the impacts of both conventional and renewable energy development. Twenty-one percent of Wyoming core areas have high wind development potential, and 51 percent are subject to either wind or authorized development of oil and gas leases (Doherty *et al.*, in press, p. 31).

In addition to Wyoming, southeastern Oregon is a focus area for potential commercial-scale wind development. Currently, south-central and southeastern Oregon have large areas of relatively unfragmented sage-dominated landscapes which are important for maintaining long-term connectivity between the sage-grouse populations (Knick and Hanser, in press, pp. 1-2.). Historically, central Oregon's population provided connectivity with the Columbia Basin area through narrow habitat corridors (Connelly *et al.* 2004, p. 6-13). These connections have now been lost, resulting in the isolation of the northern extant population in Washington. The Northern Great Basin ranks lowest of the MZs in the intensity of the human footprint and consequent effects (Leu and Hanser, in press, p. 25; Wisdom *et al.*, in press, p. 16), and this could be contributing to the substantial connectivity that still exists between the Northern Great Basin, Snake River Plain, and the Southern Great Basin

Region populations (Knick and Hanser, in press, p. 1). The BLM is the major land manager in this part of the southeastern Oregon, with jurisdiction over 49,000 km² (18,900 mi²) (BLM 2009d, entire) that include much of the scantily vegetated ridge tops prone to high and sustained wind. At this time, most of the development activity is in the initial phase of meteorological site investigation and involves little infrastructure (AWEA 2009, entire; BLM 2009e). Many of these monitoring sites could be developed, considering the projected demand for renewable energy, contributing to fragmentation of this relatively intact sagebrush landscape.

Most published reports of the effects of wind development on birds focus on the risks of collision with towers or turbine blades. No published research is specific to the effects of wind farms on the greater sage-grouse. However, the avoidance of human-made structures such as powerlines and roads by sage-grouse and other prairie grouse is documented (Holloran 2005, p. 1; Pruett *et al*, in press, p. 6). Renewable energy facilities, including wind power, typically require many of the same features for construction and operation as do nonrenewable energy resources. Therefore, we anticipate that potential impacts from direct habitat losses, habitat fragmentation through roads and powerlines, noise, and increased human presence (Connelly *et al.* 2004, pp. 7-40 to 7-41) will generally be similar to those already discussed for nonrenewable energy development.

Wind farm development begins with site monitoring and collection of meteorological data to accurately characterize the wind regime. Turbines are installed after the meteorological data indicate the appropriate siting and spacing. Roads are necessary to access the turbine sites for installation and maintenance. Each turbine unit has an estimated footprint of 0.4 to 1.2 ha (1 to 3 ac) (BLM 2005a, pp. 3.1-3.4). One or more substations may be constructed depending on the size of the farm. Substation footprints are 2 ha (5 ac) or less in size (BLM 2005a, p. 3.7).

The average footprint of a turbine unit is relatively small from a landscape perspective. Turbines require careful placement within a field to avoid loss of output from interference with neighboring turbines. Spacing improves efficiency but expands the overall footprint of the field. Sage-grouse populations are impacted by the direct loss of habitat, primarily from construction of access roads as well as indirect loss of habitat due to avoidance. Sage-grouse could be killed by flying into turbine rotors or towers (Erickson *et al.* 2001, entire) although reported collision mortalities have been few. One sage-grouse was found dead within 45 m (148 ft) of a turbine on the Foote Creek Rim wind facility in south-central Wyoming, presumably from flying into a turbine (Young *et al.* 2003, Appendix C, p. 61). This is the only known sage-grouse mortality at this facility during three years of monitoring. Sage-grouse hens with broods have been observed under turbines at Foote Creek Rim (Young 2004, pers. comm.). We have no recent reports of sage-grouse mortality due to collision with a wind turbine; however, many facilities may not be monitored. No deaths of gallinaceous birds were reported in a comprehensive review of avian collisions and wind farms in the United States; the authors hypothesized that the average tower height and flight height of grouse, and diurnal migration habitats of some birds minimized the risk of collision (Johnson *et al.* 2000, pp. ii-iii; Erickson *et al.* 2001, pp. 8, 11, 14, 15).

Noise is produced by wind turbine mechanical operation (gear boxes, cooling fans) and airfoil interaction with the atmosphere. No published studies have focused specifically on the effects of wind power noise and greater sage-grouse. In studies conducted in oil and gas fields, noise may have played a factor in habitat selection and decrease in lek attendance (Holloran 2005, pp. 49, 56). However, comparison between wind turbine and oil and gas operations is difficult based on the character of sound. Adjusting for manufacturer type and atmospheric conditions, the audible operating sound of a single wind turbine has been calculated as the same level as conversational speech at 1 m (3 ft) at a distance of 600 m (2,000 ft) from the turbine. This level is typical of background levels of a rural environment (BLM 2005a, p. 5-24). However, commercial wind farms do not have a single turbine, and multiple turbines over a large area would likely have a much larger noise print. Low-frequency vibrations created by rotating blades produce annoyance responses in humans (van den Berg 2003, p. 1), but the specific effect on birds is not documented.

Moving blades of turbines cast moving shadows that cause a flickering effect producing a phenomenon called "shadow flicker" (AWEA 2008, p. 5-33). Hypothetically, shadow flicker could mimic predator shadows and elicit an avoidance response in birds during daylight hours, but this potential effect has not been investigated.

Since 2005, states have required an increasing amount of energy to come from renewable sources. For example, Colorado law requires incremental increases of renewable generation from 3 percent in 2007 to 20 percent by 2020 (AFWA and Service 2007, p. 8). Financial incentives, including grants and tax breaks, encourage private development of renewable sources. Although development of renewables is encouraged at a State level, siting authority for wind varies from State to State (AFWA and Service 2007, pp. 7, 8, 14, 28, 30, 36, 39, 43, 46, 49, 52; State of Oregon 2008, entire). For example, the State of Idaho provides tax incentives and loan programs for renewable energy development, but wind power is currently unregulated at any level of government (AFWA and Service 2007, p. 14). The North Dakota Public Service Commission regulates siting of wind power facilities over 100 megawatts using the Service's interim voluntary guidelines (Service 2003, entire).

Wyoming does not have a requirement for increased reliance on renewable energy sources and no specific wind siting authority. However, large construction projects in the State are subject to approval by an Industrial Siting Council (ISC) of the State Department of Environmental Quality, with the WGFD providing recommendations for mitigating impacts to wildlife associated with development considered by the ISC. The ISC's review and approval of projects is subject to the Wyoming Governor's executive order (State of Wyoming 2008, entire) that is intended to prevent harmful effects to sage-grouse from development or new land uses in designated core areas. Wind developers in Wyoming understand that most proposed wind developments regardless of locale must be approved by the ISC and that development proposed in core areas is unlikely to be permitted by the ISC due to the Governor's Executive Order (see discussion in Factor D below).

The BLM manages more land areas of high wind resource potential than any other land management agency. In 2005, the BLM completed the Wind Energy Final Programmatic EIS that provides an overarching guidance for wind project development on BLM-administered lands (BLM 2005a, entire). Best management practices (BMPs) are prescribed to minimize impacts of all phases of construction and operation of a wind production facility. The BMPs guide future project planning and do not guarantee protections specific to sage-grouse. We do not have information on how or where the EIS guidance has been applied since 2005 and cannot evaluate its effectiveness. The footprint of wind energy developments is reported to be

small (BLM 2005a, p. 5-2). The BLM indicates that approximately 600 km² (232 mi²) of BLM-administered lands are likely to be developed in nine States within the sage-grouse's range before 2025 (BLM 2005a, pp. ES-8, 5-2). It is estimated that only 5 to 10 percent of a development will have a long-term disturbance that remains on the landscape for at least as long as the generating facility is viable (i.e., roads, foundations, substation, fencing) (BLM 2005a, p. 5-2). However, this estimate does not account for sage-grouse avoidance of developed areas and could be an underestimation of indirect effects. Based on what we know of oil and gas development (previously described), the impact of structures, noise and human activity can reach far beyond the point of origin and contribute cumulatively to other human-made and natural disturbances that fragment and decrease the quality of sage-grouse habitats. The BLM's determination of the quantity of lands potentially impacted by wind energy development could be extremely conservative considering the interest in reducing green-house emissions and the institution of State renewable energy mandates and incentives that have occurred since 2005.

Wind development is guided by policy at BLM national and State levels that generally offers only guidance to avoid impacts to sage-grouse and habitats. A 2008 BLM Instruction Memo IM 2009-43 (BLM 2008e, p. 2) emphasizes the use of the Service's 2003 interim guidelines as voluntary and to be used only on a general basis in siting, design, and monitoring decisions. The BLM's Oregon State Office Instruction Memorandum OR-2008-014 (BLM 2007d, entire) is explicit in the placement of meteorological test towers to avoid active leks, seasonal concentrations, and collision; IM OR-2009-038 (BLM 2009f, entire) reduces the ODFW's recommended buffer distance for wind farms and applies only guidelines for avoidance of sage-grouse leks and seasonal habitats.

Wind energy resources are found throughout the range of the greater sage-grouse, and growth of wind power development is expected to continue. The DOE predicts that wind may provide a significant portion of the nation's energy needs by the year 2030, and substantial growth of wind developments will be required (DOE 2008, p. 1). In mid-2009, wind energy production facilities in the sage-grouse range in operation or under construction had a capacity of 11.93 gigawatts (AWEA 2009, entire) (Table 9). To achieve predicted levels of 49 to greater than 90 gigawatts capacity (DOE 2008, p. 10), the generation capacity will need to increase by 400 to 800 percent by 2030. Existing commercial wind turbines range from 1-2 megawatt generating capacity (AWEA 2009, entire). The forecasted increase in production would require approximately 37,000 to 78,000 or more turbines based on the existing technology and equipment in use. Assuming a generation capacity of 5 megawatts per km² (0.4 mi²) density, Copeland *et al.* (2009, p. 1) estimated an additional 50,000 km² (19,305 mi²) of land in the sage-grouse range would be required to meet the predicted level of wind-generated electricity by 2030.

TABLE 9— WIND ENERGY DEVELOPMENT IN THE GREATER SAGE-GROUSE RANGE, 2009–2030.

STATE	MZ	Existing Capacity 2009* (gigawatts)	Forecasted Capacity in 2030 (gigawatts)**
North Dakota	I	1.2	1 to 5
South Dakota	I	0.31	5 to 10
Montana	I	0.17	5 to 10
Wyoming	I, II	1.3	10 plus
Utah	II, III, IV, VII	0.4	1 to 5
Idaho	IV	0.15	1 to 5
Nevada	III, IV, V	0	5 to 10
California	III, V	2.8	10 plus
Oregon	IV, V	2.2	5 to 10
Washington	VI	2.2	5 to 10
Colorado	II, VII	1.2	1 to 5
Total		11.93	49 to 90 plus

*Includes completed and under construction, Source: American Wind Energy Assn. (2009, entire).
** Source: DOE (2008, p. 10).
(1000 megawatt = 1 gigawatt)

States such as Nevada and Montana that have not been tapped for extensive wind power development are likely to experience significant new energy development within the next 20 years (Table 9). In Wyoming, where wind development is advancing and predicted to increase by 10 fold or more (Table 9), the effects of both conventional and nonconventional renewable sources may claim a substantial toll on sage-grouse habitats and geographic areas that were in the past considered refugia for the species. As with oil and gas development, the average footprint of a turbine unit is relatively small from a landscape perspective, but the effects of large-scale developments have the potential to reduce the size of sagebrush habitats directly, degrade habitats with invasive species, provide pathways for synanthropic predators (i.e., predators that live near and benefit from an association with humans), and cumulatively contribute to habitat fragmentation.

Other Renewable Energy Sources

Hydropower development can cause direct habitat losses and possibly an increase in human recreational activity. Reservoirs created concurrently with power generation structures inundated large areas of riparian habitats used by sage-grouse broods (Braun 1998, p. 144). Reservoirs and the availability of irrigation water precipitated conversion of large expanses of upland shrub-steppe habitat in the Columbia Basin adjacent to the rivers (65 FR 51578, August 24, 2000). We were unable to find any information regarding the amount of sage-grouse habitat affected by hydropower projects in other areas of the species' range beyond the Columbia Basin. No new large-scale facilities have been constructed and hydropower electricity generation has decreased steadily over the past 10 years (EIA 2009d, entire). We do not anticipate that future dam construction will result in large losses of sagebrush habitats.

Solar-powered electricity generation is increasing. Between 2005 and the end of 2008, solar electricity generation increased from the equivalent of 66 trillion Btu to 83 trillion Btu (EIA 2009d, entire). Solar-generating systems have been used on a small scale to power individual buildings, small complexes, remote facilities, and signs. Solar energy infrastructure is often ancillary to other development, and large-scale solar-generating systems have not contributed to any calculable direct habitat loss for sage-grouse, but this may change as more systems come on line for commercial electricity generation. Solar energy systems require, depending on local conditions, 1.6 ha (4 ac) to produce 1 megawatt of electricity. For example, the 162-ha (400-ac) Nevada Solar One, the third largest solar electricity producer in the world, has a maximum potential of 75 megawatts from a 121-ha (300-ac) solar field (nevadasolarone.com 2008, entire).

No commercial solar plants are operating in sage-grouse habitats at this time. Southern and eastern Nevada, the Pinedale area of Wyoming, and east-central Utah are the areas of the sage-grouse range with good potential for commercial solar development (EIA 2009e, entire). There are a total of 196 ha (484 ac) of active solar leases on BLM property in northern California (MZ IV) and central Wyoming (MZ II) (BLM 2009g, map) in sagebrush habitats within the current sage-grouse range and these leases will likely be developed. The BLM is developing a programmatic EIS for leasing and development of solar energy on BLM lands. The EIS planning period has been extended to analyze the effects of concentrating large-scale development in selected geographic areas including sage-grouse habitats in east-central Nevada and southern Utah (BLM 2009h, entire) because of the considerable administrative and public interest in developing public lands for solar-generated electricity (BLM 2009i, entire). At this time, we do not have enough information available to evaluate the scale of future impacts of solar power generation in sage-grouse habitats. We will continue to evaluate and monitor the impacts of solar power development in sage-grouse habitats as more information becomes available. We are not aware of any investigations reporting the impacts of solar generating facilities on sage-grouse or other gallinaceous birds. Commercial solar generation could produce direct habitat loss (i.e., solar fields completely eliminate habitat), fragmentation, roads, powerlines, increased human presence, and disturbance during facility construction with similar effects to sage-grouse as reported with oil and gas development.

Geothermal energy production has remained steady since 2005 (EIA 2009d, entire). Geothermal facilities are within the sage-grouse range in California (3 plants, MZ III), Nevada (5 plants, MZs III and V), Utah (2 plants, MZ III), and Idaho (1 plant, MZ IV). Since 2005, two additional plants were constructed is in current sage-grouse range – one in Idaho and one in Utah (Geothermal Energy Association 2008, pp. 2-7). One existing geothermal plant in southern Utah is in the vicinity of sage-grouse habitat in an area where wind power is being considered for development (First Wind-Milford 2009, entire), which will result in cumulative impacts. Geothermal potential occurs across the sage-grouse range in States with existing development and southeast Oregon, west-central Wyoming, and north-central Colorado (EIA 2009e, entire).

Geothermal energy production is similar to oil and gas development such that it requires surface exploration, exploratory drilling, field development, and plant construction and operation. Wells are drilled to access the thermal source and could take from 3 weeks to 2 months of continuous drilling (Suter 1978, p. 3), which may cause disturbance to sage-grouse. The ultimate number of wells, and therefore potential loss of habitat, depends on the thermal output of the well and expected production of the plant (Suter 1978, p. 3). Pipelines are needed to carry steam or superheated liquids to the generating plant which is similar in size to a coal- or gas-fired plant, resulting in further habitat and indirect disturbance. Direct habitat loss occurs from well pads, structures, roads, pipelines and transmission lines, and impacts would be similar to those described previously for oil and gas development.

The development of geothermal energy requires intensive human activity during field development and operation. Geothermal plants could be in remote areas necessitating housing construction, transportation, and utility infrastructure for employees and their families (Suter 1978, p. 12). Geothermal development could cause toxic gas release; the type and effect of these gases depends on the geological formation in which drilling occurs (Suter 1978, pp. 7-9). The amount of water necessary for drilling and condenser cooling may be high. Local water depletions may be a concern if such depletions result in the loss of brood-rearing habitat.

The BLM has the authority to lease geothermal resources in 11 western States. A programmatic EIS for geothermal leasing and operations was completed in 2008 (BLM and USFS 2008a, entire). Best management practices for minimizing the effects of geothermal development and operations on sage-grouse are guidance only and are general in nature (BLM and USFS 2008a, pp. 4.82-4.83). The EIS' reasonably foreseeable development scenario predicts that Nevada will experience the greatest increase in geothermal growth–doubling the production of electricity from geothermal sources by 2025 (BLM and USFS 2008, p. 2-35). Currently, approximately 1,800 km^2 (694 mi^2) of active geothermal leases exist on public lands primarily in the Southern (MZ IV) and Northern Great Basin (MZ III) and 1,138 km^2 (439 mi^2) of leases are pending (Knick *et al.*, in press, p. 138).

Energy production from biomass sources has increased every year since 2005 (EIA 2009d, entire). Wood has been a primary biomass source, but corn ethanol and biofuels produced from cultivated crops are on the increase (EIA 2008b, entire). Currently, wood products and corn production do not occur in the range of the sage-grouse in significant quantities (Curtis 2008, p. 7). The National Renewable Energy Laboratory cites potentials for agricultural biomass resources in northern Montana (MZ I), southern Idaho (MZ IV), eastern Washington (MZ VI), eastern Oregon MZ IV), northwest Nevada (MZ V), and southeast Wyoming (MZ II) (NREL 2005, entire). Conversion from native sod to agriculture for the purpose of biomass production could result in a loss of sage-grouse habitat on

private lands. The 2007 Energy Independence and Security Act mandated incremental production and use through the year 2022 of advanced biofuel, cellulosic biofuel, and biomass-based diesel (P.L. 110-140, section 203) and could provide an incentive to convert native sod or expired CRP lands to biomass crops. The effects on sage-grouse will depend on amount and location of sagebrush habitats developed. The effects of agriculture are discussed in habitat conversion section above.

Transmission Corridors

Section 368(a) of the Energy Policy Act of 2005 (42 U.S.C. 15926) directs Federal land management agencies to designate corridors on Federal land in 11 western States for oil, gas and hydrogen pipelines and electricity transmission and distribution facilities (energy transport corridors). The agencies completed a programmatic EIS (DOE *et al.* 2008, entire) to address the environmental impacts of corridors on Federal lands. The proposed action calls for designating more than 9,600 km (6,000 mi) with an average width of 1 km (0.6 mi) of energy corridors across the western United States (DOE *et al.* 2008, p. S-17). The designated corridors on Federal lands will tie in to corridors on private lands and lands in other governmental jurisdictions. Some of the areas proposed for designation are currently used for transmission. Federal lands newly incorporated into transportation or utility rights-of-way are mostly BLM lands in California (185 km, 115 mi), Colorado (97 km, 60 mi), Idaho (303 km, 188 mi), Montana (254 km, 158 mi), Nevada (810 km, 503 mi), Oregon (418 km, 260 mi), Washington (no additional land), Utah (356 km, 221 mi), and Wyoming (198 km, 123 mi) (DOE *et al.* 2008, p. S-18).

It is uncertain how much of the proposed corridors are in sagebrush habitat within the distribution area of sage-grouse, but based on the proposed location, habitat in Wyoming (MZ II), Idaho (MZ IV), Utah (MZ III), Nevada (MZ III) and Oregon (MZs III and IV) would be most affected. The purpose of the corridor designation is to serve a role in expediting applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution. These designated areas will likely facilitate the development of novel renewable and nonrenewable electricity generating facilities on public and private lands. Sage-grouse could be impacted through a direct loss of habitat, human activity (especially during construction periods), increased predation, habitat deterioration through the introduction of nonnative plant species, and additional fragmentation of habitat.

Summary: Energy Development

Energy development is a significant risk to the greater sage-grouse in the eastern portion of its range (Montana, Wyoming, Colorado, and northeastern Utah – MZs I, II, VII and the northeastern part of MZ III), with the primary concern being the direct effects of energy development on the long-term viability of greater sage-grouse by eliminating habitat, leks, and whole populations and fragmenting some of the last remaining large expanses of habitat necessary for the species' persistence. The intensity of energy development is cyclic and based on many factors including energy demand, market prices, and geopolitical uncertainties. However, continued exploration and development of traditional and nonconventional fossil fuel sources in the eastern portion of the greater sage-grouse range is predicted to continue to increase over the next 20 years (EIA 2009b, p. 109). Greater sage-grouse populations are predicted to decline 7 to 19 percent over the next 20 years due to the effects of oil and gas development in the eastern part of the range (Copeland *et al.* 2009, p. 4); this decline is in addition to the 45 to 80 percent decline that is estimated to have already occurred range wide (Copeland *et al.* 2009, p. 4).

Development of commercially viable renewable energy—wind, solar, geothermal, biomass—is increasing across the range with focus in some areas already experiencing traditional energy development (EIA 2009b, pp. 3-4; AWEA 2009a, entire). In Wyoming, where wind development is advancing and predicted to increase by 10-fold (DOE 2008, p. 10), the effects of both conventional and nonconventional and renewable sources may claim a substantial toll on sage-grouse habitats and geographic areas that were in the past considered refugia for the species. Renewable energy resources are likely to be developed in areas previously untouched by traditional energy development. Wind energy resources are being investigated in south-central and southeastern Oregon where large areas of relatively unfragmented sage-dominated landscapes are important for maintaining long-term connectivity within the sage-grouse populations (Knick and Hanser in press, pp. 1-2.).

Greater sage-grouse populations are negatively affected by energy development activities, even when mitigative measures are implemented (Holloran 2005, pp. 57-60; Walker *et al.* 2007a, p. 2651). Energy development, particularly high density development, will continue to threaten sage-grouse populations, specifically in the MZs I and II, which contain the greatest numbers of birds throughout their range.

Development of commercially viable renewable energy–wind, solar, geothermal, biomass–is rapidly increasing rangewide with a focus in some areas already experiencing significant traditional energy development (e.g., MZs I and II). The effects of renewable energy development are likely similar to those of nonrenewable energy as similar types of infrastructure are required. Based on our review of the literature, we anticipate the impacts of these developments will negatively affect the ability of greater sage-grouse to persist in those areas in the foreseeable future.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) has concluded that warming of the climate is unequivocal, and that continued greenhouse gas emissions at or above current rates will cause further warming (IPCC 2007, p. 30). Eleven of the 12 years from 1995 through 2006 rank among the 12 warmest years in the instrumental record of global surface temperature since 1850 (ISAB 2007). Climate-change scenarios estimate that the mean air temperature could increase by over 3°C (5.4°F) by 2100 (IPCC 2007, p. 46). The IPCC also projects that there will very likely be regional increases in the frequency of hot extremes, heat waves, and heavy precipitation (IPCC 2007, p. 46), as well as increases in atmospheric carbon dioxide (IPCC 2007, p. 36).

We recognize that there are scientific differences of opinion on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely primarily on synthesis documents (e.g., IPCC 2007; Global Climate Change Impacts in the United States 2009) that present the consensus view of a very large number of experts on climate change from around the world. We have found that these synthesis reports, as well as the scientific papers used in those reports or resulting from those reports, represent the best available scientific information we can use to inform our decision and have relied upon them and provided citation within our analysis. In addition, where possible we have used projections specific to the region of interest, the western United States and southern Canada, which includes the range of the greater sage-grouse. We also use projections of the effects of climate

change to sagebrush where appropriate, while acknowledging that the uncertainty of climate change effects increases as one applies those potential effects to a habitat variable like sagebrush, and then increases again when the impacts to the habitat variable are applied to the species.

Projected climate change and its associated consequences have the potential to affect greater sage-grouse and may increase its risk of extinction, as the impacts of climate change interact with other stressors such as disease, and habitat degradation and loss that are already affecting the species (Walker and Naugle, in press, entire; Global Climate Change Impacts in the United States 2009, p. 81; Miller *et al.* in press, pp. 46-50). In the Pacific Northwest, regionally averaged temperatures have risen 0.8 degrees Celsius (1.5 degrees Fahrenheit) over the last century (as much as 2 degrees Celsius (4 degrees Fahrenheit) in some areas), and are projected to increase by another 1.5 to 5.5 degrees Celsius (3 to 10 degrees Fahrenheit) over the next 100 years (Mote *et al.* 2003, p. 54; Global Climate Change Impacts in the United States 2009, p. 135). Arid regions such as the Great Basin where greater sage-grouse occurs are likely to become hotter and drier; fire frequency is expected to accelerate, and fires may become larger and more severe (Brown *et al.* 2004, pp. 382-383; Neilson *et al.* 2005, p. 150; Chambers and Pellant 2008, p. 31; Global Climate Change Impacts in the United States 2009, p. 83).

Climate changes such as shifts in timing and amount of precipitation, and changes in seasonal high and low temperatures, as well as average temperatures, may alter distributions of individual species and ecosystems significantly (Bachelet *et al.* 2001, p174). Under projected future temperature conditions, the cover of sagebrush within the distribution of sage-grouse is anticipated to be reduced (Neilson *et al.* 2005, p. 154; Miller *et al.* in press, p. 45). Warmer temperatures and greater concentrations of atmospheric carbon dioxide create conditions favorable to *Bromus tectorum*, as described above, thus continuing the positive feedback cycle between the invasive annual grass and fire frequency that poses a significant threat to greater sage-grouse (Chambers and Pellant 2008, p. 32; Global Climate Change Impacts in the United States 2009, p. 83). Fewer frost-free days also may favor frost-sensitive woodland vegetation of Sonoran and Chihuahuan deserts, which may expand, potentially encroaching on the sagebrush biome in the southern Great Basin where sage-grouse populations currently exist (Miller *et al.* in press, p. 44). Such encroachment of woody vegetation degrades sage-grouse habitat (see Factor A, Invasive plants).

Temperature and precipitation both directly influence potential for West Nile virus (WNv) transmission (Walker and Naugle in press, p. 12). In sage-grouse, WNv outbreaks appear to be most severe in years with higher summer temperatures (Walker and Naugle in press, p. 13) and under drought conditions (Epstein and Defilippo, p. 105). This relationship is due to the breeding cycle of the WNv vector, *Culex tarsalis* being highly dependent on warm water temperature for mosquito activity and virus amplification (Walker and Naugle in press, p. 12; see discussion under Disease and Predation below). Therefore, the higher summer temperatures and more frequent or severe drought or both, that are likely under current climate change projections, make more severe WNv outbreaks likely in low-elevation sage-grouse habitats where WNv is already endemic, and also make WNv outbreaks possible in higher elevation sage-grouse habitats that to date have been WNv-free due to relatively cold conditions.

Emissions of carbon dioxide, considered to be the most important anthropogenic greenhouse gas, increased by approximately 80 percent between 1970 and 2004 due to human activities (IPCC 2007, p. 36). Future carbon dioxide emissions from energy use are projected to increase by 40 to 110 percent over the next few decades, between 2000 and 2030 (IPCC 2007, p. 44). An increase in the atmospheric concentration of carbon dioxide has important implications for greater sage-grouse, beyond those associated with warming temperatures, because higher concentrations of carbon dioxide are favorable for the growth and productivity of *Bromus tectorum* (Smith *et al.* 1987, p. 142; Smith *et al.* 2000, p. 81). Although most plants respond positively to increased carbon dioxide levels, many invasive nonnative plants respond with greater growth rates than native plants, including *B. tectorum* (Smith *et al.* 1987, p. 142; Smith *et al.* 2000, p. 81; Global Climate Change Impacts in the United States 2009, p. 83). Laboratory research results illustrated that *B. tectorum* grown at carbon dioxide levels representative of current climatic conditions matured more quickly, produced more seed and greater biomass, and produced significantly more heat per unit biomass when burned than *B. tectorum* grown at "pre-industrial" carbon dioxide levels (Blank *et al.* 2006, pp. 231, 234). These responses to increasing carbon dioxide may have increased the flammability in *B. tectorum* communities during the past century (Ziska *et al.* 2005, as cited in Zouhar *et al.* 2008, p. 30; Blank *et al.* 2006, p. 234).

Field studies likewise demonstrate that *Bromus* species demonstrate significantly higher plant density, biomass, and seed rain (dispersed seeds) at elevated carbon dioxide levels relative to native annuals (Smith *et al.* 2000, pp. 79-81). The researchers conclude that "the results from this study confirm experimentally in an intact ecosystem that elevated carbon dioxide may enhance the invasive success of *Bromus* spp. in arid ecosystems," and suggest that this enhanced success will then expose these areas to accelerated fire cycles (Smith *et al.* 2000, p. 81). Chambers and Pellant (2008, p. 32) also suggest that higher carbon dioxide levels are likely increasing *B. tectorum* fuel loads due to increased productivity, with a resulting increase in fire frequency and extent. Based on the best available information, we expect the current and predicted atmospheric carbon dioxide levels to increase the threat posed to greater sage-grouse by *B. tectorum* and from more frequent, expansive, both in sage-grouse habitat degradation (functional fragmentation) and severe wildfires (Smith *et al.* 1987, p. 143; Smith *et al.* 2000, p. 81; Brown *et al.* 2004, p. 384; Neilson *et al.* 2005, pp. 150, 156; Chambers and Pellant 2008, pp. 31-32). Therefore, beyond the potential changes associated with temperature and precipitation, increases in carbon dioxide concentrations represent a threat to the sagebrush biome and an indirect threat to sage-grouse through habitat degradation and loss (Miller *et al.* in press, p. 45), with the combined effects of higher temperatures and carbon dioxide concentrations leading to a loss of 12 percent of the current area of sagebrush per degree Celsius of temperature increase, or from 34 to 80 percent of sagebrush distribution depending on the emissions scenario used (Nielson *et al.* 2005, p. 6, 10; Miller *et al.* in press, p. 45).

Bradley (2009, pp. 196-208) and Bradley *et al.* (2009, pp. 1-11) predict that nonnative invasive species in the sagebrush-steppe ecosystem may either expand or contract under climate change, depending on the current and projected future range of a particular invasive plant species. They developed a bioclimatic model for *B. tectorum* based on maps of invaded range derived from remote sensing. The best predictors of *B. tectorum* occurrence

were summer, annual, and spring precipitation, followed by winter temperature (Bradley *et al.*, 2009, p. 5). Depending primarily on future precipitation conditions, the model predicts *B. tectorum* is likely to shift northwards, leading to expanded risk of *B. tectorum* invasion in Idaho, Montana, and Wyoming, but reduced risk of invasion in southern Nevada and Utah, which currently have large areas dominated by this nonnative grass (Bradley *et al.*, 2009, p. 5). Therefore, the threat posed to greater sage-grouse by the greater frequency and geographic extent of wildfires and other associated negative impacts from the presence of *B. tectorum* is expected to continue into the foreseeable future. Bradley (2009, pp. 205) stated that the bioclimatic model she used is an initial step in assessing the potential geographic extent of *B. tectorum*, because climate conditions only affect invasion on the broadest regional scale. Other factors relating to land use, soils, competition, or topography may affect suitability of a given location. Bradley (2009, entire) concludes that the potential for climate to shift away from suitability for *B. tectorum* in the future may offer an opportunity for restoration of the sagebrush biome in this area. We anticipate that areas that become unsuitable for *B. tectorum*, may transition to other vegetation over time. However, it is not known if transition back to sagebrush as a dominant landcover or to other native or nonnative vegetation is more likely.

In a study that modeled potential impacts to big sagebrush (*A. tridentata* ssp.) due to climate change, Shafer *et al.* (2001, pp. 200-215) used response surfaces to describe the relationship between bioclimatic variables and the distribution of tree and shrub taxa in western North America. Species distributions were simulated using scenarios generated by three general circulation models – HADCM2, CGCM1, and CSIRO. Each scenario produced similar results, simulating future bioclimatic conditions that would reduce the size of the overall range of sagebrush and change where sagebrush may occur. These simulated changes were the result of increases in the mean temperature of the coldest month which the authors speculated may interact with soil moisture levels to produce the simulated impact. Each model predicted that climate suitability for big sagebrush would shift north into Canada. Areas in the current range would become less suitable climatically, and would potentially cause significant contraction. The authors also point out that increases in fire frequency under the simulated climate projections would leave big sagebrush more vulnerable to fire impacts.

Shafer *et al.* (2001, pp. 213) explicitly state that their approach should not be used to predict the future range of a species, and that the underlying assumptions of the models they used are "unsatisfying" because they presume a direct causal relationship between the distribution of a species and particular environmental variables. Shafer *et al.* (2001, pp. 207, 213) identify cautions similar to Bradley *et al.* (in press, pp. 205) regarding their models. A variety of factors are not included in climate space models, including: the effect of elevated CO2 on the species' water-use efficiency, what really is the physiological effect of exceeding the assumed (modeled) bioclimatic limit on the species, the life stage at which the limit affects the species (seedling versus adult), the life span of the species, and the movement of other organisms into the species range (Shafer *et al.*, 2001, pp. 207). These variables would likely help determine how climate change would affect species distributions. Shafer *et al.* (2001, pp. 213) concludes that while more empirical studies are needed on what determines a species and multi-species distributions, those data are often lacking; in their absence climatic space models can play an important role in characterizing the types of changes that may occur so that the potential impacts on natural systems can be assessed.

Schrag *et al.* (submitted MS, 2009, pp. 1-42) developed a bioclimatic envelope model for big sagebrush and silver sagebrush in the States of Montana, Wyoming, and North and South Dakotas. This analysis suggests that large displacement and reduction of sagebrush habitats will occur under climate change as early as 2030 for both species of sagebrush examined. At the time of this finding, the Schrag *et al.* analysis has not been peer reviewed, and we have significant reservations about using analyses of this level of complexity in making management decisions, without it having gone through a review process where experts in the fields of climate change, bioclimatic modeling, and sagebrush ecology can all assess the validity of the reported results. Other models projecting the affect of climate change on sagebrush habitat discussed more below, identify uncertainty associated with projecting climatic habitat conditions into the future given the unknown influence of other factors that such models do not incorporate (e.g., local physiographic conditions, life stage of the plant, generation time of the plant and its reaction to changing CO2 levels).

In some cases, effects of climate change can be demonstrated (e.g., McLaughlin *et al.* 2002) and where it can be, we rely on that empirical evidence, such as increased stream temperatures (see Rio Grande cutthroat trout, 73 FR 27900), or loss of sea ice (see polar bear, 73 FR 28212), and treat it as a threat that can be analyzed. However, we have no such data relating to greater sage-grouse. Application of continental scale climate change models to regional landscapes, and even more local or "step-down" models projecting habitat potential based on climatic factors, while informative, contain a high level of uncertainty due to a variety of factors including: regional weather patterns, local physiographic conditions, life stages of individual species, generation time of species, and species reactions to changing CO2 levels. The models summarized above are limited by these types of factors; therefore, their usefulness in assessing the threat of climate change on greater sage-grouse also is limited.

Summary: Climate Change

The direct, long-term impact from climate change to greater sage-grouse is yet to be determined. However, as described above, the invasion of *Bromus tectorum* and the associated changes in fire regime currently pose one of the significant threats to greater sage-grouse and the sagebrush-steppe ecosystem. Under current climate-change projections, we anticipate that future climatic conditions will favor further invasion by *B. tectorum,* as well as woody invasive species that affect habitat suitability, and that fire frequency will continue to increase, and the extent and severity of fires may increase as well. Climate warming is also likely to increase the severity of WNv outbreaks and to expand the area susceptible to outbreaks into areas that are now too cold for the WNv vector. Therefore, the consequences of climate change, if current projections are realized, are likely to exacerbate the existing primary threats to greater sage-grouse of frequent wildfire and invasive nonnative plants, particularly *B. tectorum* as well as the threat posed by disease. As the IPCC projects that the changes to the global climate system in the 21st century will likely be greater than those observed in the 20th century (IPCC 2007, p. 45), we anticipate that these effects will continue and likely increase into the foreseeable future. As there is some degree of uncertainty regarding the potential effects of climate

change on greater sage-grouse specifically, climate change in and of itself was not considered a significant factor in our determination whether greater sage-grouse is warranted for listing. However, we expect the severity and scope of two of the significant threats to greater sage-grouse, frequent wildfire and *B. tectorum* colonization and establishment; as well as epidemic WNv, to magnify within the foreseeable future due the effects of climate change already underway (i.e., increased temperature and carbon dioxide). Thus, currently we consider climate change as playing a potentially important indirect role in intensifying some of the current significant threats to the species.

Analysis of Habitat Fragmentation in the Context of Factor A

Greater sage-grouse are a landscape-scale species requiring large, contiguous areas of sagebrush for long-term persistence. Large-scale characteristics within surrounding landscapes influence habitat selection, and adult sage-grouse exhibit a high fidelity to all seasonal habitats, resulting in little adaptability to changes. Fragmentation of sagebrush habitats has been cited as a primary cause of the decline of sage-grouse populations (Patterson 1952, pp. 192-193; Connelly and Braun 1997, p. 4; Braun 1998, p. 140; Johnson and Braun 1999, p. 78; Connelly *et al.* 2000a, p. 975; Miller and Eddleman 2000, p. 1; Schroeder and Baydack 2001, p. 29; Johnsgard 2002, p. 108; Aldridge and Brigham 2003, p. 25; Beck *et al.* 2003, p. 203; Pedersen *et al.* 2003, pp. 23-24; Connelly *et al.* 2004, p. 4-15; Schroeder *et al.* 2004, p. 368; Leu *et al.* in press, p. 19). Documented negative effects of fragmentation include reduced lek persistence, lek attendance, population recruitment, yearling and adult annual survival, female nest site selection, nest initiation, and loss of leks and winter habitat (Holloran 2005, p. 49; Aldridge and Boyce 2007, pp. 517-523; Walker *et al.* 2007a, pp. 2651-2652; Doherty *et al.* 2008, p. 194). Functional habitat loss also contributes to habitat fragmentation as greater sage-grouse avoid areas due to human activities, including noise, even though sagebrush remains intact. In an analysis of population connectivity, Knick and Hanser (in press, p. 31) demonstrated that in some areas of the sage-grouse range, populations are already isolated and at risk for extirpation due to genetic, demographic, and environmental stochasticity. Habitat loss and fragmentation contribute to this population isolation and increased risk of extirpation.

We examined several factors that result in habitat loss and fragmentation. Historically, large losses of sagebrush habitats occurred due to conversion for agricultural croplands. This conversion is continuing today, and may increase due to the promotion of biofuel production and new technologies to provide irrigation to arid lands. Indirect effects of agricultural activities, such as linear corridors created by irrigation ditches, also contribute to habitat fragmentation by allowing the incursion of nonnative plants. Direct habitat loss and fragmentation also has occurred as the result of expanding human populations in the western United States, and the resulting urban development in sagebrush habitats.

Fire is one of the primary factors linked to population declines of greater sage-grouse because of long-term loss of sagebrush and conversion to nonnative grasses. Loss of sagebrush habitat to wildfire has been increasing in the western portion of the greater sage-grouse range due to an increase in fire frequency and size. This change is the result of incursion of nonnative annual grasses, primarily *Bromus tectorum*, into sagebrush ecosystems. The positive feedback loop between *B. tectorum* and fires facilitates future fires and precludes the opportunity for sagebrush, which is killed by fire, to become re-established. *B. tectorum* and other invasive plants also alter habitat suitability for sage-grouse by reducing or eliminating native forbs and grasses essential for food and cover. Annual grasses and noxious perennials continue to expand their range, facilitated by ground disturbances, including wildfire, grazing, agriculture, and infrastructure associated with energy development and urbanization. Concern with habitat loss and fragmentation due to fire and invasive plants has mostly been focused in the western portion of the species' range. However, climate change may alter the range of invasive plants, potentially expanding this threat into other areas of the species' range. The establishment of these plants will then contribute to increased fire frequency in those areas, further compounding habitat loss and fragmentation. Functional habitat loss is occurring from the expansion of native conifers, mainly due to decreased fire return intervals, livestock grazing, increases in global carbon dioxide concentrations, and climate change.

Sage-grouse populations are significantly reduced, including local extirpation, by nonrenewable energy development activities, even when mitigative measures are implemented (Walker *et al.* 2007a, p. 2651). The persistent and increasing demand for energy resources is resulting in their continued development within sage-grouse range, and will only act to increase habitat fragmentation. Habitat fragmentation due to energy development results not only from the actual footprint of energy development and its appurtenant facilities (e.g., powerlines, roads), but also from functional habitat loss (e.g., noise, presence of overhead structures).

Livestock management and domestic livestock and wild horse grazing have the potential to seriously degrade sage-grouse habitat at local scales through loss of nesting cover, decreasing native vegetation, and successional stage and, therefore, vegetative resiliency, and increasing the probability of incursion of invasive plants. Fencing constructed to manage domestic livestock causes direct mortality, degradation, and fragmentation of habitats, and increased predator populations. There is little direct evidence linking grazing practices to population levels of greater sage-grouse. However, testing for impacts of grazing at landscape scales important to sage-grouse is confounded by the fact that almost all sage-grouse habitat has at one time been grazed, and thus no non-grazed areas currently exist with which to compare. While some rangeland treatments to remove sagebrush for livestock forage production can temporarily increase sage-grouse foraging areas, the predominant effect is habitat loss and fragmentation, although those losses cannot be quantified or spatially analyzed due to lack of data collection.

Restoration of sagebrush habitat is challenging, and restoring habitat function may not be possible because alteration of vegetation, nutrient cycles, topsoil, and cryptobiotic crusts have exceeded recovery thresholds. Even if possible, restoration will require decades and will be cost-prohibitive. To provide habitat for sage-grouse, restoration must include all seasonal habitats and occur on a large scale (4,047 ha (10,000 ac) or more) to provide all necessary habitat components. Restoration may never be achieved in the presence of invasive grass species.

The WAFWA identified a goal of "no net loss" of birds and habitat in their Greater Sage-grouse Comprehensive Conservation Strategy (Stiver *et al.* 2006, p. 1-7). Knick and Hanser (in press, p. 32) have concluded that this strategy may no longer be possible due to natural and anthropogenic threats that are degrading the remaining sagebrush habitats. They recommend focusing conservation on areas critical to range-wide persistence of this species (Knick and Hanser in press, p. 31). Wisdom *et al.* (in press, pp. 24-25) and

Knick and Hanser (in press, p. 17) identified two strongholds of contiguous sagebrush habitat essential for the long-term persistence of greater sage-grouse (the southwest Wyoming Basin and the Great Basin area straddling the States of Oregon, Nevada, and Idaho). Other areas within the greater sage-grouse range had a high uncertainty for continued population persistence (Wisdom *et al.*, in press, p. 25) due to fragmentation from anthropogenic impacts. However, our analyses of fragmentation in the two stronghold areas showed that habitats in these areas are becoming fragmented due to wildfire, invasive species, and energy development. Therefore, we are concerned that the level of fragmentation in these areas may already be limiting sage-grouse populations and further reducing connectivity between populations. These threats have intensified over the last two decades, and we anticipate that they will continue to accelerate due to the positive feedback loop between fire and invasives and the persistent and increasing demand for energy resources.

Population Trends in Relation to Habitat Loss and Fragmentation

In order to assess the effects of habitat loss and fragmentation on greater sage-grouse populations and persistence, we examined a variety of data to understand how population trends reflected the changing habitat condition. Patterns of sage-grouse extirpation were identified by Aldridge *et al.* 2008 (entire) Johnson *et al.* (in press, entire), Wisdom *et al.* (in press, entire), Knick and Hanser (in press, entire), and others, and discussed in detail above. Examples include fragmentation of populations and their isolation as a result of habitat loss from fire (Knick and Hanser in press, p. 20; Wisdom *et al.* in press, p. 22), an increase in the probability of extirpation as a result of fire (Knick and Hanser in press, p. 31) and agricultural activities and human densities (Aldridge *et al.* 2008, p. 990; Wisdom *et al.* in press, p. 4), and sage-grouse population declines as a result of energy development (Doherty *et al.* 2008, p. 193; Johnson *et al.* in press, p. 13; Leu and Hanser, in press, p. 28). Therefore, where these habitat factors, and others identified above, are occurring, we anticipate that sage-grouse population trends will continue to decline.

Lek count data are the only data available to estimate sage-grouse population trends, and are the data WAFWA collects (WAFWA 2008, p. 3). The use of lek count data as an index of trends involves various types of uncertainty (such as measurement error, count methods, statistical and other types of assumptions; e.g. see Connelly *et al.*, 2004, pp. 6-18 to 6-20; and WAFWA 2008, pp. 7-8). Nevertheless, these data have been collected for 50 years in most locations and therefore do have utility in examining long-term trends (Gerrodette 1987, p. 1370; Connelly *et al.* 2004, p. A3-3; Stiver *et al.* 2009, p. 3-5; WAFWA 2008, p. 3), and in evaluating differences in trends across the species' range. Therefore, we are considering the results of researchers whose work relies on lek data (e.g., Garton *et al.* (in press), Wisdom *et al.* (in press), Connelly *et al.* (2004, p. 6-18 to 6-59; WAFWA 2008, entire) to help inform our overall analyses.

Population trends (average number of males per lek) in MZs I and II, the areas with the highest concentration of nonrenewable energy development, decreased by 17 and 30 percent from 1965 to 2007, respectively (Garton *et al.* in press, pp. 28, 35). Individual population trends within each MZ varied. However, in areas of intensive energy development, trends were negative as habitat continued to be fragmented. For example, in the Powder River Basin of Wyoming, sage-grouse populations have declined by 79 percent in the 12 years since coal-bed methane development was initiated there (Emmerich 2009, pers. comm.). In MZs affected by *Bromus tectorum* and fire, (primarily MZs IV (Snake River Plain) and V (Northern Great Basin)), population trends from 1995 to 2007 also were negative (Table 6). These results are consistent with the analyses conducted by Wisdom *et al.* (in press, p. 24) that demonstrate that fragmentation as a result of disturbance results in reduced population numbers and population isolation.

In some populations within the species' range, population trends (number of males counted on leks) since the early 1990s appear to be stable, and in some cases increasing (Garton *et al.* in press, Figs.2-8, pp.188-219). However, simply looking at total number of males counted does not accurately reflect habitat conditions, as leks, and by inference the associated breeding habitats, could have been lost. Additionally, as discussed above, sage-grouse will continue to attend leks even after habitat suitability is diminished simply due to site fidelity (Walker *et al.* 2007a, p. 2651). Therefore, the counts of males on these leks may artificially minimize the declines seen in trend analyses, as little productivity results from them. Because the analyses were truncated in 2007 to be comparable to other analyses of population trends (i.e. Connelly *et al.* 2004 and WAFWA 2008, see discussion under population size above), delays in population response to habitat loss and fragmentation events within the past 2 to 3 years may not have been captured. Also, some significant events that have resulted in habitat loss occurred after the 2007 lekking season. For example, the Murphy complex fire in Idaho and Nevada burned 264,260 ha (653,000 ac), resulting in the loss of 75 of 102 leks, and the associated nesting habitats in the area. Population-level effects of this fire would not be reflected by any of the three population trend analyses (Connelly *et al.*, 2004; WAFWA 2008; Garton *et al.* in press) simply because it occurred after the time period analyzed.

Projections of Future Populations

As described above, our analysis of habitat trends, and those provided in the published literature show that population extirpation and declines have, and are likely to continue to track habitat loss or environmental changes (e.g., Walker *et al.*, 2005, Aldridge *et al.* 2008; Knick and Hanser in press; Wisdom *et al.* in press). Estimation of how these trends may affect future population numbers and habitat carrying capacity was conducted by Garton *et al.* (in press, entire). We realize population viability analyses are based on assumptions that may or may not be realistic given the species analyzed. Additionally, lek counts are not the best data for use in these kinds of analyses as variability in lek attendance, observer bias, and the unknown relationship between males counted to actual population sizes limit unbiased estimation of future population numbers (see also discussion under population sizes above, and in Garton *et al.*, in press, pp. 8, 66). At the request of the Colorado Division of Wildlife, three individuals (Conroy 2009, entire; Noon 2009, entire; Runge 2009, entire) reviewed Garton *et al.* outside the established peer review process and noted similar limitations of these data. We received these reviews and have reviewed them in the context of all other data we received in preparation of this finding. Their primary concern was about the applicability of analyzing and presenting future population projections in the manner done by Garton *et al.* in press, based on the limitations of the data, the assumptions required, and uncertainty in the estimates of the model parameters (see also discussion above).

Garton *et al.*, (in press, pp. 6-8, 64-67) acknowledged these concerns, as several of the reviewers pointed out, and their analyses underwent peer review via the

normal scientific process prior to acceptance for publication. Population viability analyses can provide useful information in examining the potential future status of a species as long as the assumptions of the model, and violations thereof, are clearly identified and considered in the interpretation of the results. Therefore, we present the analyses conducted by Garton *et al.* (in press, entire) here in relation to our conclusion of how existing and continued habitat fragmentation may impact the greater sage-grouse within the foreseeable future. The projections reported by Garton *et al.* (in press, entire; see discussion below) are generally consistent with what we expect given the causes of sage-grouse declines and extirpation documented in the literature (see above) and where those threats occur in the species range, despite the concerns of the authors and others about the limitations of lek data and prospective analysis. We are unaware of any other prospective rangewide population viability analyses for this species.

Garton *et al.* (in press, entire) projected population and habitat carrying capacity trends (the modeled estimate where population growth rate is 0) at 30 (2037) and 100 (2107) years into the future. Growth rates were analogous to rates from 1987 to 2007, and quasi-extinction thresholds (artificial thresholds below which the long-term persistence and viability of a species is questionable due to stochastic variables, such as small populations or genetic inbreeding) corresponded to minimum counts of 20 and 200 males at leks (Garton *et al.* in press, p. 19). The thresholds were established to correspond to populations of 50 and 500 breeding birds, numbers generally accepted for adequate effective population sizes to avoid negative genetic effects from inbreeding (Garton *et al.* in press, p. 19). Therefore, population projections that fell below 50 breeding adults (males and females) were identified as being at short-term risk of extinction, and those that fell below 500 breeding adults (males and females) were identified as being at long-term risk for extinction. However, recent work by Bush (2009, p. 106) suggests that a higher proportion of male sage-grouse are breeding than previously identified. Therefore, Garton *et al.* (in press, p. 20) state that their resulting projections are likely underestimates of actual impacts as more birds are necessary than they assumed for population productivity. Additionally, Traill *et al.* (2010, p. 32) argue that a minimum effective population size must be 5,000 individuals to maintain evolutionary minimal viable populations of wildlife (retention of sufficient genetic material to avoid effect of inbreeding depression or deleterious mutations). We examined the projected population trends for 30 years to minimize the risk of error associated with the 100 year projections simply due to using lek data.

One assumption made by Garton *et al.* (in press, p. 19) is that future population growth would be analogous to what occurred from 1987 to 2007. We anticipate adverse habitat impacts (see discussion of foreseeable future below) and synergism between these impacts (e.g. fire and invasive species expansion) to increase habitat loss; therefore, Garton *et al.*'s (in press) likely over-estimate the resulting future habitat carrying capacity and population numbers.

In all MZs, the analyses by Garton *et al.* (in press) predict that populations will continue to decline. In MZ I, Garton *et al.* (in press, p. 29) project a population decline of 59 percent between 2007 and 2037 if current population and habitat trends continue (Table 10). In the Powder River Basin area, where significant gas development is occurring, population trends were projected an almost 90 percent decline by 2037 (Garton *et al.* in press, p. 26). This projection is consistent with Walker *et al.* (2007, p. 2651) estimate that lek persistence would decline to 5 percent in the Powder River Basin with full field development over a similar time frame. Also, Johnson (in press, p. 13) found that lek counts were reduced from 1997 to 2007 in areas of oil and gas development, and our GIS analyses found that a minimum of 70 percent of breeding habitats is affected by energy development activities in this area (Service 2008b; see discussion under Energy Development). Declines in the Powder River Basin within the past 12 years of development have reached 79 percent (Emmerich 2009, pers. comm.). Populations in MZ I that do not experience the same levels of energy development are not projected to decline as significantly, with the exception of the Yellowstone watershed population (Table 10). This population is projected to be extirpated within 30 years (Garton *et al.* in press, p. 46). This area is highly fragmented by agricultural and energy development, factors identified by Aldridge *et al.* (2008, p. 991) and Wisdom *et al.* (in press, p. 23) with sage-grouse extirpation. Wisdom *et al.* (in *press*, p. 23) also predicted extirpation in this area due to the continuing loss of sagebrush. Loss of the Yellowstone watershed population will result in a gap in the species' range, isolating sage-grouse north of the Missouri River from the rest of the species.

TABLE 10—PROJECTED CHANGES IN CARRYING CAPACITIES OF MANAGEMENT ZONES AND POPULATIONS FROM 2007 TO 2037. CARRYING CAPACITIES ARE REFLECTED AS THE AVERAGE NUMBER OF MALES PER LEK, AND WERE CALCULATED BY DIVIDING POPULATION PROJECTIONS FOR 2037 BY THE POPULATION ESTIMATE IN 2007. DATA FROM GARTON *et al.* (IN PRESS, PP. 22-63, 95-97).

Management Zone	Population	Change in Carrying Capacity from 2007 to 2037 (%)
I (Great Plains)		-59
	Yellowstone watershed	-100
	Powder River	-90
	Northern Montana	-11
	Dakotas	-62
II (Wyoming Basin)		-66

TABLE 10—PROJECTED CHANGES IN CARRYING CAPACITIES OF MANAGEMENT ZONES AND POPULATIONS FROM 2007 TO 2037. CARRYING CAPACITIES ARE REFLECTED AS THE AVERAGE NUMBER OF MALES PER LEK, AND WERE CALCULATED BY DIVIDING POPULATION PROJECTIONS FOR 2037 BY THE POPULATION ESTIMATE IN 2007. DATA FROM GARTON *et al.* (IN PRESS, PP. 22-63, 95-97).—Continued

Management Zone	Population	Change in Carrying Capacity from 2007 to 2037 (%)
	Eagle – S. Routt	extirpated
	Jackson Hole	—
	Middle Park	—
	Wyoming Basin	-64
III (Southern Great Basin)		-55
	Bi-State NV/CA	-7
	S. Mono Lake	—
	NE Interior UT	+211
	San Pete County UT	—
	S. central UT	-36
	Summit-Morgan UT	-14
	Toole-Juab UT	-27
	Southern Great Basin	-61
IV (Snake River Plain)		-55
	Baker, OR	No change
	Bannack, MT	-9
	Red Rocks, MT	-18
	Wisdom, MT	—
	E. central ID	—
	Snake, Salmon, Beaverhead, ID	-18
	Northern Great Basin	-73
V (Northern Great Basin)		-74
	Central OR	-67
	Klamath, OR	—
	NW Interior NV	—
	Western Great Basin	-59
VI (Columbia Basin)		-46
	Moses Coulee	-74
	Yakima	—

TABLE 10—PROJECTED CHANGES IN CARRYING CAPACITIES OF MANAGEMENT ZONES AND POPULATIONS FROM 2007 TO 2037. CARRYING CAPACITIES ARE REFLECTED AS THE AVERAGE NUMBER OF MALES PER LEK, AND WERE CALCULATED BY DIVIDING POPULATION PROJECTIONS FOR 2037 BY THE POPULATION ESTIMATE IN 2007. DATA FROM GARTON *et al.* (IN PRESS, PP. 22-63, 95-97).—Continued

Management Zone	Population	Change in Carrying Capacity from 2007 to 2037 (%)
VII (Colorado Plateau)*		—

— Data insufficient to model
* Although the model projects population increases, habitat is limited in the area, likely limiting actual population growth.

Garton *et al.* (in press, p. 36) projected populations will decline in MZ II by 66 percent between 2007 and 2037 if current population trends and habitat activities continue (Table 10). The Wyoming Basin area, where significant oil, gas and renewable energy development is occurring, is projected to decline by 64 percent (Garton *et al.* in press, p. 34). Population persistence for the Eagle–South Routt population, an area also experiencing significant energy development activities, could not be estimated due to data sampling concerns. However, the population is unlikely to persist for 20 years (Braun, as cited in Garton *et al.* in press, p 30), where 100 percent of the breeding habitat is affected by energy development (Service 2008b). Johnson (in press, p. 13) found that declines in lek attendance was strongly, negatively associated with the presence of wells in these areas once the total number of wells in this MZ exceeded 250. Wells in both of these populations currently exceed that threshold. Therefore, the results of Garton *et al.*'s (in press) analyses are not unexpected.

Garton *et al.* (in press, p. 46) projected populations in MZ III will decline by 53 percent between 2007 and 2037 if current population trends and habitat activities continue (Table 10). Most populations in this area are already isolated by topographic features and experience high native conifer incursions. *Bromus tectorum* also is of significant concern in the Southern Great Basin population. Large losses of sagebrush in this MZ have resulted from *B. tectorum* incursion and the resulting altered fire cycle (Johnson in press, p. 23). Fire within 54 km (33.5 mi) of a lek was identified by Knick and Hanser (in press, p. 29) as one of the most important factors negatively affecting sage-grouse persistence on the landscape. Assuming the current rate of habitat loss continues in this MZ, carrying capacity is projected to decline by 45 percent by 2037 (Garton *et al.* in press, p. 46).

In MZ IV, Garton *et al.* (in press, p. 53) populations are projected to decline by 55 percent between 2007 and 2037 if current population trends and habitat activities continue (Table 10). The Northern Great Basin population is projected to have the greatest drop in carrying capacity, and is the area currently most affected by reduced fire cycles as a result of *Bromus tectorum* incursions. As discussed above, fire within 54 km (33.5 mi) of a lek was identified by as one of the most important factors negatively affecting sage-grouse persistence on the landscape (Knick and Hanser in press, p. 29). The associated incursion of *B. tectorum* has resulted in large losses of habitat in this MZ (Johnson in press, p. 23). Carrying capacities in other populations in this MZ are not projected to decline as much, but these populations do not have significant fire and *B. tectorum* incursions.

In MZ V, Garton *et al.* (in press, p. 58) projected populations will decline by 74 percent between 2007 and 2037 if current population trends and habitat activities continue (Table 10). Nearly all populations within this MZ are affected by reduced fire frequencies and *Bromus tectorum* incursions (see discussion above). In MZ VI, Garton *et al.* (in press, p. 62) projected populations will decline by 46 percent between 2007 and 2037 if current population trends and habitat activities continue (Table 10). The two populations in this MZ are already isolated from the rest of the range, and actively managed by the State of Washington to maintain birds (e.g., translocations, active habitat enhancement). In addition to impacts from agricultural activities and human development (Johnson in press, p. 27), these populations are affected by the loss of CRP lands and military activities, neither of which were quantified by Garton *et al.* (in press, entire). Therefore, the projections provided in the population viability analysis are likely underestimated.

Carrying capacity projections could not be estimated for MZ VII due to insufficient data. Energy development activities occur within most populations in this area, and Johnson (in press, p. 13) reported that lek attendance was lower around producing wells in this MZ. We believe that based on habitat impacts, if birds are retained in this area, the populations will be reduced in size and further isolated.

The projections from Garton *et al.* (in press, entire), which are consistent with results reported by Wisdom *et al.* (in press, entire), our own analyses, and others examining the effects of habitat loss and degradation on population trends, reflect that by 2037 sage-grouse populations and connectivity between them will be further reduced across the species range. This is consistent with other literature that has documented patterns of decline and extirpation as a result of the ongoing habitat losses and fragmentation (for example, see Johnson in press, Knick *et al.* in press and Wisdom *et al.* in press). We are cautious in using a single projection for determining future population status based on the limitation of lek data and the lack of any other comparable rangewide population viability analyses. However, Garton *et al.*'s (in press, entire) results are consistent with the habitat loss and fragmentation analyses conducted by the Service and many other authors, as noted in the individual MZ discussions above.

The population and carrying capacity projections by Garton *et al.* (in press, pp. 22-64) are generally consistent with what we would expect given the causes of sage-grouse declines and extirpation documented in the literature (see above) and where those threats occur in the species range. Therefore, despite the concerns of the authors and other about the limitations of lek data and prospective analysis, the results presented by Garton *et al.* (in press, entire) are consistent with our analyses of habitat impacts based on the review of the best available scientific information.

Foreseeable Future of Habitat Threats

We examined the persistence of each of these habitat threats on the landscape to help inform a determination of foreseeable future. Habitat conversion and fragmentation resulting from agricultural activities and urbanization will continue indefinitely. Human

populations are increasing in the western United States and we have no data indicating this trend will be reversed. Increased fire frequency as facilitated by the expanding distribution of invasive plant species will continue indefinitely unless an effective means for controlling the invasives is found. In the last approximately 100 years, no broad scale *Bromus tectorum* eradication method has been developed. Therefore, given the history of invasive plants on the landscape, our continued inability to control such species, and the expansive infestation of invasive plants across the species' range currently, we anticipate they and associated fires will be on the landscape for the next 100 years or longer.

Continued exploration and development of traditional and nonconventional fossil fuel sources in the eastern portion of the greater sage-grouse range will continue to increase over the next 20 years (EIA 2009b, p. 109). Based on existing National Environmental Policy Act (NEPA) documents for major oil and gas developments, production within existing developments will continue for a minimum of 20 years, with subsequent restoration (if possible) requiring from 30 to 50 additional years. Renewable energy development is estimated to reach maximum development by 2030. However, since most renewable energy facilities are permanent landscape features, unlike oil, gas and coal, direct and functional habitat loss from the development footprint will be permanent. Based on this information, we estimate the foreseeable future of energy development at a minimum of 50 years, and perhaps much longer for nonrenewable sources.

Grazing (both domestic and wild horse and burro) is unlikely to be removed from sagebrush ecosystems. Therefore, it is difficult to estimate a foreseeable future for livestock grazing. However, as of 2007, there were 7,118,989 permitted AUMs in sage-grouse habitat. Although there have been recent reductions in the number of AUMs (3.4 percent since 2005), we have no information suggesting that livestock grazing will be significantly reduced, or removed, from sage-grouse habitats. Therefore, while we cannot provide an exact estimate of the foreseeable future for grazing, we expect it to be a persistent use of the sage-grouse landscape for several decades.

Summary of Factor A

As identified above in our Factor A analysis, habitat conversion for agriculture, urbanization, infrastructure (e.g., roads, powerlines, fences); fire, invasive plants, pinyon-juniper woodland encroachment, grazing, energy development, and climate change are all contributing, individually and collectively, to the present and threatened destruction, modification, and curtailment of the habitat and range of the greater sage-grouse. The impacts are compounded by the fragmented nature of this habitat loss, as fragmentation results in functional loss of habitat for greater sage-grouse even when otherwise suitable habitat is still present.

Fragmentation of sagebrush habitats is a key cause, if not the primary cause, of the decline of sage-grouse populations. Fragmentation can make otherwise suitable habitat either too small or isolated to be of use to greater sage-grouse (i.e., functional habitat destruction), or the abundance of sage-grouse that can be supported in an area is diminished. Fire, invasive plants, energy development, various types of infrastructure, and agricultural conversion have resulted in habitat fragmentation and additional fragmentation is expected to continue for the foreseeable future in some areas.

In our evaluation of Factor A, we found that although many of the habitat impacts we analyzed (e.g, fire, urbanization, invasive species) are present throughout the range, they are not at a level that is causing a threat to greater sage-grouse everywhere within its range. Some threats are of high intensity in some areas but are low or nonexistent in other areas. Fire and invasive plants, and the interaction between them, is more pervasive in the western part of the range than in the eastern. Oil and gas development is having a high impact on habitat in many areas in the eastern part of the range, but a low impact further to the west. The impact of pinyon-juniper encroachment generally is greater in western areas of the range, but is of less concern in more eastern areas such as Wyoming and Montana. Agricultural development is high in the Columbia Basin, Snake River Plain, and eastern Montana, but low elsewhere. Infrastructure of various types is present throughout the most of range of the greater sage-grouse, as is livestock grazing, but the degree of impact varies depending on grazing management practices and local ecological conditions. The degree of urbanization and exurban development varies across the range, with some areas having relatively low impact to habitat.

While sage-grouse habitat has been lost or altered in many portions of the species' range, habitat still remains to support the species in many areas of its range (Connelly *et al.* in press c, p. 23), such as higher elevation sagebrush, and areas with a low human footprint (activities sustaining human development) such as the Northern and Southern Great Basin (Leu and Hanser in press, p. 14), indicating that the threat of destruction, modification or curtailment of the greater sage-grouse is moderate in these areas. In addition, two strongholds of contiguous sagebrush habitat (the southwest Wyoming Basin and the Great Basin area straddling the States of Oregon, Nevada, and Idaho) contain the highest densities of males in the range of the species (Wisdom *et al.* in press, pp. 24-25; Knick and Hanser in press, p. 17). We believe that the ability of these strongholds to maintain high densities to date in the presence of several threats indicates that there are sufficient habitats currently to support the greater sage-grouse in these areas, but not throughout its entire range unless these threats are ameliorated.

As stated above, the impacts to habitat are not uniform across the range; some areas have experienced less habitat loss than others, and some areas are at relatively lower risk than others for future habitat destruction or modification. Nevertheless, the impacts are substantial in many areas and will continue or even increase in the future across much of the range of the species. With continued habitat destruction and modification, resulting in fragmentation and diminished connectivity, greater sage-grouse populations will likely decline in size and become more isolated, making them more vulnerable to further reduction over time and increasing the risk of extinction.

We have evaluated the best scientific and commercial information available regarding the present or threatened destruction, modification, or curtailment of the greater sage-grouse's habitat or range. Based on the current and ongoing habitat issues identified here, their synergistic effects, and their likely continuation in the future, we conclude that this threat is significant such that it provides a basis for determining that the species warrants listing under the Act as a threatened or endangered species.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Commercial Hunting

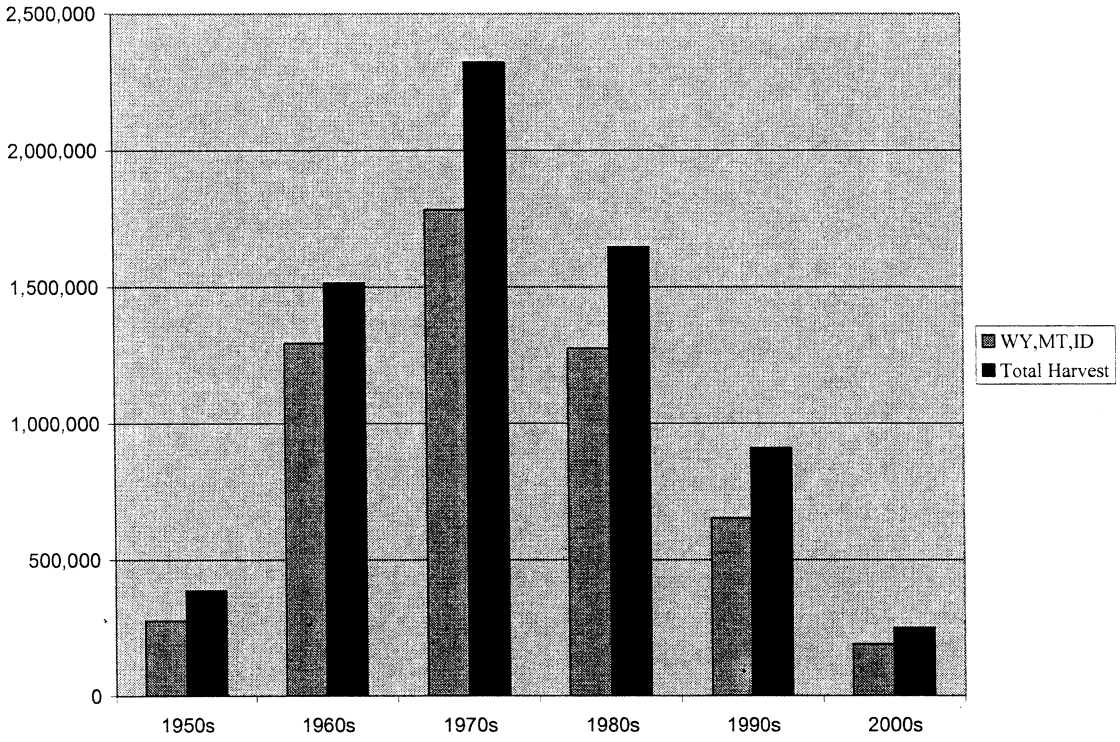
The greater sage-grouse was heavily exploited by commercial hunting in the late 1800s and early 1900s (Patterson 1952, pp. 30-32; Autenrieth 1981, pp. 3-11). Hornaday (1916, pp. 179-221) and others alerted the public to the risk of

extinction of the species as a result of this overharvest. The impacts of hunting on greater sage-grouse during those historical decades may have been exacerbated by impacts from human expansion into sagebrush-steppe habitats (Girard 1937, p. 1). In response, many States closed sage-grouse hunting seasons by the 1930s (Patterson 1952, pp.30-33; Autenrieth 1981, p. 10). Sage-grouse have not been commercially harvested for many decades; therefore, commercial hunting does not affect the greater sage-grouse.

Recreational Hunting

With the increase of sage-grouse populations by the 1950s, limited recreational hunting seasons were allowed in most of the species' range (Patterson 1952, p. 242; Autenrieth 1981, p.11). Currently, greater sage-grouse are legally sport-hunted in 10 of 11 States where they occur (Connelly *et al.* 2004, p. 6-3). The hunting season for sage-grouse in Washington was closed in 1988, and the species was added to the State's list of threatened species in 1998 (Stinson *et al.* 2004, p. 1). In Canada, sage-grouse are designated as an endangered species, and hunting is not permitted (Connelly *et al.* 2004, p. 6-3).

Figure 3—Total greater sage-grouse harvest by decade for available State-wide harvest estimates. For illustrative purposes, harvest estimates are shown as totals and as a combination for WY, MT, and ID, the States with the greatest individual harvest levels. (Values are underestimates as no data were available for CA, CO, MT, and NV in the 1950s, and total harvest values for WY were not reported prior to 1957; no data were available in the 1960s for CA, ND, or SD, and data for NV and CO were only partially reported; and no data were available for CA and ND in the 1970s).



Harvest levels have varied considerably since the 1950s, and in recent years have been much lower than in past decades (Figure 3) (Service 2009, unpublished data). From 1960 to 1980, the majority of sage-grouse hunting mortality occurred in Wyoming, Idaho, and Montana, accounting for at least 75 to 85 percent of the annual harvest (Service 2009, unpublished data). In the 1960s harvest exceeded 120,000 individuals annually for 7 out of 10 years. Harvest levels reached a maximum in the 1970s, being above 200,000 individuals in 9 of 10 years with the total estimate at 2,322,581 birds harvested for the decade. During the 1980s, harvest exceeded 130,000 individuals in 9 of 10 years (Service 2009, unpublished data). The harvest was above 100,000 annually during the early 1990s but in 1994 dropped below 100,000 for the first time in decades. From 2000 to 2007, annual harvest has averaged approximately 31,000 birds (Service 2009, unpublished data).

Sustainable harvest is determined based on the concept of compensatory and additive mortality (Connelly 2005, p. 7). The compensatory mortality hypothesis asserts that if sage-grouse produce more offspring than can survive to sexual maturity, individuals lost to hunting represent losses that would have occurred otherwise from some other source (e.g., starvation, predation, disease). Hunting mortality is termed additive if it exceeds natural mortality and ultimately results in a decline of the breeding population. The validity of compensatory mortality in upland gamebirds has not been rigorously tested, and as we stated above, annual

sage-grouse productivity is relatively low compared to other grouse species. Autenrieth (1981, p. 77) suggested sage-grouse could sustain harvest rates of up to 30 percent annually. Braun (1987, p. 139) suggested a rate of 20 to 25 percent was sustainable. State wildlife agencies currently attempt to keep harvest levels below 5 to 10 percent of the population, based on a recommendation taken from Connelly *et al.* (2000a, p. 976). However, it is unclear from Connelly *et al.* (2000a) what this recommendation is based on, and similar to previous suggested harvest rates, it has not been experimentally tested with regard to its impacts on sage-grouse populations.

The validity of the idea that hunting is a form of compensatory mortality for upland game birds has been questioned in recent years (Reese and Connelly, in press, p. 6). Connelly *et al.* 2005 (pp. 660, 663) cite many studies suggesting that hunting of upland game, including the greater sage-grouse, is often not compensatory. Other studies have sought to determine whether hunting mortality in sage-grouse is compensatory or additive (Crawford 1982; Crawford and Lutz 1985; Braun 1987; Zunino 1987; Johnson and Braun 1999; Connelly *et al.* 2003; Sedinger *et al.* in press; Sedinger *et al.* unpublished data). Results of those studies have been contradictory. For example, Braun (1987, p. 139) found that harvest levels of 7 to 11 percent had no effect on subsequent spring breeding populations based on lek counts in North Park, Colorado. Johnson and Braun (1999, p. 83) determined that overwinter mortality correlated with harvest intensity in North Park, Colorado, and hypothesized that hunting mortalities may be additive.

Numerous contradictions are likely due to differing methods, lack of experimental data, and differing effects of harvest due to a relationship between harvest and habitat quality. For example, Connelly *et al.* (2003, pp. 256-257) evaluated data for monitored lek routes in areas experiencing different levels of harvest (no harvest, 1-bird season, 2-bird season) in Idaho and found that populations with no hunting season had faster rates of population increase than populations with a light to modest harvest. The effect was particularly pronounced in xeric habitats near human populations, which suggests that the impact of hunting on sage-grouse to some extent depends on habitat quality. Gibson (1998, p. 15) found that hunting mortality had negative impacts on the population dynamics of an isolated population of sage-grouse in Long Valley, California, but appeared to have no effect on sage-grouse in Bodie Hills, California, a nearby population that is contiguous with adjacent occupied areas of Nevada. Data indicated that hunting suppressed the population size of the isolated Long Valley population well below the apparent carrying capacity (Gibson 1998, p. 15; Gardner 2008, pers. comm.).

Sage-grouse hunting is regulated by State wildlife agencies. Hunting seasons are reviewed annually, and States change harvest management based on estimates for spring production and population size (e.g., Bohne 2003, pp.1-10). However, harvest affects fall populations of sage-grouse, and currently there is no reliable method for obtaining estimates of fall population size (Connelly *et al.* 2004, p. 9-6). Instead, lek counts conducted in the spring are used as a surrogate for fall population size. However, fall populations are already reduced from spring estimates as some natural mortality inevitably has occurred in the interim (Kokko 2001, p. 164). The discrepancy between spring and fall population size estimates plays a role in determining whether harvest will be within the recommended level of less than 5-10 percent of the fall population. For example, hen mortality in Montana increased from the typical level of 1 to 5 percent to 16 percent during July/August in a year (2003) with WNv mortality (Moynahan 2006, p.1535). During the summer of 2006 and 2007 in South Dakota, mortality from WNv was estimated to be between 21 and 63 percent of the population (Kaczor 2008, p.72). Despite the increased mortalities due to WNv, hunting regulations in both States remained similar to previous years.

Female survivorship is a key element of population productivity. Harvest might affect female and male grouse differently. Connelly *et al.* (2000b, p.228-229) found that in Idaho 42 percent of all documented female mortality was attributable to hunting while for males the number was 15 percent. Patterson (1952, p. 245) found females accounted for 60 percent (1950) and 63 percent (1951) of total hunting mortalities. Because sage-grouse are relatively long-lived, have moderate reproductive rates, and are polygynous, their populations are likely to be especially sensitive to adult female survival (Schroeder 1999, p.2, 13; Saether and Bakke 2000, p. 652; Connelly 2005, p.9). Yearling sage-grouse hens have less reproductive potential than adults (Dalke *et al.* 1963, p. 839; Moynahan 2006, p. 1537). Adult females have higher nest initiation rates, higher nest success, and higher chick survival rates than yearling females (Connelly *et al.*, in press a, pp. 15, 20, 48). High adult female mortality has the potential to result in negative lag effects as future populations become overrepresented by yearling females (Moynahan 2006, p. 1537).

All States with hunting seasons have changed limits and season dates to more evenly distribute hunting mortality across the entire population structure of greater sage-grouse, harvesting birds after females have left their broods (Bohne 2003, p. 5). Females and broods congregate in mesic areas late in the summer potentially making them more vulnerable to hunting (Connelly *et al.* 2000b, p. 230). However, despite increasingly later hunting seasons, hens in Wyoming continue to comprise the majority of the harvest in all years (WGFD 2004a, p. 4; 2006, p. 7). From 1996 to 2008, on average 63 percent of adult hunting mortalities in Nevada were females (range 58 percent to 73 percent) (NDOW, 2009, unpublished data). In 2008 in Oregon, adult females accounted for 70 percent of the adults harvested (ODFW 2009). These results could indicate that females are more susceptible to hunting mortality, or it could be a reflection of a female skewed sex ratio in adult birds. Male sage-grouse typically have lower survival rates than females, and the varying degrees of female skewed sex ratios recorded for sage-grouse are thought to be as a result of this differential survival (Swenson 1986, p. 16; CO Conservation Plan, p. 54). The potential for negative effects on populations by harvesting reproductive females has long been recognized by upland game managers (e.g., hunting of female ring-necked pheasants, (*Phasianus colchicus),* is prohibited in most States).

Harvest management levels that are based on the concept of compensatory mortality assume that overwinter mortality is high, which is not true for sage-grouse (winter mortality rates approximately 2 percent, Connelly *et al.* 2000b, p. 229). Additionally, due to WNv, sage-grouse population dynamics may be increasingly affected by mortality that is density independent (i.e., mortality that is independent of population size). Further, there is growing concern regarding wide-spread habitat degradation and fragmentation from various sources, such as development, fire, and the spread of noxious weeds, resulting in density independent mortality which increases the probability that harvest mortality will be additive.

State management agencies have become increasingly responsive to these concerns. All of the States where hunting greater sage-grouse is legal,

except Montana, now manage harvests on a regional scale rather than applying State-wide limits. Bag limits and season lengths are relatively conservative compared to prior decades (Connelly 2005, p. 9; Gardner 2008, pers. comm.). Emergency closures have been used for some declining populations. For example, North Dakota closed the 2008 and 2009 hunting seasons following record low lek attendance likely due to WNv (Robinson 2009, pers. comm.). Hunting on the Duck Valley Indian Reservation (Idaho/Nevada) has been closed since 2006 due to WNv (Dick 2009, pers. comm.; Gossett 2008, pers. comm.). Hunting in Owyhee County, Idaho was closed in 2006 and again in 2008 and 2009 as a result of WNv (Dick 2008, pers. comm.; IDFG 2009).

All ten States that allow bow and gun hunting of sage-grouse also allow falconers to hunt sage-grouse. Falconry seasons are typically longer (60 to 214 days), and in some cases have larger bag limits than bow/gun seasons. However, due to the low numbers of falconers and their dispersed activities, the resulting harvest is thought to be negligible (Apa 2008, pers. comm.; Northrup 2008, pers. comm.; Hemker 2008, pers. comm.; Olsen 2008, pers. comm.; Kanta 2008, pers. comm.). Wyoming is one of the few States that collects falconry harvest data and reported a take of 180 sage-grouse by falconers in the 2006-2007 season (WGFD 2007, unpublished data). In Oregon, the take is probably less than five birds per year (Budeau 2008, pers. comm.). In Idaho the 2005 estimated Statewide falconry harvest was 77 birds, and that number has likely remained relatively constant (Hemker 2008, pers. comm.). We are not aware of any studies that have examined falconry take of greater sage-grouse in relation to population trends, but the amount of greater sage-grouse mortality associated with falcon sport hunting appears to be negligible.

We surveyed the State fish and wildlife agencies within the range of greater sage-grouse to determine what information they had on illegal harvest (poaching) of the species. Nevada and Utah indicated they were aware of citations being issued for sage-grouse poaching, but that it was rare (Espinosa 2008, pers. comm.; Olsen 2008, pers. comm.). Sage-grouse wings are infrequently discovered in wing-barrel collection sites during forest grouse hunts in Washington, but such take is considered a result of hunter misidentification rather than deliberate poaching (Schroeder 2008, pers. comm.). None of the remaining States had any quantitative data on the level of poaching. Based on these results, illegal harvest of greater sage-grouse poaching appears to occur at low levels. We are not aware of any studies or other data that demonstrate that poaching has contributed to sage-grouse population declines.

Recreational Use

Greater sage-grouse are subject to a variety of non-consumptive recreational uses such as bird watching or tour groups visiting leks, general wildlife viewing, and photography. Daily human disturbances on sage-grouse leks could cause a reduction in mating and some reduction in total production (Call and Maser 1985, p. 19). Overall, a relatively small number of leks in each State receive regular viewing use by humans during the strutting season and most States report no known impacts from this use (Apa 2008, pers. comm.; Christiansen 2008, pers. comm.; Gardner 2008, pers. comm.; Northrup 2008, pers. comm.). Only Colorado has collected data regarding the effects of non-consumptive use. Their analyses suggest that controlled lek visitation has not impacted greater sage-grouse (Apa 2008, pers. comm.). However, Oregon reported anecdotal evidence of negative impacts of unregulated viewing to individual leks near urban areas that are subject to frequent disturbance from visitors (Hagen 2008, pers. comm.).

To reduce any potential impact of lek viewing on sage-grouse, several States have implemented measures to protect most leks while allowing recreational viewing to continue. The Wyoming Game and Fish Department (WGFD) provides the public with directions to 16 leks and guidelines to minimize viewing disturbance. Leks included in the brochure are close to roads and already subject to some level of disturbance (Christiansen 2008, pers. comm.); presumably, focusing attention on these areas reduces pressure on relatively undisturbed leks. Colorado and Montana have some sites with viewing trailers for the public for the same reasons (Apa 2008, pers. comm.; Northrup 2008, pers. comm.). We were not able to locate any studies documenting how lek viewing, or other forms of non-consumptive recreational uses, of sage-grouse are related to sage-grouse population trends. Given the relatively small number of leks visited, we have no reason to believe that this type of recreational activity is having a negative impact on local populations or contributing to declining population trends.

Religious Use

Some Native American tribes harvest greater sage-grouse as part of their religious or ceremonial practices as well as for subsistence. Native American hunting occurs on the Wind River Indian Reservation (Wyoming), with about 20 males per year taken off of leks in the spring plus an average fall harvest of approximately 40 birds (Hnilicka 2008, pers. comm.). The Shoshone-Bannock Tribe (Idaho) occasionally takes small numbers of birds in the spring, but no harvest figures have been reported for 2007 and 2008 (Christopherson 2008, pers. comm.). The Shoshone-Paiute Tribe of the Duck Valley Indian Reservation (Idaho and Nevada) suspended hunting in 2006 to 2009 due to significant population declines resulting from a WNv outbreak in the area (Dick 2009, pers. comm.; Gossett 2008, pers. comm.). Prior to 2006, the sage-grouse hunting season on the Duck Valley Indian Reservation ran from July 1 to November 30 with no bag or possession limits. Preliminary estimates indicate that the harvest may have been as high as 25 percent of the population (Gossett 2008, pers. comm.). Despite the hunting ban, populations have not recovered on the reservation (Dick 2009, pers. comm.; Gossett 2008, pers. comm.). No harvest by Native Americans for subsistence or religious and ceremonial purposes occurs in South Dakota, North Dakota, Colorado, Washington, or Oregon (Apa 2008, pers. comm.; Hagen 2008, pers. comm.; Kanta 2008, pers. comm.; Robinson 2008, pers. comm.; Schroeder 2008, pers. comm.).

Scientific and Educational Use

Greater sage-grouse are the subject of many scientific research studies. We are aware of some 51 studies ongoing or completed during 2005 and 2008. Of the 11 western States where sage-grouse currently occur, all reported some type of field studies that included the capture, handling, and subsequent banding, or banding and radio-tagging of sage-grouse. In 2005, the overall mortality rate due to the capture, handling, and/or radio-tagging process was calculated at approximately 2.7 percent of the birds captured (68 mortalities of 2,491 captured). A survey of State agencies, BLM, consulting companies, and graduate students involved in sage-grouse research indicates that there has been little change in direct handling mortality since then. We are not aware of any studies that document that this level of taking has affected any sage-grouse population trends.

Greater sage-grouse have been translocated in several States and the Province of British Columbia (Reese and Connelly 1997, p. 235). Reese and Connelly (1997, pp. 235-238)

documented the translocation of over 7,200 birds between 1933 and 1990. Only 5 percent of the translocation efforts documented by Reese and Connelly (1997, p. 240) were considered to be successful in producing sustained, resident populations at the translocation sites. From 2003 to 2005, 137 adult female sage-grouse were translocated to Strawberry Valley, Utah and had a 60 percent annual survival rate (Baxter *et al.* 2006, p. 182). Since 2004, Oregon and Nevada have supplied the State of Washington with close to 100 greater sage-grouse to increase the genetic diversity of the geographically isolated Columbia Basin populations and to reestablish a historical population. One bird has died during transit and as expected natural mortality for translocated birds has been higher than resident populations (Schroeder 2008, pers. comm.). Given the low numbers of birds that have been used for translocation spread over many decades, it is unlikely that the removals from source populations have contributed to greater sage-grouse declines, while the limited success of translocations also has likely had nominal impact on rangewide population trends. We did not find any information regarding the direct use of greater sage-grouse for educational purposes.

Summary of Factor B

Greater sage-grouse are not used for any commercial purpose. In Canada, hunting of sage-grouse is prohibited in Alberta and Saskatchewan. In the United States, sage-grouse hunting is regulated by State wildlife agencies and hunting regulations are reevaluated yearly. We have no information that suggests any change will occur in the current situation, in which hunting greater sage-grouse is prohibited in Washington and allowed elsewhere in the range of the species in the U.S. under State regulations, which provide a basis for adjustments in annual harvest and emergency closures of hunting seasons. We have no evidence suggesting that gun and bow sport hunting has been a primary cause of range-wide declines of the greater sage-grouse in the past, or that it currently is at level that poses a significant threat to the species. However, although harvest as a singular factor does not appear to threaten the species throughout its range, negative impacts on local populations have been demonstrated and there remains a large amount of uncertainty regarding harvest impacts because of a lack of experimental evidence and conflicting studies. Significant habitat loss and fragmentation have occurred during the past several decades, and there is evidence that the sustainability of harvest levels depends to a large extent upon the quality of habitat and the health of the population. However, recognition that habitat loss is a limiting factor is not conclusive evidence that hunting has played no role in population declines or that reducing or eliminating harvest will not have an effect on population stability or recovery.

Take from poaching (illegal hunting) appears to occur at low levels in localized areas, and there is no evidence that it contributes to population declines. The information on non-consumptive recreational activities is limited to lek viewing, the extent of such activity is small, and there is no indication that it has a negative impact that contributes to population declines. Harvest by Native American tribes, and mortality that results from handling greater sage-grouse for scientific purposes appears to occur at low levels in localized areas and thus we do not consider these to be a significant threat at either the rangewide or local population levels. We know of no utilization for educational purposes. We have no reason to believe any of the above activities will increase in the future.

We do not believe data support overuse of sage-grouse as a singular factor in rangewide population declines. We note, however, that in light of present and threatened habitat loss (Factor A) and other considerations (e.g. West Nile virus outbreaks in local populations), continued close attention will be needed by States and tribes to carefully manage hunting mortality, including adjusting seasons and allowable harvest levels, and imposing emergency closures if needed.

In sum, we find that this threat is not significant to the species such that it causes the species to warrant listing under the Act.

Factor C: Disease and Predation

Disease

Greater sage-grouse are hosts for a variety parasites and diseases, including macroparasitic arthropods, helminths and microparasites (protozoa, bacteria, viruses and fungi) (Thorne *et al.* 1982, p. 338; Connelly *et al.* 2004, pp. 10-4 to 10-7; Christiansen and Tate, in press, p. 2). However, there have been few systematic surveys for parasites or infectious diseases of greater sage-grouse; therefore, whether they have a role in population declines is unknown (Connelly *et al.* 2004, p. 10-3; Christiansen and Tate, in press, p. 3). Early studies have suggested that sage-grouse populations are adversely affected by parasitic infections (Batterson and Morse 1948, p. 22). Parasites also have been implicated in sage-grouse mate selection, with potentially subsequent effects on the genetic diversity of this species (Boyce 1990, p. 263; Deibert 1995, p. 38). However, Connelly *et al.* (2004, p. 10-6) note that, while these relationships may be important to the long-term ecology of greater sage-grouse, they have not been shown to be significant to the immediate population status. Connelly *et al.* (2004, p. 10-3) have suggested that diseases and parasites may limit isolated sage-grouse populations, but that the effects of emerging diseases require additional study (see also Christiansen and Tate, in press, pp. 22-23).

Internal parasites which have been documented in the greater sage-grouse include the protozoans *Sarcosystis* spp. and *Tritrichomonas simoni*, blood parasites (including avian malaria (*Plasmodium* spp.), *Leucocytozoon* spp., *Haemoproteus* spp., and *Trypanosoma avium*, tapeworms (*Raillietina centrocerci* and *R. cesticillus*), gizzard worms (*Habronema* spp. and *Acuaria* spp.), cecal worms (*Heterakis gallinarum*), and filarid nematodes (*Ornithofilaria tuvensis*) (Honess 1955, pp.1-2; Hepworth 1962, p. 6: Thorne *et al.* 1982, p. 338; Connelly *et al.* 2004, pp. 10-4 to 10-6; Petersen 2004, p. 50; Christiansen and Tate, in press, pp. 9-13). None of these parasites have been known to cause mortality in the greater sage-grouse (Christiansen and Tate, in press, p. 8-13). Sub-lethal effects of these parasitic infections on sage-grouse have never been studied.

Greater sage-grouse host many external parasites, including lice, ticks, and dipterans (midges, flies, mosquitoes, and keds) (Connelly *et al.* 2004, pp. 10-6 to 10-7). Most ectoparasites do not produce disease, but can serve as disease vectors or cause mechanical injury and irritation (Thorne *et al.* 1982, p. 231). Ectoparasites can be detrimental to their hosts, particularly when the bird is stressed by inadequate habitat or nutritional conditions (Petersen 2004, p. 39). Some studies have suggested that lice infestations can affect sage-grouse mate selection (Boyce 1990, p. 266; Spurrier *et al.* 1991, p. 12; Deibert 1995, p. 37), but population impacts are not known (Connelly *et al.* 2004, p. 10-6).

Only a few parasitic infections in greater sage-grouse have been documented to result in fatalities, including the protozoan, *Eimeria* spp. (coccidiosis) (Connelly *et al.* 2004, p.

10-4), and possibly ixodid ticks (*Haemaphysalis cordeilishas*). Mortality is not 100 percent with coccidiosis, and young birds that survive an initial infection typically do not succumb to subsequent infections (Thorne *et al.* 1982, p. 112). Infections also tend to be localized to specific geographic areas. Most cases of coccidiosis in greater sage-grouse have been found where large numbers of birds congregated, resulting in soil and water contamination by fecal material (Scott 1940, p. 45; Honess and Post 1968, p. 20; Connelly *et al.* 2004, p. 10-4; Christiansen and Tate, in press, p. 3). While the role of this parasite in population regulation is unknown, Petersen (2004, p. 47) hypothesized that coccidiosis could be limiting for local populations, as this parasite causes decreased growth and resulted in significant mortality in young birds, thereby potentially limiting recruitment. However, no cases of sage-grouse mortality resulting from coccidiosis have been documented since the early 1960s (Connelly *et al.* 2004, p. 10-4), with the exception of two yearlings being held in captivity (Cornish 2009a, pers. comm.). One hypothesis for the apparent decline in occurrences of coccidiosis is the reduced density of sage-grouse, limiting the spread of the disease (Christiansen and Tate, in press, p. 14).

The only mortalities associated with ixodid ticks were found in association with a tularemia (*Francisella tularenis*) outbreak in Montana (Parker *et al.* 1932, p. 480; Christiansen and Tate, in press, p. 7). The sage-grouse mortality was likely from the pathological effects of the abnormally high number of feeding ticks found on the birds, as well as tularemia infection itself (Christiansen and Tate, in press, p.15). No other reports of tularemia have been recorded in greater sage-grouse (Christiansen and Tate, in press, p. 15).

Greater sage-grouse also are subject to a variety of bacterial, fungal, and viral pathogens. The bacteria *Salmonella* spp. has caused mortality in the greater sage-grouse and was apparently contracted through of exposure to contaminated water supplies around livestock stock tanks (Connelly *et al.* 2004, p. 10-7). However, it is unlikely that diseases associated with *Salmonella* spp. pose a significant risk to sage-grouse unless environmental conditions concentrate birds, resulting in contamination of limited water supplies by accumulated fecal material (Christiansen and Tate, in press, p. 15). A tentative documentation of *Mycoplasma* spp. in sage-grouse is known from Colorado (Hausleitner 2003, p. 147), but we found no other information to suggest this bacterium is either fatal or widespread. Other bacteria found in sage-grouse include avian tuberculosis (*Mycobacterium avium*), and avian cholera (*Pasteurella multocida*). These bacteria have never been identified as a cause of mortality in greater sage-grouse and the risk of exposure and hence, population effects, is low (Connelly *et al.* 2004, p. 10-7 to 10-8).

Sage-grouse afflicted with coccidiosis in Wyoming also were positive for *Escherichia coli* (Honess and Post 1968, p. 17). This bacterium is not believed to be a threat to wild populations of greater sage-grouse (Christiansen and Tate, in press, p. 15), as it has only been shown to cause acute mortality in captive birds kept in unsanitary conditions (Friend 1999, p. 125). One death from *Clostridium perfringens* has been recorded in a free-ranging adult male sage-grouse in Oregon (Hagen and Bildfell 2007, p. 545). Friend (1999, p. 123) mentions that outbreaks of *Clostridum* have been reported in greater sage-grouse, but the only information we located were two deaths reported from northeastern Wyoming (Cornish 2009a, pers. comm.). Christiansen and Tate (in press, p. 14) caution that given the persistence of this bacterium's spores in the soil, the resulting necrotic enteritis, especially when coupled with coccidiosis, may be a concern in small isolated populations.

One case of aspergillosis, a fungal disease, has been documented in sage-grouse, but there is no evidence to suggest this fungus plays a role in limiting greater sage-grouse populations (Connelly *et al.* 2004, p. 10-8; Petersen 2004, p. 45). Sage-grouse habitats are generally incompatible with the ecology of this disease due to their arid conditions.

Viruses could cause serious diseases in grouse species and potentially influence population dynamics (Petersen 2004, p. 46). However, prior to 2002, only avian infectious bronchitis (caused by a coronavirus) had been identified in the greater sage-grouse during necropsy. No clinical signs of the disease were observed.

West Nile virus was introduced into the northeastern United States in 1999 and has subsequently spread across North America (Marra *et al.* 2004, p.394). This virus is thought to have caused millions of wild bird deaths since its introduction (Walker and Naugle in press, p. 4), but most WNv mortality goes unnoticed or unreported (Ward *et al.* 2006, p. 101). The virus persists largely within a mosquito-bird-mosquito infection cycle (McLean 2006, p. 45). However, direct bird-to-bird transmission of the virus has been documented in several species (McLean 2006, pp. 54, 59) including the greater sage-grouse (Walker and Naugle in press, p. 13; Cornish 2009b, pers. comm.). The frequency of direct transmission has not been determined (McLean 2006, p. 54).

Impacts of WNv on the bird host varies by species with some species being relatively unaffected (e.g., common grackles (*Quiscalus quiscula*)) and others experiencing mortality rates of up to 68 percent (e.g., American crow (*Corvus brachyrhynchos*)) (Walker and Naugle in press, p. 4, and references therein). Greater sage-grouse are considered to have a high susceptibility to WNv, with resultant high levels of mortality (Clark *et al.* 2006, p. 19; McLean 2006, p. 54).

In sagebrush habitats, WNv transmission is primarily regulated by environmental factors, including temperature, precipitation, and anthropogenic water sources, such as stock ponds and coal-bed methane ponds, that support the mosquito vectors (Reisen *et al.* 2006, p. 309; Walker and Naugle in press, pp. 10-12). Cold ambient temperatures preclude mosquito activity and virus amplification, so transmission to and in sage-grouse is limited to the summer (mid-May to mid-September) (Naugle *et al.* 2005, p. 620; Zou *et al.* 2007, p. 4), with a peak in July and August (Walker and Naugle in press, p. 10). Reduced and delayed WNv transmission in sage-grouse has occurred in years with lower summer temperatures (Naugle *et al.* 2005, p. 621; Walker *et al.* 2007b, p. 694). In non-sagebrush ecosystems, high temperatures associated with drought conditions increase WNv transmission by allowing for more rapid larval mosquito development and shorter virus incubation periods (Shaman *et al.* 2005, p.134; Walker and Naugle in press, p. 11). Greater sage-grouse congregate in mesic habitats in the mid-late summer (Connelly *et al.* 2000, p. 971) thereby increasing the risk of exposure to mosquitoes. If WNv outbreaks coincide with drought conditions that aggregate birds in habitat near water sources, the risk of exposure to WNv will be elevated (Walker and Naugle in press, p. 11).

Greater sage-grouse inhabiting higher elevation sites in summer are likely less vulnerable to contracting WNv than birds at lower elevation as ambient temperatures are typically cooler (Walker and Naugle in press, p. 11). Greater sage-grouse populations in northwestern Colorado and western Wyoming are examples of high elevation populations with lower risk for impacts from WNv (Walker and Naugle in press, p. 26). Also, due to

summer temperatures generally being lower in more northerly areas, sage-grouse populations that are in geographically more northern populations my be less susceptible than those at similar elevations farther south (Naugle *et al.* 2005, cited in Walker and Naugle in press, p. 11). Climate change could result in increased temperatures and thus potentially exacerbate the prevalence of WNv, and thereby impacts on greater sage-grouse, but this risk also depends on complex interactions with other environmental factors including precipitation and distribution of suitable water (Walker and Naugle in press, p. 12).

The primary vector of WNv in sagebrush ecosystems is *Culex tarsalis* (Naugle *et al.* 2004, p. 711; Naugle *et al.* 2005, p. 617; Walker and Naugle in press, p. 6). Individual mosquitoes may disperse as much as 18 km (11.2 mi) (Miller 2009, pers. comm.; Walker and Naugle in press, p. 7). This mosquito species is capable of overwinter survival and, therefore, can emerge as infected adults the following spring (Walker and Naugle in press, p. 8 and references therein), thereby decreasing the time for disease cycling (Miller 2009, pers. comm.). This ability may increase the occurrence of this virus at higher elevation populations or where ambient temperatures would otherwise be insufficient to sustain the entire mosquito-virus cycle.

In greater sage-grouse, mortality from WNv occurs at a time of year when survival is otherwise typically high for adult females (Schroeder *et al.* 1999, p.14; Aldridge and Brigham 2003, p. 30), thus potentially making these deaths additive and reducing average annual survival (Naugle *et al.* 2005, p. 621). WNv has been identified as a source of additive mortality in American white pelicans (*Pelecanus erythrorhynchos*) in the northern plains breeding colonies (Montana, North Dakota and South Dakota), and its continued impact has the potential to severely impact the entire pelican population (Sovada *et al.* 2008, p. 1030).

WNv was first detected in 2002 as a cause of greater sage-grouse mortalities in Wyoming (Walker and Naugle in press, p. 15). Data from four studies in the eastern half of the sage-grouse range (Alberta, Montana, and Wyoming; MZ I) showed survival in these populations declined 25 percent in July and August of 2003 as a result of the WNv infection (Naugle *et al.* 2004, p. 711). Populations of sage-grouse that were not affected by WNv showed no similar decline. Additionally, individual sage-grouse in exposed populations were 3.4 times more likely to die during July and August, the peak of WNv occurrence, than birds in non-exposed populations (Connelly *et al.* 2004, p. 10-9; Naugle *et al.* 2004, p. 711). Subsequent declines in both male and female lek attendance in infected areas in 2004 compared with years before WNv suggest outbreaks could contribute to local population extirpation (Walker *et al.* 2004, p. 4). One outbreak near Spotted Horse, Wyoming in 2003 was associated with the subsequent extirpation of the local breeding population, with five leks affected by the disease becoming inactive within 2 years (Walker and Naugle in press, p. 16). Lek surveys in northeastern Wyoming in 2004 indicated that regional sage-grouse populations did not decline, suggesting that the initial effects of WNv were localized (WGFD, unpublished data, 2004b).

Eight sage-grouse deaths resulting from WNv were identified in 2004: four from the Powder River Basin area of northeastern Wyoming and southeastern Montana, one from the northwestern Colorado, near the town of Yampa, and three in California (Naugle *et al.* 2005, p. 618). Fewer other susceptible hosts succumbed to the disease in 2004, suggesting that below average precipitation and summer temperatures may have limited mosquito production and disease transmission rates (Walker and Naugle in press, pp. 16-17). However, survival rates in greater sage-grouse in July and September of that year were consistently lower in areas with confirmed WNv mortalities than those without (avg. 0.86 and 0.96, respectively; Walker and Naugle in press, p. 17). There were no comprehensive efforts to track sage-grouse mortalities outside of these areas, so the actual distribution and extent of WNv in sage-grouse in 2004 is unknown (70 FR 2270).

Mortality rates from WNv in northeastern Wyoming and southeastern Montana (MZ I) were between 2.4 (estimated minimum) and 28.9 percent (estimated maximum) in 2005 (Walker *et al.* 2007b, p. 693). Sage-grouse mortalities also were reported in California, Nevada, Utah, and Alberta, but no mortality rates were calculated (Walker and Naugle in press, p. 17). Mortality rates in 2006 in northeastern Wyoming ranged from 5 to15 percent of radio-marked females (Walker and Naugle in press, p. 17). Mortality rates in South Dakota among radio-marked juvenile sage-grouse ranged between 6.5 and 71 percent in the same year (Kaczor 2008, p. 63). Large sage-grouse mortality events, likely the result of WNv, were reported in the Jordan Valley and near Burns, Oregon (over 60 birds), and in several areas of Idaho and along the Idaho-Nevada border (over 55 birds) (Walker and Naugle in press, p. 18). While most of the carcasses had decomposed and, therefore, were not testable, results for the few that were tested showed that they died from WNv. Mortality rates in these areas were not calculated. However, the hunting season in Owyhee County, Idaho, was closed that year due to the large number of birds that succumbed to the disease (USGS 2006, p. 1; Walker and Naugle in press, p. 18).

In 2007, a WNv outbreak in South Dakota contributed to a 44-percent mortality rate among 80 marked females (Walker and Naugle in press, p. 18). Juvenile mortality rates in 2007 in the same area ranged from 20.8 to 62.5 percent (Kaczor 2008, p. 63), reducing recruitment the subsequent spring by 2 to 4 percent (Kaczor 2008, p. 65). Twenty-six percent of radio-marked females in northeastern Montana died during a 2–week period immediately following the first detection of WNv in mosquito pools. Two of those females were confirmed dead from WNv (Walker and Naugle in press, p. 18). In the Powder River Basin, WNv-related mortality among 85 marked females was between 8 and 21 percent (Walker and Naugle in press, p. 18). A 52-percent decline in the number of males attending leks in North Dakota between 2007 and 2008 also were associated with WNv mortality in 2007 that prompted the State wildlife agency to close the hunting season in 2008 (North Dakota Game and Fish 2008, entire) and 2009 (Robinson 2009, pers. comm.). The Duck Valley Indian Reservation along the border of Nevada and Idaho closed their hunting season in 2006 due to population declines resulting from WNv (Gossett 2008, pers. comm.). WNv is still present in that area, with continued population declines (50.3 percent of average males per lek from 2005 to 2008) (Dick 2008, p. 2), and the hunting season remains closed. The hunting season was closed in most of the adjacent Owyhee County, Idaho for the same reason in both 2008 and 2009 (Dick 2008, pers. comm.; IDFG 2009).

Only Wyoming reported WNv mortalities in sage-grouse in 2008 (Cornish 2009c, pers. comm.). However, with the exceptions of Colorado, California, and Idaho, research on sage-grouse in other States is limited, minimizing the ability to identify mortalities from the disease, or recover infected birds before tissue deterioration precludes testing. Three sage-grouse deaths were confirmed in 2009 in Wyoming (Cornish 2009c, pers. comm.), two in Idaho (Moser 2009, pers. comm.)

and one other is suspected in Utah (Olsen 2009, pers. comm.).

Greater sage-grouse deaths resulting from WNv have been detected in 10 States and 1 Canadian province. To date, no sage-grouse mortality from WNv has been identified in either Washington State or Saskatchewan. However, it is likely that sage-grouse have been infected in Saskatchewan based on known patterns of sage-grouse in infected areas of Montana (Walker and Naugle in press, p. 15). Also, WNv has been detected in other species within the range of greater sage-grouse in Washington (USGS 2009).

In 2005, we reported that there was little evidence that greater sage-grouse can survive a WNv infection (70 FR 2270). This conclusion was based on the lack of sage-grouse found to have antibodies to the virus and from laboratory studies in which all sage-grouse exposed to the virus, at varying doses, died within 8 days or less (70 FR 2270; Clark *et al.* 2006, p. 17). These data suggested that sage-grouse do not develop a resistance to the disease, and death is certain once an individual is exposed (Clark *et al.* 2006, p. 18). However, 6 of 58 females (10.3 percent) birds captured in the spring of 2005 in northeastern Wyoming and southeastern Montana were seropositive for neutralizing antibodies, which suggests they were exposed to the virus the previous fall and survived an infection. Additional, but significantly fewer (2 of 109, or 1.8 percent) seropositive females were found in the spring of 2006 (Walker *et al.* 2007b, p. 693). Of approximately 1,400 serum tests on sage-grouse from South Dakota, Montana, Wyoming and Alberta, only 8 tested positive for exposure to WNv (Cornish 2009dpers. comm.), suggesting that survival is extremely low. Seropositive birds have not been reported from other parts of the species' range (Walker and Naugle in press, p. 20).

The duration of immunity conferred by surviving an infection is unknown (Walker and Naugle in press, p. 20). It also is unclear whether sage-grouse have sub-lethal or residual effects resulting from a WNv infection, such as reduced productivity or overwinter survival (Walker *et al.* 2007b, p. 694). Other bird species infected with WNv have been documented to suffer from chronic symptoms, including reduced mobility, weakness, disorientation, and lack of vigilance (Marra *et al.* 2004, p. 397; Nemeth *et al.* 2006, p. 253), all of which may affect survival, reproduction, or both (Walker and Naugle in press, p. 20). Reduced productivity in American white pelicans has been attributed to WNv (Sovada *et al.* 2008, p.1030).

Several variants of WNv have emerged since the original identification of the disease in the United States in 1999. One variant, termed NY99, has proven to be more virulent than the original virus strain of WNv, increasing the frequency of disease cycling (Miller 2009, pers. comm.). This constant evolution of the virus could limit resistance development in the greater sage-grouse.

Walker and Naugle (in press, pp. 20-24) modeled variability in greater sage-grouse population growth for the next 20 years based on current conditions under three WNv impact scenarios. These scenarios included: (1) no mortalities from WNv; (2) WNv- related mortality based on rates of observed infection and mortality rate data from 2003 to 2007; and (3) WNv-related mortality with increasing resistance to the disease over time. The addition of WNv-related mortality (scenario 2) resulted in a reduction of population growth. The proportion of resistant individuals in the modeled population increased marginally over the 20–year projection periods, from 4 to 15 percent, under the increasing resistance scenario (scenario 3). While this increase in the proportion of resistant individuals did reduce the projected WNv rates, the authors caution that the presence of neutralizing antibodies in the live birds does not always indicate that these birds are actually resistant to infection and disease (Walker and Naugle in press, p. 25).

Additional models predicting the prevalence of WNv suggest that new sources of anthropogenic surface waters (e.g., coal-bed methane discharge ponds), increasing ambient temperatures, and a mosquito parasite that reduces the length of time the virus is present in the vector before the mosquito can spread the virus all suggest the impacts of this disease are likely to increase (Miller 2008, pers. comm.). However, the extent to which this will occur, and where, is unclear and difficult to predict because several conditions that support the WNv cycle must coincide for an outbreak to occur.

Human-created water sources in sage-grouse habitat known to support breeding mosquitoes that transmit WNv include overflowing stock tanks, stock ponds, irrigated agricultural fields, and coal-bed natural gas discharge ponds (Zou *et al.* 2006, p. 1035). For example, from 1999 through 2004, potential mosquito habitats in the Powder River Basin of Wyoming and Montana increased 75 percent (619 ha to 1084.5 ha; 1259 ac to 2680) primarily due to the increase of small coal-bed natural gas water discharge ponds (Zou *et al.* 2006, p. 1034). Additionally, water developments installed in arid sagebrush landscapes to benefit wildlife continue to be common. Several scientists have expressed concern regarding the potential for exacerbating WNv persistence and spread due to the proliferation of surface water features (e.g., Friend *et al.*, 2001, p. 298; Zou *et al.* 2006, p.1040; Walker *et al.* 2007b, p. 695; Walker and Naugle in press, p. 27). Walker *et al.* (2007a, p. 694) concluded that impacts from WNv will depend less on resistance to the disease than on temperatures and changes in vector distribution. Zou *et al.* (2006, p. 1040) cautioned that the continuing development of coal-bed natural gas facilities in Wyoming and Montana contributes to maintaining, and possibly increasing WNv on that landscape through the maintenance and proliferation of surface water.

The long-term response of different sage-grouse populations to WNv infections is expected to vary markedly depending on factors that influence exposure and susceptibility, such as temperature, land uses, and sage-grouse population size (Walker and Naugle in press, p. 25). Small, isolated, or genetically limited populations are at higher risk as an infection may reduce population size below a threshold where recovery is no longer possible, as observed with the extirpated population near Spotted Horse, Wyoming (Walker and Naugle in press, p. 25). Larger populations may be able to absorb impacts resulting from WNv as long as the quality and extent of available habitat supports positive population growth (Walker and Naugle in press, p. 25). However, impacts from this disease may act synergistically with other stressors resulting in reduction of population size, bird distribution, or persistence (Walker *et al.* 2007a, p. 2652). WNv persists on the landscape after it first occurs as an epizootic, suggesting this virus will remain a long-term issue in affected areas (McLean 2006, p. 50).

Proactive measures to reduce the impact of WNv on greater sage-grouse have been limited and are typically economically prohibitive. Fowl vaccines used on captive sage-grouse were largely ineffective (mortality rates were reduced from 100 to 80 percent in five birds) (Clark *et al.* 2006, p. 17; Walker and Naugle in press, p. 27). Development of a sage-grouse specific vaccine would require a market incentive and development of an effective delivery mechanism for large numbers of birds. Currently, the delivery mechanism is

via intramuscular injection (Marra *et al.* 2004, p. 399; Walker and Naugle in press, p. 27), which is not feasible for wild populations. Vaccinations would likely only benefit the individuals receiving the vaccine, and not their offspring, so vaccination would have to occur on an annual basis (Walker and Naugle in press, p. 27, and references therein).

Mosquito production from human-created water sources could be minimized if water produced during coal-bed natural gas development were re-injected rather than discharged to the surface (Doherty 2007, p. 81). Mosquito control programs for reducing the number of adult mosquitoes may reduce the risk of WNv, but only if such methods are consistently and appropriately implemented (Walker and Naugle in press, p. 28). Many coal-bed natural gas companies in northeastern Wyoming (MZ I) have identified use of mosquito larvicides in their management plans (Big Horn Environmental Consultants in litt., 2009, p. 3). However, we could find no information on the actual use of the larvicides or their effectiveness. One experimental treatment in the area did report that mosquito larvae numbers were less in ponds treated with larvicides than those that were not (Big Horn Environmental Consultants in litt., 2009, pp. 5-7) but statistical analyses were not conducted. While none of the sage-grouse mortalities in the treated areas were due to WNv (Big Horn Environmental Consultants 2009, p.3), the study design precluded actual cause and effect analyses; therefore, the results are inconclusive. The benefits of mosquito control in potentially reducing the incidence of WNv in sage-grouse need to be considered in light of the potential detrimental or cascading ecological effects of widespread spraying (Marra *et al.* 2004, p. 401).

Small populations, such as the Columbia Basin area in Washington State or the subpopulations within the Bi-State area along the California and Nevada border also may be at high risk of extirpation simply due to their low population numbers and the additive mortality WNv causes (Christiansen and Tate, in press, p. 21). Larger populations may be better able to sustain losses from WNv (Walker and Naugle in press, p. 25) simply due to their size. However, as other impacts to grouse and their habitats described under Factor A affect these areas, these secure areas or sage-grouse "refugia" also may be at risk (e.g., southwestern Wyoming, south-central Oregon). Existing and developing models suggest that the occurrence of WNv is likely to increase throughout the range of the species into the future.

Summary of Disease

Although greater sage-grouse are host to a wide variety of diseases and parasites, few have resulted in population effects, with the exception of WNv. Many large losses from bacterial and coccidial infections have resulted when large groups of grouse were restricted to limited habitats, such as springs and seeps in the late summer. If these habitats become restricted due to habitat losses and degradation, or changes in climate, these easily transmissible diseases may become more prevalent. Sub-lethal effects of these disease and parasitic infections on sage-grouse have never been studied, and, therefore, are unknown.

Substantial new information on WNv and impacts on the greater sage-grouse has emerged since we completed our finding in 2005. The virus is now distributed throughout the species' range, and affected sage-grouse populations experience high mortality rates with resultant, often large reductions in local population numbers. Infections in northeastern Wyoming, southeastern Montana, and the Dakotas seem to be the most persistent, with mortalities recorded in that area every year since WNv was first detected in sage-grouse. Limited information suggests that sage-grouse may be able to survive an infection; however, because of the apparent low level of immunity and continuing changes within the virus, widespread resistance is unlikely.

There are few regular monitoring efforts for WNv in greater sage-grouse; most detection is the result of research with radio-marked birds, or the incidental discovery of large mortalities. In Saskatchewan, where the greater sage-grouse is listed as an endangered species, no monitoring for WNv occurs (McAdams 2009, pers. comm.). Without a comprehensive monitoring program, the extent and effects of this disease on greater sage-grouse rangewide cannot be determined. However, it is clear that WNv is persistent throughout the range of the greater sage-grouse, and is likely a locally significant mortality factor. We anticipate that WNv will persist within sage-grouse habitats indefinitely, and will remain a threat to greater sage-grouse until they develop a resistance to the virus.

The most significant environmental factors affecting the persistence of WNv within the range of sage-grouse are ambient temperatures and surface water abundance and development. The continued development of anthropogenic sources of warm standing water throughout the range of the species will likely increase the prevalence of the virus in sage-grouse, as predicted by Walker and Naugle (in press, pp. 20-24; see discussion above). Areas with intensive energy development may be at a particularly high risk for continued WNv mortalities due to the development of surface water features, and the continued loss and fragmentation of habitats (see discussion of energy development above). Resultant changes in temperature as a result of climate change also may exacerbate the prevalence of WNv and thereby impacts on greater sage-grouse unless they develop resistance to the virus.

With the exception of WNv, we could find no evidence that disease is a concern with regard to sage-grouse persistence across the species' range. WNv is a significant mortality factor for greater sage-grouse when an outbreak occurs, given the bird's lack of resistance and the continued proliferation of water sources throughout the range of the species. However, a complex set of environmental and biotic conditions that support the WNv cycle must coincide for an outbreak to occur. Currently the annual patchy distribution of the disease is keeping the impacts at a minimum. The prevalence of this disease is likely to increase across the species' range.

We find that the threat of disease is not significant to the point that the greater sage-grouse warrants listing under the Act as threatened or endangered at this time.

Predation

Predation is the most commonly identified cause of direct mortality for sage-grouse during all life stages (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; Connelly *et al.* in press a, p. 23). However, sage-grouse have co-evolved with a variety of predators, and their cryptic plumage and behavioral adaptations have allowed them to persist despite this mortality factor (Schroeder *et al.* 1999, p. 10; Coates 2008 p. 69; Coates and Delehanty 2008, p. 635; Hagen in press, p. 3). Until recently, there has been little published information that indicates predation is a limiting factor for the greater sage-grouse (Connelly *et al.* 2004, p. 10-1), particularly where habitat quality has not been compromised (Hagen in press, p. 3). Although many predators will consume sage-grouse, none specialize on the species (Hagen in press, p. 5). However, generalist predators have the greatest effect on ground nesting birds because

predator numbers are independent of prey density (Coates 2007, p. 4).

Major predators of adult sage-grouse include many species of diurnal raptors (especially the golden eagle), red foxes, and bobcats (*Lynx rufus*) (Hartzler 1974, pp. 532-536; Schroeder *et al.* 1999, pp. 10-11; Schroeder and Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen in press, pp. 4-5). Juvenile sage-grouse also are killed by many raptors as well as common ravens, badgers (*Taxidea taxus)*, red foxes, coyotes and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows, and magpies (*Pica* spp.). Elk (Holloran and Anderson 2003, p.309) and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425-426), have been observed to eat sage-grouse eggs. Ground squirrels (*Spermophilus* spp.) also have been identified as nest predators (Patterson 1952, p. 107; Schroeder *et al.* 1999, p. 10; Schroeder and Baydack 2001, p. 25), but recent data show that they are physically incapable of puncturing eggs (Holloran and Anderson 2003, p 309; Coates *et al.* 2008, p 426; Hagen in press, p. 6). Several other small mammals visited sage-grouse nests monitored by videos in Nevada, but none resulted in predation events (Coates *et al.* 2008, p. 425). Great Basin gopher snakes (*Pituophis catenifer deserticola*) were observed at nests, but no predation occurred.

Adult male greater sage-grouse are very susceptible to predation while on the lek (Schroeder *et al.* 1999, p. 10; Schroeder and Baydack 2000, p. 25; Hagen in press, p. 5), presumably because they are very conspicuous while performing their mating displays. Because leks are attended daily by numerous birds, predators also may be attracted to these areas during the breeding season (Braun 1995). Connelly *et al.* (2000b, p.228) found that among 40 radio-collared males, 83 percent of the mortality was due to predation and 42 percent of those mortalities occurred during the lekking season (March through June). Adult female greater sage-grouse are susceptible to predators while on the nest but mortality rates are low (Hagen in press, p. 6). Hens will abandon their nest when disturbed by predators (Patterson 1952, p. 110), likely reducing this mortality (Hagen in press, p. 6). Connelly *et al.* (2000b, p. 228) found that among 77 radio-collared adult hens that died, 52 percent of the mortality was due to predation, and 52 percent of those mortalities occurred between March and August, which includes the nesting and brood-rearing periods. Because sage-grouse are highly polygynous with only a few males breeding per year, sage-grouse populations are likely more sensitive to predation upon females. Predation of adult sage-grouse is low outside the lekking, nesting, and brood-rearing season (Connelly *et al.* 2000b, p. 230; Naugle *et al.* 2004, p. 711; Moynahan *et al.* 2006, p. 1536; Hagen in press, p. 6).

Estimates of predation rates on juveniles are limited due to the difficulties in studying this age class (Aldridge and Boyce 2007, p. 509; Hagen in press, p.8). Chick mortality from predation ranged from 27 percent to 51 percent in 2002 and 10 percent to 43 percent in 2003 on three study sites in Oregon (Gregg *et al.* 2003a, p. 15; 2003b, p. 17). Mortality due to predation during the first few weeks after hatching was estimated to be 82 percent (Gregg *et al.* 2007, p. 648). Based on partial estimates from three studies, Crawford *et al.* (2004, p. 4 and references therein) reported survival of juveniles to their first breeding season was low, approximately 10 percent, and predation was one of several factors they cited as affecting juvenile survival. However, Connelly *et al*, (in press a, p. 19) point out that the estimate of 10 percent survival of juveniles likely is biased low, as at least two of the four studies that were the basis of this estimate were from areas with fragmented or otherwise marginal habitat.

Sage-grouse nests are subject to varying levels of predation. Predation can be total (all eggs destroyed) or partial (one or more eggs destroyed). However, hens abandon nests in either case (Coates, 2007, p. 26). Gregg *et al.* (1994, p. 164) reported that over a 3–year period in Oregon, 106 of 124 nests (84 percent) were preyed upon (Gregg *et al.* 1994, p. 164). Non-predated nests had greater grass and forb cover than predated nests. Patterson (1952, p.104) reported nest predation rates of 41 percent in Wyoming. Holloran and Anderson (2003, p. 309) reported a predation rate of 12 percent (3 of 26) in Wyoming. In a 3–year study involving four study sites in Montana, Moynahan *et al.* (2007, p. 1777) attributed 131 of 258 (54 percent) of nest failures to predation in Montana, but the rates may have been inflated by the study design (Connelly *et al.* in press a, p. 17). Re-nesting efforts may compensate for the loss of nests due to predation (Schroeder 1997, p. 938), but re-nesting rates are highly variable (Connelly *et al.* in press a, p. 16). Therefore, re-nesting is unlikely to offset losses due to predation. Losses of breeding hens and young chicks to predation potentially can influence overall greater sage-grouse population numbers, as these two groups contribute most significantly to population productivity (Baxter *et al.* 2008, p. 185; Connelly *et al*, in press a, p. 18).

Nesting success of greater sage-grouse is positively correlated with the presence of big sagebrush and grass and forb cover (Connelly *et al.* 2000, p. 971). Females actively select nest sites with these qualities (Schroeder and Baydack 2001, p. 25; Hagen *et al.* 2007, p. 46). Nest predation appears to be related to the amount of herbaceous cover surrounding the nest (Gregg *et al.* 1994, p. 164; Braun 1995; DeLong *et al.* 1995, p. 90; Braun 1998; Coggins 1998, p. 30; Connelly *et al.* 2000b, p. 975; Schroeder and Baydack 2001, p. 25; Coates and Delehanty 2008, p. 636). Loss of nesting cover from any source (e.g., grazing, fire) can reduce nest success and adult hen survival. However, Coates (2007, p. 149) found that badger predation was facilitated by nest cover as it attracts small mammals, a badger's primary prey. Similarly, habitat alteration that reduces cover for young chicks can increase their rate of predation (Schroeder and Baydack 2001, p. 27).

In a review of published nesting studies, Connelly *et al.* (in press a, p. 17) reported that nesting success was greater in unaltered habitats versus altered habitats. Where greater sage-grouse habitat has been altered, the influx of predators can decrease annual recruitment into a population (Gregg *et al.* 1994, p. 164; Braun 1995; Braun 1998; DeLong *et al.* 1995, p. 91; Schroeder and Baydack 2001, p. 28; Coates 2007, p. 2; Hagen in press, p. 7). Ritchie *et al.* (1994, p. 125), Schroeder and Baydack (2001, p. 25), Connelly *et al.* (2004, p. 7-23), and Summers *et al.* (2004, p. 523) have reported that agricultural development, landscape fragmentation, and human populations have the potential to increase predation pressure on all life stages of greater sage-grouse by forcing birds to nest in less suitable or marginal habitats, increasing travel time through habitats where they are vulnerable to predation, and increasing the diversity and density of predators.

Abundance of red fox and corvids, which historically were rare in the sagebrush landscape, has increased in association with human-altered landscapes (Sovada *et al.* 1995, p. 5). In the Strawberry Valley of Utah, low survival of greater sage-grouse may have been due to an unusually high density of red foxes, which apparently were attracted to that area by anthropogenic activities (Bambrough *et al.* 2000). Ranches, farms, and housing

developments have resulted in the introduction of nonnative predators including domestic dogs (*Canis domesticus*) and cats (*Felis domesticus*) into greater sage-grouse habitats (Connelly *et al.* 2004, p. 7-23). Local attraction of ravens to nesting hens may be facilitated by loss and fragmentation of native shrublands, which increases exposure of nests to potential predators (Aldridge and Boyce 2007, p. 522; Bui 2009, p. 32). The presence of ravens was negatively associated with grouse nest and brood fate (Bui 2009, p. 27).

Raven abundance has increased as much as 1500 percent in some areas of western North America since the 1960s (Coates and Delehanty 2010, p. 244 and references therein). Human-made structures in the environment increase the effect of raven predation, particularly in low canopy cover areas, by providing ravens with perches (Braun 1998, pp.145-146; Coates 2007, p. 155; Bui 2009, p. 2). Reduction in patch size and diversity of sagebrush habitat, as well as the construction of fences, powerlines, and other infrastructure also are likely to encourage the presence of the common raven (Coates *et al.* 2008, p. 426; Bui 2009, p. 4). For example, raven counts have increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada (Atamian *et al.* 2007, p. 2). Ravens contributed to lek disturbance events in the areas surrounding the transmission line (Atamian *et al.* 2007, p. 2), but as a cause of decline in surrounding sage-grouse population numbers, it could not be separated from other potential impacts, such as WNv.

Holloran (2005, p. 58) attributed increased sage-grouse nest depredation to high corvid abundances, which resulted from anthropogenic food and perching subsidies in areas of natural gas development in western Wyoming. Bui (2009, p. 31) also found that ravens used road networks associated with oil fields in the same Wyoming location for foraging activities. Holmes (unpubl. data) also found that common raven abundance increased in association with oil and gas development in southwestern Wyoming. The influence of synanthropic predators in the Wyoming Basin is important as this area has one of the few remaining clusters of sagebrush landscapes and the most highly connected network of sage-grouse leks (Knick and Hanser in press, p.18). Raven abundance was strongly associated with sage-grouse nest failure in northeastern Nevada, with resultant negative effects on sage-grouse reproduction (Coates 2007, p. 130). The presence of high numbers of predators within a sage-grouse nesting area may negatively affect sage-grouse productivity without causing direct mortality. Coates (2007, p. 85-86) suggested that ravens may reduce the time spent off the nest by female sage-grouse, thereby potentially compromising their ability to secure sufficient nutrition to complete the incubation period.

As more suitable grouse habitat is converted to oil fields, agriculture and other exurban development, grouse nesting and brood-rearing become increasingly spatially restricted (Bui 2009, p. 32). High nest densities which result from habitat fragmentation or disturbance associated with the presence of edges, fencerows, or trails may increase predation rates by making foraging easier for predators (Holloran 2005, p. C37). In some areas even low but consistent raven presence can have a major impact on sage-grouse reproductive behavior (Bui 2009, p. 32). Leu and Hanser (in press, pp. 24-25) determined that the influence of the human footprint in sagebrush ecosystems may be underestimated due to varying quality of spatial data. Therefore, the influence of ravens and other predators associated with human activities may be under-estimated.

Predator removal efforts have sometimes shown short-term gains that may benefit fall populations, but not breeding population sizes (Cote and Sutherland 1997, p. 402; Hagen in press, p. 9; Leu and Hanser in press, p. 27). Predator removal may have greater benefits in areas with low habitat quality, but predator numbers quickly rebound without continual control (Hagen in press, p. 9). Red fox removal in Utah appeared to increase adult sage-grouse survival and productivity, but the study did not compare these rates against other non-removal areas, so inferences are limited (Hagen in press, p. 11). Slater (2003, p. 133) demonstrated that coyote control failed to have an effect on greater sage-grouse nesting success in southwestern Wyoming. However, coyotes may not be an important predator of sage-grouse. In a coyote prey base analysis, Johnson and Hansen (1979, p. 954) showed that sage-grouse and bird egg shells made up a very small percentage (0.4-2.4 percent) of analyzed scat samples. Additionally, coyote removal can have unintended consequences resulting in the release of mesopredators, many of which, like the red fox, may have greater negative impacts on sage-grouse (Mezquida *et al.* 2006, p. 752). Removal of ravens from an area in northeastern Nevada caused only short-term reductions in raven populations (less than 1 year) as apparently transient birds from neighboring sites repopulated the removal area (Coates 2007, p. 151). Additionally, badger predation appeared to partially compensate for decreases in raven removal (Coates 2007, p. 152). In their review of literature regarding predation, Connelly *et al.* (2004, p. 10-1) noted that only two of nine studies examining survival and nest success indicated that predation had limited a sage-grouse population by decreasing nest success, and both studies indicated low nest success due to predation was ultimately related to poor nesting habitat. Bui (2009, pp. 36-37) suggested removal of anthropogenic subsidies (e.g., landfills, tall structures) may be an important step to reducing the presence of sage-grouse predators. Leu and Hanser (in press, p. 27) also argue that reducing the effects of predation on sage-grouse can only be effectively addressed by precluding these features.

Summary of Predation

Greater sage-grouse are adapted to minimize predation by cryptic plumage and behavior. Because sage-grouse are prey, predation will continue to be an effect on the species. Where habitat is not limited and is of good quality, predation is not a threat to the persistence of the species. However, sage-grouse may be increasingly subject to levels of predation that would not normally occur in the historically contiguous unaltered sagebrush habitats. The impacts of predation on greater sage-grouse can increase where habitat quality has been compromised by anthropogenic activities (such as exurban development, road development) (e.g. Coates 2007, p. 154, 155; Bui 2009, p. 16; Hagen in press, p. 12). Landscape fragmentation, habitat degradation, and human populations have the potential to increase predator populations through increasing ease of securing prey and subsidizing food sources and nest or den substrate. Thus, otherwise suitable habitat may change into a habitat sink for grouse populations (Aldridge and Boyce 2007, p. 517). Anthropogenic influences on sagebrush habitats that increase suitability for ravens may limit sage-grouse populations (Bui 2009, p. 32). Current land-use practices in the intermountain West favor high predator (in particular, raven) abundance relative to historical numbers (Coates *et al.* 2008, p. 426). The interaction between changes in habitat and predation may have substantial effects at the landscape level (Coates 2007, p. 3).

The studies presented here suggest that, in areas of intensive habitat

alteration and fragmentation, sage-grouse productivity and, therefore, populations could be negatively affected by increasing predation. Predators could already be limiting sage-grouse populations in southwestern Wyoming and northeastern Nevada (Coates 2007, p. 131; Bui 2009, p. 33).

The influence of synanthropic predators in southwestern Wyoming may be particularly significant as this area has one of the few remaining sagebrush landscapes and the most highly connected network of sage-grouse leks (Wisdom *et al.* in press, p. 24). Unfortunately, except for the few studies presented here, data are lacking that definitively link sage-grouse population trends with predator abundance. However, where habitats have been altered by human activities, we believe that predation could be limiting local sage-grouse populations. As more habitats face development, even dispersed development, we expect the risk of increased predation to spread, possibly with negative effects on the sage-grouse population trends. Studies of the effectiveness of predator control have failed to demonstrate an inverse relationship between the predator numbers and sage-grouse nesting success or populations numbers.

Except in localized areas where habitat is compromised, we found no evidence to suggest predation is limiting greater sage-grouse populations. However, landscape fragmentation is likely contributing to increased predation on this species.

Summary of Factor C

With regard to disease, the only concern is the potential effect of WNv. This disease is distributed throughout the species' range and affected sage-grouse populations experience high mortality rates (near 100 percent lethality), with resultant reductions in local population numbers. Risk of exposure varies with factors such as elevation, precipitation regimes, and temperature. The continued development of anthropogenic water sources throughout the range of the species, some of which are likely to provide suitable conditions for breeding mosquitoes that are part of the WNv cycle, will likely increase the prevalence of the virus in sage-grouse. We anticipate that WNv will persist within sage-grouse habitats indefinitely and may be exacerbated by factors (e.g., climate change) that increase ambient temperatures and the presence of the vector on the landscape. The occurrence of WNv occurrence is sporadic across the species' range, and a complex set of environmental and biotic conditions that support the WNv cycle must coincide for an outbreak to occur.

Where habitat is not limited and is of good quality, predation is not a significant threat to the species. We are concerned that continued landscape fragmentation will increase the effects of predation on this species, potentially resulting in a reduction in sage-grouse productivity and abundance in the future. However, there is very limited information on the extent to which such effects might be occurring. Studies of the effectiveness of predator control have failed to demonstrate an inverse relationship between the predator numbers and sage-grouse nesting success or population numbers, i.e., predator removal activities have not resulted in increased populations. Mortality due to nest predation by ravens or other human-subsidized predators is increasing in some areas, but there is no indication this is causing a significant rangewide decline in population trends. Based on the best scientific and commercial information available, we conclude that predation is not a significant threat to the species such that the species requires listing under the Act as threatened or endangered.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether threats to the greater sage-grouse are adequately addressed by existing regulatory mechanisms. Existing regulatory mechanisms that could provide some protection for greater sage-grouse include: (1) local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Regulatory mechanisms, if they exist, may preclude listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted. Conversely, threats on the landscape are exacerbated when not addressed by existing regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced).

Local Land Use Laws, Processes, and Ordinances

Approximately 31 percent of the sagebrush habitats within the sage-grouse MZs are privately owned (Table 3; Knick in press, p. 39) and are subject only to local regulations unless Federal actions are associated with the property (e.g., wetland modification, Federal subsurface owner). We conducted extensive internet searches and contacted State and local working group contacts from across the range of the species to identify local regulations that may provide protection to the greater sage-grouse. We identified only one regulation at the local level that specifically addresses sage-grouse. Washington County, Idaho, Planning and Zoning has developed a draft Comprehensive Plan which states that "Sage Grouse leks...and a buffer around those leks, shall be protected from the disruption of development" (Washington County, 2009, p. 27). As this plan is still incomplete, and the final buffer distance has not been identified, it cannot currently provide the necessary regulatory provisions to be considered further. Sage-grouse were mentioned in other county and local plans across the range, and some general recommendations were made regarding effects to sage-grouse associated with land uses. However, we could find no other examples of county-planning and enforceable zoning regulations specific to sage-grouse.

State Laws and Regulations

State laws and regulations may impact sage-grouse conservation by providing specific authority for sage-grouse conservation over lands which are directly owned by the State; providing broad authority to regulate and protect wildlife on all lands within their borders; and providing a mechanism for indirect conservation through regulation of threats to the species (e.g. noxious weeds).

In general, States have broad authority to regulate and protect wildlife within their borders. All State wildlife agencies across the range of the species manage greater sage-grouse as resident native game birds except for Washington (Connelly *et al.* 2004, p. 6-3). In Washington, the species has been listed as a State-threatened species since 1998 and is managed in accordance with the State's provisions for such species (Stinson *et al.* 2004, p. 1). For example, killing greater sage-grouse is banned in Washington, and State-owned agricultural and grazing lands must adhere to standards regarding upland plant and vegetative community health that protect habitat for the species (Stinson *et al.* 2004, p. 55). However, lands owned by the Washington Department of Natural Resources continue to be converted from sagebrush habitat to croplands (Stinson *et al.* 2004, p. 55), which results in a loss of habitat for sage-grouse. Therefore, the provisions to protect sage-grouse in this State do not provide adequate protections for us to consider.

All States across the range of greater sage-grouse have laws and regulations

that identify the need to conserve wildlife populations and habitat, including greater sage-grouse (Connelly *et al.* 2004, p. 2-22-11). As an example, in Colorado, "wildlife and their environment" are to be protected, preserved, enhanced and managed (Colorado Revised Statutes, Title 33, Article 1–101 in Connelly *et al.* 2004, p. 2-3). Laws and regulations in Oregon, Idaho, South Dakota, and California have similar provisions (Connelly *et al.* 2004, pp. 2-2 to 2-4, 2-6 to 2-8). However, these laws and regulations are general in nature and have not provided the protection to sage-grouse habitat necessary to protect the species from the threats described in Factor A above.

All of the states within the range of the sage-grouse have state school trust lands that they manage for income to support their schools. With the exception of Wyoming (see discussion below), none of the states have specific regulations to ensure that the management of the state trust lands is consistent with the needs of sage-grouse. Thus there are currently no regulatory mechanisms on state trust lands to ensure conservation of the species.

On September 26, 2008, the Governor of Nevada signed an executive order calling for the preservation and protection of sage-grouse habitat in the State of Nevada. The executive order directs the NDOW to "continue to work with state and federal agencies and the interested public" to implement the Nevada sage-grouse conservation plan. The executive order also directs other State agencies to coordinate with the NDOW in these efforts. Although directed specifically at sage-grouse conservation, the executive order is broadly worded and does not outline specific measures that will be undertaken to reduce threats and ensure conservation of sage-grouse in Nevada.

The California Environmental Quality Act (CEQA) (Public Resources Code sections 21000–21177), requires full disclosure of the potential environmental impacts of projects proposed in the State of California. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Under these guidelines sage-grouse are given the same protection as those species that are officially listed within the State. However, the lead agency for the proposed project has the discretion to decide whether to require mitigation for resource impacts, or to determine that other considerations, such as social or economic factors, make mitigation infeasible (CEQA section 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species, their habitat, or their continued existence. Therefore, protection of listed species through CEQA is dependent upon the discretion of the agency involved, and cannot be considered adequate protection for sage-grouse.

In Wyoming, the Governor issued an executive order on August 1, 2008, mandating special management for all State lands within sage-grouse "Core Population Areas" (State of Wyoming 2008, entire). Core Population Areas are important breeding areas for sage-grouse in Wyoming as identified by the Wyoming "Governor's Sage-Grouse Implementation Team." In addition to identifying Core Population Areas, the Team also recommended stipulations that should be placed on development activities to ensure that existing habitat function is maintained within those areas. Accordingly, the executive order prescribes special consideration for sage-grouse, including authorization of new activities only when the project proponent can identify that the activity will not cause declines in greater sage-grouse populations, in the Core Population Areas. These protections will apply to slightly less than 23 percent of all sage-grouse habitats in Wyoming, but account for approximately 80 percent of the total estimated sage-grouse breeding population in the State. In February 2010, the Wyoming State Legislature adopted a joint resolution endorsing Wyoming's core area strategy as outlined in the Governor' Executive Order 2008-2.

On August 7, 2008, the Wyoming Board of Land Commissioners approved the application of the Implementation Team's recommended stipulations to all new development activities on State lands within the Core Population Areas. These actions provide substantial regulatory protection for sage-grouse in previously undeveloped areas on Wyoming State lands. However, as they only apply to State lands, which are typically single sections scattered across the State, the benefit to sage-grouse is limited.

The executive order also applies to all activities requiring permits from the Wyoming's Industrial Siting Council (ISC), including wind power developments on all lands regardless of ownership in the State of Wyoming. Developments outside of State land and not required to receive an ISC permit (primarily developments that do not reach a certain economic threshold) will not be required to follow the stipulations. The application of the Governor's order to the Wyoming ISC has the potential to provide significant regulatory protection for sage-grouse from adverse effects associated with wind development (see Energy, Factor A) and other developments.

There is still some uncertainty regarding what protective stipulations will be applied to wind siting applications. The State of Wyoming has indicated that it will enforce the Executive Order where applicable, and on August 7, 2009, the Wyoming State Board of Land Commissioners voted to withdraw approximately 400,000 ha (approximately 1 million ac) of land within the sage-grouse core areas from potential wind development (State of Wyoming 2008, entire). The withdrawal order states that "there is no published research on the specific impacts of wind energy on sage-grouse," and further states that permitting for wind development should require data collection on the potential effects of wind on sage-grouse. This action demonstrates a significant action in the State of Wyoming to address future development activities in core areas.

Wyoming's executive order does allow oil and gas leases on State lands within core areas, provided those developments adhere to required protective stipulations, which are consistent with published literature (e.g. 1 well pad per section). The Service believes that the core area strategy proposed by the State of Wyoming in Executive Order 2008-2, if implemented by all landowners via -regulatory mechanisms, would provide adequate protection for sage-grouse and their habitat in that State.

The protective measures associated with the Governor's order do not extend to lands located outside the identified core areas but still within occupied sage-grouse habitat. Where a siting permit is needed, the application is *de facto* applied to all landownerships as the Wyoming ISC cannot issue a permit without the protective stipulations in place. In non-core areas, the minimization measures would be implemented that are intended to maintain habitat conditions such that there is a 50 percent likelihood that leks will persist over time (WGFD 2009, pp. 30-35). This approach may result in adverse effects to sage-grouse and their habitats outside of the core areas (WGFD 2009, pp. 32-35).

The Wyoming executive order states that current management and existing land uses within the core areas should be recognized and respected, thus we anticipate ongoing adverse effects

associated with those activities. The Service is working in collaboration with the State of Wyoming Sage Grouse Implementation team and other entities to continue to review and refine ongoing activities in the core areas, as well as the size and location of the core areas themselves to ensure the integrity and purpose of the core area approach is maintained. Although this strategy provides excellent potential for meaningful conservation of sage-grouse, it has yet to be fully implemented. We believe that when fully realized, this effort could ameliorate some threats to the greater sage-grouse.

On April 22, 2009, the Governor of Colorado signed into law new rules for the Colorado Oil and Gas Conservation Commission (COGCC), which is the entity responsible for permitting oil and gas well development in Colorado (COGCC 2009, entire). The rules went into effect on private lands on April 1, 2009, and on Federal lands July 1, 2009. The new rules require that permittees and operators determine whether their proposed development location overlaps with "sensitive wildlife habitat," or is within restricted surface occupancy (RSO) Area. For greater sage-grouse, areas within 1 km (0.6 mi) of an active lek are designated as RSOs, and surface area occupancy will be avoided except in cases of economic or technical infeasibility (CDOW, 2009, p. 12). Areas within approximately 6.4 km (4 mi) of an active lek are considered sensitive wildlife habitat (CDOW, 2009, p. 13) and the development proponent is required to consult with the CDOW to identify measures to (1) avoid impacts on wildlife resources, including sage-grouse; (2) minimize the extent and severity of those impacts that cannot be avoided; and (3) mitigate those effects that cannot be avoided or minimized (COGCC 2009, section 1202.a).

The COGCC will consider CDOW's recommendations in the permitting decision, although the final permitting and conditioning authority remains with COGCC. Section 1202.d of the new rules does identify circumstances under which the consultation with CDOW is not required; other categories for potential exemptions also can be found in the new rules (e.g., 1203.b). The new rules will inevitably provide for greater consideration of the conservation needs of the species, but the potential decisions, actions, and exemptions can vary with each situation, and consequently there is substantial uncertainty as to the level of protection that will be afforded to greater sage-grouse. It should be noted that leases that have already been approved but not drilled (e.g., COGCC 2009, 1202.d(1)), or drilling operations that are already on the landscape, may continue to operate without further restriction into the future.

Some States require landowners to control noxious weeds, a habitat threat to sage-grouse on their property, but the types of plants considered to be noxious weeds vary by State. For example, only Oregon, California, Colorado, Utah, and Nevada list *Taeniatherum asperum* as a noxious, regulated weed, but *T. asperum* is problematic in other States (e.g., Washington, Idaho). Colorado is the only western State that officially lists *Bromus tectorum* as a noxious weed (USDA 2009), but *B. tectorum* is invasive in many more States. These laws may provide some protection for sage-grouse in areas, although large-scale control of the most problematic invasive plants is not occurring, and rehabilitation and restoration techniques are mostly unproven and experimental (Pyke in press, p. 25).

State-regulated hunting of sage-grouse is permitted in all States except Washington, where the season has been closed since 1988 (Connelly *et al.* 2004, p. 6-3). In States where hunting sage-grouse is allowed, harvest levels can be adjusted annually, and the season and limits are largely based on trend data gathered from spring lek counts and previous harvest data. Management of hunting season length and bag limits varies widely between States (see discussion of hunting regulations in Factor B). States maintain flexibility in hunting regulations through emergency closures or season changes in response to unexpected events that affect local populations. For example, in areas where populations are in decline or threats such as WNv have emerged, some States have implemented harvest reductions or closures. There have not been any studies demonstrating that hunting is the primary cause of population declines in sage-grouse. Hunting regulations provide adequate protection for the birds (see discussion under Factor B), but do not protect the habitat. Therefore, the protection afforded through this regulatory mechanism is limited.

Federal Laws and Regulations

Because it is not considered to be a migratory species, the greater sage-grouse is not covered by the provisions of the Migratory Bird Treaty Act (16 U.S.C. 703-712). However, several Federal agencies have other legal authorities and requirements for managing sage-grouse or their habitat. Federal agencies are responsible for managing approximately 64 percent of the sagebrush habitats within the sage-grouse MZs in the United States (Knick in press, p. 39, Table 3). Two Federal agencies with the largest land management authority for sagebrush habitats are the BLM and USFS. The U.S. Department of Defense (DOD), DOE, and other agencies in DOI have responsibility for lands and/or decisions that involve less than 5 percent of greater sage-grouse habitat (Table 3).

Bureau of Land Management

Knick (in press, p. 39, Table 3) estimates that about 51 percent of sagebrush habitat within the sage-grouse MZs is BLM-administered land; this includes approximately 24.9 million ha (about 61.5 million ac). The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM-administered lands, and directs development and implementation of Resource Management Plans (RMPs) which direct management at a local level. The greater sage-grouse is designated as a sensitive species on BLM lands across the species' range (Sell 2010, pers comm.). The management guidance afforded species of concern under BLM Manual 6840 – Special Status Species Management (BLM 2008f) states that "Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA" (BLM 2008f, p. .05V). BLM Manual 6840 further requires that RMPs should address sensitive species, and that implementation "should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary" (BLM 2008f, p. 2A1). As a designated sensitive species under BLM Manual 6840, sage-grouse conservation must be addressed in the development and implementation of RMPs on BLM lands.

RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They authorize and establish allowable resource uses, resource condition goals and objectives to be attained, program constraints, general management practices needed to attain the goals and objectives, general implementation sequences, intervals and standards for monitoring and evaluating RMPs to determine effectiveness, and the need for amendment or revision (43 CFR 1601.0-5(k)). The RMPs also provide a

framework and programmatic direction for implementation plans, which are site-specific plans written to regulate decisions made in a RMP. Examples include allotment management plans (AMPs) that address livestock grazing, oil and gas field development, travel management, and wildlife habitat management. Implementation plan decisions normally require additional planning and NEPA analysis.

Of the existing 92 RMPs that include sage-grouse habitat, 82 contain specific measures or direction pertinent to management of sage-grouse or their habitats (BLM 2008g, p. 1). However, the nature of these measures and direction vary widely, with some measures directed at a particular land use category (e.g., grazing management), and others relevant to specific habitat use categories (e.g., breeding habitat) (BLM 2008h). If an RMP contains specific direction regarding sage-grouse habitat, conservation, or management, it represents a regulatory mechanism that has the potential to ensure that the species and its habitats are protected during permitting and other decision-making on BLM lands. This section describes our understanding of how RMPs are currently implemented in relation to sage-grouse conservation.

In addition to land use planning, BLM uses Instruction Memoranda (IM) to provide instruction to district and field offices regarding specific resource issues. Implementation of IMs is required unless the IM provides discretion (Buckner 2009a. comm.). However, IMs are short duration (1 to 2 years) and are intended to immediately address resource concerns or provide direction to staff until a threat passes or the resource issue can be addressed in a long-term planning document. Because of their short duration, their utility and certainty as a long-term regulatory mechanism may be limited if not regularly renewed.

The BLM IM No. 2005-024 directed BLM State directors to "review all existing land use plans to determine the adequacy in addressing the threats to sage-grouse and sagebrush habitat," and then to "identify and prioritize land use plan amendments or land use plan revisions based upon the outcome." This IM instructed BLM State directors to develop a process and schedule to update deficient land use plans to adequately address sage-grouse and sagebrush conservation needs no later than April 1, 2005. The BLM reports that all land use plan revisions within sage-grouse habitat are scheduled for completion by 2015 (BLM, 2008g). To date, 14 plans have been revised, 31 are in progress, and 19 are scheduled to be completed in the future. However, the information provided to us by BLM did not specify what requirements, direction, measures, or guidance has been included in the newly revised RMPs to address threats to sage-grouse and sagebrush habitat. Therefore, we cannot assess their value or rely on them as regulatory mechanisms for the conservation of the greater sage-grouse.

On November 30, 2009, the BLM in Montana issued an IM that provides guidance for sage-grouse management on lands under their authority in MZs I and II (BLM 2009j, entire). The IM directs all state offices in Montana to develop alternatives in ongoing and future RMP revisions for activities that may affect the greater sage-grouse. The IM provides guidance to mitigate impacts and BMPs for all proposed projects and activities. While this IM will result in reduction of negative impacts of projects authorized by the Montana BLM on sage-grouse, the way in which the guidance will be interpreted and applied is uncertain and we do not have a basis to assess whether or the extent to which it might be effective in reducing threats. However, the IM is based on an approach based on core areas in Montana, similar to the approach implemented more formally in Wyoming. Therefore, it could be effective in reducing impacts to sage-grouse habitat in the short term on BLM lands in Montana. Unfortunately, the IM applies only to ongoing and future RMPs, and does not apply to activities authorized under existing RMPs. No expiration date was provided for this IM, but as discussed above typical life expectancy of IMs is rarely greater than 2 years.

The BLM has regulatory authority over livestock grazing, OHV travel and human disturbance, infrastructure development, fire management, and energy development through FLPMA and associated RMP implementation, and the Mineral Leasing Act (MLA) (30 U.S.C. 181 *et seq.*). The RMPs provide a framework and programmatic guidance for AMPs that address livestock grazing. In addition to FLPMA, BLM has specific regulatory authority for grazing management provided at 43 CFR 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions determined by BLM to be appropriate to achieve management and resource condition objectives on the public lands and other lands administered by the BLM, and to ensure that habitats are, or are making significant progress toward being restored or maintained for BLM special status species (43 CFR 4180.1(d)). Terms and conditions that are attached to grazing permits are generally mandatory. Across the range of sage-grouse, BLM required each BLM state office to adopt rangeland health standards and guidelines by which they measure allotment condition (43 CFR 4180 2(b)). Each state office developed and adopted their own standards and guidelines based on habitat type and other more localized considerations.

The rangeland health standards must address restoring, maintaining or enhancing habitats of BLM special status species to promote their conservation, and maintaining or promoting the physical and biological conditions to sustain native populations and communities (43 CFR 4180.2(e)(9) and (10)). BLM is required to take appropriate action no later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines (43 CFR 4180.2(c)).

The BLM conducted national data calls in 2004 through 2008 to collect information on the status of rangelands, rangeland health assessments, and measures that have been implemented to address rangeland health issues across sage-grouse habitats under their jurisdiction. However, the information collected by BLM could not be used to make broad generalizations about the status of rangelands and management actions. There was a lack of consistency across the range in how questions were interpreted and answered for the data call, which limited our ability to use the results to understand habitat conditions for sage-grouse on BLM lands. For example, one question asked about the number of acres of land within sage-grouse habitat that was meeting rangeland health standards. Field offices in more than three States conducted the rangeland health assessments, and reported landscape conditions at different scales (Sell 2009, pers. comm.). In addition, the BLM data call reported information at a different scale than was used for their landscape mapping (District or project level versus national scale) (Buckner 2009b, pers. comm.). Therefore, we lack the information necessary to assess how this regulatory mechanism effects sage-grouse conservation.

The BLM's regulations require that corrective action be taken to improve rangeland condition when the need is identified; however, actions are not necessarily implemented until the permit renewal process is initiated for the noncompliant parcel. Thus, there may be a lag time between the allotment

assessment when necessary management changes are identified, and when they are implemented. Although RMPs, AMPs, and the permit renewal process provide an adequate regulatory framework, whether or not these regulatory mechanisms are being implemented in a manner that conserves sage-grouse is unclear. The BLM's data call indicates that there are lands within the range of sage-grouse that are not meeting the rangeland health standards necessary to conserve sage-grouse habitats. In some cases management changes should occur, but such changes have not been implemented (BLM 2008i).

The BLM uses regulatory mechanisms to address invasive species concerns, particularly through the NEPA process. For projects proposed on BLM lands, BLM has the authority to identify and prescribe best management practices for weed management; where prescribed, these measures must be incorporated into project design and implementation. Some common best management practices for weed management may include surveying for noxious weeds, identifying problem areas, training contractors regarding noxious weed management and identification, providing cleaning stations for equipment, limiting off-road travel, and reclaiming disturbed lands immediately following ground disturbing activities, among other practices. The effectiveness of these measures is not documented.

The BLM conducts treatments for noxious and invasive weeds on BLM lands, the most common being reseeding through the Emergency Stabilization and Burned Area Rehabilitation Programs. According to BLM data, 66 of 92 RMPs noted that seed mix requirements (as stated in RMPs, emergency stabilization and rehabilitation, and other plans) were sufficient to provide suitable sage-grouse habitat (e.g., seed containing sagebrush and forb species)(Carlson 2008a). However, a sufficient seed mix does not assure that restoration goals will be met; many other factors (e.g., precipitation) influence the outcome of restoration efforts.

Invasive species control is a priority in many RMPs. For example, 76 of the RMPs identified in the data call claim that the RMP (or supplemental plans/guidance applicable to the RMP) requires treatment of noxious weeds on all disturbed surfaces to avoid weed infestations on BLM managed lands in the planning area (Carlson 2008a). Also, of the 82 RMPs that reference sage-grouse conservation, 51 of these specifically address fire, invasives, conifer encroachment, or a combination thereof (Carlson 2008, pers. comm.). We note that it is possible that more RMPs are addressing invasives under another general restoration category. In the 51 RMPs that address fire, invasives, and conifer encroachment, they typically provide nonspecific guidance on how to manage invasives. A few examples include: manage livestock in a way that enhances desirable vegetation cover and reduces the introduction of invasives, identify tools that may be used to control invasives (e.g., manual, mechanical, biological, or chemical treatments), utilize an integrated weed management program, and apply seasonal restrictions on fire hazards, among other methods (Carlson 2008, pers. comm.). As with other agencies and organizations, the extent to which these measures are implemented depends in large part on funding, staff time, and other regulatory and non-regulatory factors. Therefore, we cannot assess their value as regulatory mechanisms for the conservation of the greater sage-grouse.

Herbicides also are commonly used on BLM lands to control invasives. In 2007, the BLM completed a programmatic EIS (72 FR 35718) and record of decision (72 FR 57065) for vegetation treatments on BLM-administered lands in the western United States. This program guides the use of herbicides for field-level planning, but does not authorize any specific on-the-ground actions; site-specific NEPA analysis is still required at the project level.

The BLM has one documented regulatory action to address wildfire and protect of sage-grouse: National IM 2008-142 – 2008 Wildfire Season and Sage-Grouse Conservation. This IM was issued on June 19, 2008, and was effective through September 30, 2009. It provided guidance to BLM State directors that conservation of greater sage-grouse and sagebrush habitats should be a priority for wildfire suppression, particularly in areas of the Great Basin (portions of WAFWA MZ III, IV, and V) (BLM 2008j, entire). At least one BLM State office within the range of sage-grouse (Idaho) developed a State-level IM and guidance that prioritized the protection of sage-grouse habitats during fire management activities, in addition to the national IM which pertains to wildfire suppression activities (BLM 2008k, entire).

While we do not know the extent to which these directives alleviated the wildfire threat to sage-grouse (as described under Factor A) during the 2008 and 2009 fire seasons, we believe that this strategic approach to ameliorating the threat of fire is appropriate and significant. Targeting the protection of important sage-grouse habitats during fire suppression and fuels management activities could help reduce loss of key habitat due to fire if directed through a long-term, regulatory mechanism. Under Factor A, we describe why the threat of wildfire is likely to continue indefinitely. This foreseeable future requires a regulatory approach that addresses the threat over the long term. The use of IMs to increase protection of sage-grouse habitat during wildfire is not adequate to protect the species because IMs are both short-term and have discretionary renewal (decisions made on a case-by-case basis).

The BLM is the primary Federal agency managing the United States energy resources on 102 million surface ha (253 million ac) and 283 million sub-surface ha (700 million ac) of mineral estate (BLM 2010). Public sub-surface estate can be under public or private (i.e., split-estate) surface. Over 7.3 million ha (18 million ac) of sage-grouse habitats on public lands are leased for oil, gas, coal, minerals, or geothermal exploration and development across the sage-grouse range (Service 2008f). Energy development, particularly nonrenewable development, has primarily occurred within sage-grouse MZs I and II.

The BLM has the legal authority to regulate and condition oil and gas leases and permits under both FLPMA and the MLA. An amendment to the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6201 *et seq.*) in 2000 (Energy Policy Act of 2000 (PL 106-469)) requires the Secretary of the Interior to conduct a scientific inventory of all onshore Federal lands to identify oil and gas resources underlying these lands (42 U.S.C. 6217). The Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*) further requires the nature and extent of any restrictions or impediments to the development of such resources be identified and permitting and development be expedited on Federal lands (42 U.S.C. 15921). In addition, the 2005 Energy Policy Act orders the identification of renewable energy sources (e.g., wind, geothermal) and provides incentives for their development (42 U.S.C. 15851).

On May 18, 2001, President Bush signed Executive Order (E.O.) 13212 – Actions to Expedite Energy-Related Projects (May 22, 2001, 66 FR 28357), which states that the executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or

conservation of energy. The Executive Order specifies that this includes expediting review of permits or taking other actions as necessary to accelerate the completion of projects, while maintaining safety, public health, and environmental protections. On October 23, 2009, nine Federal agencies signed a MOU to expedite the siting and construction of qualified electric transmission within the United States (Federal Agency MOU 2009). The MOU states that all existing environmental review and safeguard processes will be fully maintained. Therefore, we assume that this new MOU will not alter the regulatory processes (e.g., RMPs, project specific NEPA analysis) currently in place related to transmission siting on BLM lands.

Program-specific guidance for fluid minerals (including oil and gas) in the BLM planning handbook (BLM 2005b, Appendix C pp. 23-24) specifies that land use planning decisions will identify restrictions on areas subject to leasing, including closures, as well as lease stipulations. Stipulations are conditions that are made part of a lease when the environmental planning record demonstrates the need to accommodate various resources such as the protection of specific wildlife species. Stipulations advise the lease holder that a wildlife species in need of special management may be present in the area defined by the lease, and certain protective measures may be required in order to develop the mineral resource on that lease.

The handbook further specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and notes that the least restrictive constraint to meet the resource protection objective should be used (BLM 2005b, Appendix C pp. 23-24). Waivers are permanent exemptions, and modifications are changes in the terms of the stipulation. The BLM reports the issuance of waivers and modifications as rare (BLM 2008i). Exceptions are a one-time exemption to a lease stipulation. For example, a company may be issued an exception to enter crucial winter habitat during a mild winter if an on-the-ground survey verifies that sage-grouse are not using the winter habitat or have left earlier than normal (BLM 2004, p. 86). In 2006 and 2007, of 1,716 mineral or right-of-way authorizations on Federal surface in 42 BLM planning areas no waivers were issued; 24 modifications were issued and 115 exceptions were granted, 72 of which were in the Great Divide planning area in Wyoming (BLM 2008i), one of the densest population concentrations for sage-grouse.

Although the restrictive stipulations that are applied to permits and leases vary, a 0.40-km (0.25-mi) radius around sage-grouse leks is generally restricted to "no surface occupancy" during the breeding season, and noise and development activities are often limited during the breeding season within a 0.80- to 3.22-km (0.5- to 2-mi) radius of sage-grouse leks. Although these are the most often-applied stipulations, site-specific application is highly variable. For example, language in the Randolph RMP in Utah states that no exploration, drilling, or other development activities can occur during the breeding season within 3.22 km (2 mi) of a known sage-grouse lek, and that there are "no exceptions to this stipulation" (BLM 2008h). Conversely, under the Platte River RMP in the Wind River Basin Management Area of Wyoming, "oil and gas development is a priority in the area" and "discretionary timing stipulations protecting sage-grouse nesting habitats...will not be applied" (BLM 2008h). Most of the RMPs that address oil, gas, or minerals development specify the standard protective stipulations (BLM 2008h). The stipulations do not apply to the operation or maintenance of existing facilities, regardless of their proximity to sage-grouse breeding areas (BLM 2008h). In addition, approximately 73 percent of leased lands in known sage-grouse breeding habitat have no stipulations at all (Service 2008f).

As noted above, a 0.4-km (0.25-mi) radius buffer is used routinely by BLM and other agencies to minimize the impacts of oil and gas development on sage-grouse breeding activity. The rationale for using a 0.4-km (0.25-mi) buffer as the basic unit for active lek protection is not clear, as there is no support in published literature for this distance affording any measure of protection (see also discussion under Energy Development, above). Anecdotally, this distance appears to be an artifact from the 1960s attempt to initiate planning guidelines for sagebrush management and is not scientifically based (Roberts 1991). The BLM stipulations most commonly attached to leases and permits are inadequate for the protection of sage-grouse, and for the long-term maintenance of their populations in those areas affected by oil and gas development activities (Holloran 2005, pp. 57-60; Walker 2007, p. 2651). In some locations, the BLM is incorporating recommendations and information from new scientific studies into management direction. Wyoming BLM issued an IM on December 29, 2009 (BLM 2009k, entire) to ensure their management of sage-grouse and their habitats are consistent with the State of Wyoming's core area populations (see discussion above). The IM applies to all BLM programs and activities within Wyoming, with the exception of livestock grazing management. A separate IM will be issued separately for this program. The December 2009 IM should have the same efficacy in ameliorating threats to the sage-grouse in Wyoming. However, the IM is scheduled to expire on Sept. 30, 2011, and therefore its life is far shorter than the foreseeable future (30 to 50 years, see discussion below) for energy development in that state. However, we are optimistic that this IM will result in short-term conservation benefits for sage-grouse in Wyoming.

As with fossil fuel sources, the production, purchase, and facilitation of development of renewable energy products by Federal entities and land management agencies is directed by the 2005 Energy Policy Act and Presidential E.O. 13212. The energy development section of Factor A describes in detail the development and operation of renewable energy projects, including recent increases in wind, solar and geothermal energy development. All of these activities require ground disturbance, infrastructure, and ongoing human activities that could adversely affect greater sage-grouse on the landscape. Recently the BLM has begun developing guidance to minimize impacts of renewable energy production on public lands. A ROD for "Implementation of a Wind Energy Development Program and Associated Land Use Plan Amendments" (BLM 2005a, entire) was issued in 2005. The ROD outlines best management practices (BMPs) for the siting, development and operation of wind energy facilities on BLM lands. The voluntary guidance of the BMPs do not include measures specifically intended to protect greater sage-grouse, although they do provide the flexibility for such measures to be required through site-specific planning and authorization (BLM 2005a, p. 2).

On December 19, 2008, the BLM issued IM 2009-043, which is intended to serve as additional guidance for processing wind development proposals. In that IM, which expires on September 30, 2010, BLM updates or clarifies previous guidance documentation, including the Wind Energy Development Policy, and best management practices from the wind energy development programmatic EIS of 2005. The new guidance does not

provide specific recommendations for greater sage-grouse, and largely defers decision-making regarding project siting, including meteorological towers, to either the individual land use planning process, or to the standard environmental compliance (i.e., NEPA) process. In addition, it emphasizes the voluntary nature of the Service's 2003 interim guidelines for minimizing the effects of wind turbines on avian species and reiterates that incorporation of the guidelines in BLM agency decisions was not mandatory (BLM 2008e).

BLM State offices in Oregon and Idaho issued explicit guidance regarding siting of meteorological towers (IM OR-2008-014 and ID-2009-006, respectively) which required siting restrictions for towers around leks such that potential adverse effects to sage-grouse are avoided or minimized. These IMs provided substantial regulatory protection for sage-grouse; however, both of these IMs expired on September 30, 2009. We anticipate that they will be renewed in FY 2010, but that is an annual management decision by the respective State BLM offices, thus the long-term certainty that such measures will remain in place is unknown.

The BLM is currently in the process of developing programmatic-level guidance for the development of solar and geothermal energy projects. A draft programmatic EIS for geothermal development is currently available (BLM and USFS 2008a, entire), and the draft programmatic EIS for solar energy is under development (BLM and DOE 2008). We anticipate that solar and geothermal energy development will increase in the future (see discussion under energy in Factor A), and that the development of infrastructure associated with these projects could affect sage-grouse. Final environmental guidance for solar and geothermal energy development on BLM lands has not yet been issued or implemented; thus, we cannot assess its adequacy or implications for the conservation of sage-grouse.

Summary: BLM

The BLM manages the majority of greater sage-grouse habitats across the range of the species. The BLM has broad regulatory authority to plan and manage all land use activities on their lands including travel management, energy development, grazing, fire management, invasive species management, and a variety of other activities. As described in Factor A, all of these factors have the potential to affect sage-grouse, including direct effects to the species and its habitats. The ability of regulatory mechanisms to adequately address the effects associated with wildfire or invasive plant species such as *Bromus tectorum* is limited due primarily to the nature of those factors and how they manifest on the landscape. However, a regulatory mechanism that requires BLM staff to target the protection of key sage-grouse habitats during fire suppression or appropriate fuels management activities could help address the threat of wildfire in some situations. We recognize the use of IMs for this purpose, including both at the national and State level (Idaho) (BLM 2008j and 2008k); however, a long-term mechanism is necessary given the scale of the wildfire threat and its likelihood to persist on the landscape in the foreseeable future.

For other threats to sage-grouse on BLM lands, the BLM has the regulatory authority to address them in a manner that will provide protection for sage-grouse. However, BLM's current application of those authorities in some areas falls short of meeting the conservation needs of the species. This is particularly evident in the regulation of oil, gas, and other energy development activities, both on BLM-administered lands and on split-estate lands. Stipulations commonly applied by BLM to oil and gas leases and permits do not adequately address the scope of negative influences of development on sage-grouse (Holloran 2005, pp. 57-60, Walker 2007, pp. 2651; see discussion under Factor A), with the exception of the new 2010 IM issued by the BLM in Wyoming (see discussion below). In addition, BLM's ability to waive, modify, and allow exceptions to those stipulations without regard to sage-grouse persistence further limits the adequacy of those regulatory mechanisms in alleviating the negative impacts to the species associated with energy development.

For other threats, such as grazing, our ability to assess the application of existing regulatory mechanisms on a broad scale is limited by the way that BLM collected and summarized their data on rangeland health assessments and the implementation of corrective measures, where necessary. The land use planning and activity permitting processes, as well as other regulations available to BLM give them the authority to address the needs of sage-grouse. However, the extent to which they do so varies widely from RMP area to RMP area across the range of the species. In many areas existing mechanisms (or their implementation) on BLM lands and BLM-permitted actions do not adequately address the conservation needs of greater sage-grouse, and are exacerbating the effects of threats to the species described under Factor A.

USDA Forest Service

The USFS has management authority for 8 percent of the sagebrush area within the sage-grouse MZs (Table 3; Knick in press, p. 39). The USFS estimated that sage-grouse occupy about 5.2 million ha (12.8 million ac) on national forest lands in the western United States (USFS 2008 Appendix 2, Table 1). Twenty-six of the 33 National Forests or Grasslands across the range of sage-grouse contain moderately or highly important seasonal habitat for sage-grouse (USFS 2008 Appendix 2, Table 2). Management of activities on national forest system lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600-1614, August 17, 1974, as amended 1976, 1978, 1980, 1981, 1983, 1985, 1988, and 1990). NFMA specifies that the USFS must have a land and resource management plan (LRMP) (16 U.S.C. 1600) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. All of the LRMPs that currently guide the management of sage-grouse habitats on USFS lands were developed using the 1982 implementing regulations for land and resource management planning (1982 Rule, 36 CFR 219).

Greater sage-grouse is designated as sensitive species on USFS lands across the range of the species (USFS 2008, pp. 25-26). Designated sensitive species require special consideration during land use planning and activity implementation to ensure the viability of the species on USFS lands and to preclude any population declines that could lead to a Federal listing (USFS 2008, p. 21). Additionally, sensitive species designations require analysis for any activity that could have an adverse impact to the species, including analysis of the significance of any adverse impacts on the species, its habitat, and overall population viability (USFS 2008, p. 21). The specifics of how sensitive species status has conferred protection to sage-grouse on USFS lands varies significantly across the range, and is largely dependent on LRMPs and site-specific project analysis and implementation. Fourteen forests identify greater sage-grouse as a Management Indicator Species (USFS 2008, Appendix 2, Table 2), which requires them to establish objectives for the maintenance and improvement of habitat for the species during all planning processes, to the degree consistent with overall multiple use objectives of the alternative (1982 Rule,

36 CFR 219.19(a)). Of the 33 National Forests that manage greater sage-grouse habitat, 16 do not specifically address sage-grouse management or conservation in their Forest Plans, and only 6 provide a high level of detail specific to sage-grouse management (USFS 2008, Appendix 2, Table 4).

Almost all of the habitats that support sage-grouse on USFS lands also are open to livestock grazing (USFS 2008, p. 39). Under the Range Rescissions Act of 1995 (P.L. 104-19), the USFS must conduct a NEPA analysis to determine whether grazing should be authorized on an allotment, and what resource protection provisions should be included as part of the authorization (USFS 2008, p. 33). The USFS reports that they use the sage-grouse habitat guidelines developed in Connelly *et al.* (2000) to develop desired condition and livestock use standards at the project or allotment level. However, USFS also reported that the degree to which the recommended sage-grouse conservation and management guidelines were incorporated and implemented under Forest Plans varied widely across the range (USFS 2008, p. 45). We do not have the results of rangeland health assessments or other information regarding the status of USFS lands that provide habitat to sage-grouse and, therefore, cannot assess the efficacy in conserving this species.

Energy development occurs on USFS lands, although to a lesser extent than on BLM lands. Through NFMA, LRMPs, and the On-Shore Oil and Gas Leasing Reform Act (1987; implementing regulations at 36 CFR 228, subpart E), the USFS has the authority to manage, restrict, or attach protective measures to mineral and other energy permits on USFS lands. Similar to BLM, existing protective standard stipulations on USFS lands include avoiding construction of new wells and facilities within 0.4 km (0.25 mi), and noise or activity disturbance within 3.2 km (2.0 mi) of active sage-grouse leks during the breeding season. As described both in Factor A and above, this buffer is inadequate to prevent adverse impacts to sage-grouse populations. For most LRMPs where energy development is occurring, these stipulations also apply to hard mineral extraction, wind development, and other energy development activities in addition to fluid mineral extraction (USFS 2008, Appendix 1, entire). The USFS is a partner agency with the BLM on the draft programmatic EIS for geothermal energy development described above. The Record of Decision for the EIS does not amend relevant LRMPs and still requires project-specific NEPA analysis of geothermal energy applications on USFS lands (BLM and USFS 2008b, p. 3).

The land use planning process and other regulations available to the USFS give it the authority to adequately address the needs of sage-grouse, although the extent to which they do so varies widely across the range of the species. We do not have information regarding the current land health status of USFS lands in relation to the conservation needs of greater sage-grouse; thus, we cannot assess whether existing conditions adequately meet the species' habitat needs.

Other Federal Agencies

Other Federal agencies in the DOD, DOE, and DOI (including the Bureau of Indian Affairs, the Service, and National Park Service) are responsible for managing less than 5 percent of sagebrush lands within the United States (Knick 2008, p. 31). Regulatory authorities and mechanisms relevant to these agencies' management jurisdictions include the National Park Service Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3 and 4), the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee), and the Department of the Army's Integrated Natural Resources Management Plans for their facilities within sage-grouse habitats. Due to the limited amount of land administered by these agencies, we have not described them in detail here. However, most of these agencies do not manage specifically for greater sage-grouse on their lands, except in localized areas (e.g., specific wildlife refuges, reservations). One exception is DOD regulatory mechanisms applicable within MZ VI, where half of the remaining sage-grouse populations and habitats occur on their lands.

The Yakima Training Center (YTC), a U.S. Army facility, manages land in Washington that is the primary habitat for one of two populations of greater sage-grouse in that State. During the breeding season, the YTC has restrictions on training activities for the protection of sage-grouse. Leks have a 1-km (0.6-mi) buffer where all training is excluded, and aircraft below 91.4 m (300 ft) are restricted from midnight to 9 am from March 1 to May 15 (Stinson *et al.* 2004, p. 32). Sage-grouse protection areas also are identified, and training activities are restricted in those areas during nesting and early brood rearing periods (Stinson *et al.* 2004, p. 32). Other protections also are provided. According to Stinson *et al.* (2004, p. 32), the "YTC is the only area in Washington where sage-grouse are officially protected from disturbance during the breeding and brood-rearing period." However, the biggest concern for sage-grouse on the YTC is wildfire, both natural and human-caused (Schroeder 2009, pers. comm.). Military training activities occur across the YTC throughout the year, including when there is high fire risk, and many fires are started every year (Schroeder 2009, pers. comm.). Although the YTC has an active fire response program, there are some fires most years that grow large, and habitat is being burned faster than it can be replaced (Schroeder 2009, pers. comm.). The protective stipulations to reduce disturbance to greater sage-grouse are useful; however, current management, training activities, and fire response, are resulting in habitat loss for the species on the YTC.

The USDA Farm Service Agency manages the Conservation Reserve Program (CRP) which pays landowners a rental fee to plant permanent vegetation on portions of their lands, taking them out of agricultural production (Schroeder and Vander Haegen in press, p. 4-5). These lands are put under contract, typically for a 10–year period (Walker 2009, pers. comm.). In some areas across the range of sage-grouse, and particularly in Washington (Schroeder and Vander Haegen in press, p. 21), CRP lands provide important habitat for the species (see Factor A discussion). Under the 2008 Farm Bill, several changes could reduce the protection that CRP lands afford sage-grouse. First, the total acreage that can be enrolled in the CRP program at any time has been reduced from 15.9 million ha (39.2 million ac) to 12.9 million ha (32 million ac) for 2010-2012 (USDA 2009a, p. 1). Second, no more than 25 percent of the agricultural lands in any county can now be enrolled under CRP contracts, although there are provisions to avoid this cap if permission is granted by the County government (Walker 2009, pers. comm.). Third, the 2008 Farm Bill authorized the BCAP, which provides financial assistance to agricultural producers to establish and produce eligible crops for the conversion to bioenergy products (USDA 2009b, p. 1). As CRP contracts expire, the BCAP program could result in greater incentives to take land out of CRP and put it into production for biofuels (Walker 2009, pers. comm.). All of these changes could affect the amount of land in CRP, and in turn the habitat value provided to greater sage-grouse. This change is of particular importance in Washington, where CRP lands have been out of production long enough to provide habitat for sage-grouse. Although the 2008 Farm Bill has been

signed into law, the implementing regulations and rules have not yet been finalized. Thus, we cannot assess how the measures described above will be implemented, and to what extent they may change the quantity or quality of CRP land available for sage-grouse.

Canadian Federal and Provincial Laws and Regulations

Greater sage-grouse are federally protected in Canada as an endangered species under schedule 1 of the Species at Risk Act (SARA; Canada Gazette, Part III, Chapter 29, Volume 25, No. 3, 2002). Passed in 2002, SARA is similar to the ESA and allows for habitat regulations to protect sage-grouse (Aldridge and Brigham 2003, p. 31). The species is also listed as endangered at the provincial level in Alberta and Saskatchewan, and neither province allows harvest (Aldridge and Brigham 2003, p. 31). In Saskatchewan, sage-grouse are protected under the Wildlife Habitat Protection Act, which protects sage-grouse habitat from being sold or cultivated (Aldridge and Brigham 2003, p. 32). In addition, sage-grouse are listed as endangered under the Saskatchewan Wildlife Act, which restricts development within 500 m (1,640 ft) of leks and prohibits construction within 1,000 m (3,281 ft) of leks between March 15 and May 15 (Aldridge and Brigham 2003, p. 32). As stated above, these buffers are inadequate to protect sage-grouse from disturbance. In Alberta, individual birds are protected, but their habitat is not (Aldridge and Brigham 2003, p. 32). Thus, although there are some protections for the species in Canada, they are not sufficient to assure conservation of the species.

Nonregulatory Conservation Measures

There are many non-regulatory conservation measures that may provide local habitat protections. Although they are non-regulatory in nature, they are here to acknowledge these programs. We have reviewed and taken into account efforts being made to protect the species, as required by the Act. Although some local conservation efforts have been implemented and are effective in small areas, they are neither individually nor collectively at a scale that is sufficient to ameliorate threats to the species or populations. Many other conservation efforts are being planned but there is substantial uncertainty as to whether, where, and when they will be implemented, and whether they will be effective; further, even if the efforts being planned or considered become implemented and are effective in the future, they are not a scale, either individually or collectively, to be sufficient to ameliorate the threats to the species.

Other partnerships and agencies have also implemented broader-scale conservation efforts. Cooperative Weed Management Areas (CWMAs) provide a voluntary approach to control invasive species across the range of sage-grouse. CWMAs are partnerships between Federal, State, and local agencies, tribes, individuals, and interested groups to manage both species designated by State agencies as noxious weeds, and invasive plants in a county or multi-county geographical area. As of 2005, Oregon, Nevada, Utah, and Colorado had between 75 and 89 percent of their States covered by CWMAs or county weed districts, while Washington, Idaho, Montana, and Wyoming had between 90 and 100 percent coverage. Coverage in North Dakota is between 50 and 74 percent, and South Dakota has less than 25 percent coverage (Center for Invasive Plant Management 2008). Because these CWMAs are voluntary partnerships we cannot be assured that they will be implemented nor can we predict their effectiveness.

The Natural Resources Conservation Service (NRCS) of the USDA provides farmers, ranchers, and other private landowners with technical assistance and financial resources to support various management and habitat restoration efforts. This includes helping farmers and ranchers maintain and improve wildlife habitat as part of larger management efforts, and developing technical information to assist NRCS field staff with sage-grouse considerations when working with private landowners. Because of the variable nature of the actions that can be taken and the species they may address, some may benefit greater sage-grouse, some may cause negative impacts (e.g., because they are aimed at creating habitat conditions for other species that are inconsistent with the needs of sage-grouse), or are neutral in their effects. In May 2008, Congress passed the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill, P.L. 110-246). The Farm Bill maintains or extends various technical and funding support programs for landowners. All conservation programs under the Farm Bill are voluntary, unless binding contracts for conservation planning or restoration are completed.

In 2006, WAFWA published the "Greater Sage-Grouse Comprehensive Conservation Strategy" (Conservation Strategy; Stiver *et al.* 2006). This document describes a range-wide framework to "maintain and enhance populations and distribution of sage-grouse" (Stiver *et al.* 2006, p. ES-1). Although this framework is important to guiding successful long-term conservation efforts and management of the greater sage-grouse and its habitats, by design the WAFWA Conservation Strategy is not regulatory in nature. Implementation of recommendations in the Strategy by each signatory to the associated MOU is voluntary and few, if any of the conservation recommendations have been implemented. Given the lack of funding for this effort, we do not have the assurances that implementation will occur. However, this is the most comprehensive inter-agency strategy developed for this species and therefore, if the principles identified are properly implemented it could have significant positive impacts.

All of the States in the extant range of the greater sage-grouse have finalized conservation or management plans for the species and its habitats. These plans focus on habitat and population concerns at a State level. The degree to which they consider and address mitigation for a variety of threats varies substantially. For example, some plans propose explicit strategies for minerals and energy issues (e.g., Montana) or wind energy development (e.g., Washington), and others more generally acknowledge potential issues with energy development but do not identify specific conservation measures (e.g., Nevada) (Stiver *et al.* 2006, p. 2-24). These plans are in various stages of implementation. The State level plans are not prescriptive, and generally contain information to help guide the development and implementation of more focused conservation efforts and planning at a local level. We recognize the importance of these plans and coordination efforts, but at this time cannot rely on them being effectively implemented. Specific measures recommended in a State plan that have been adopted into legal or regulatory frameworks (e.g., a resource management plan), are assessed as regulatory mechanisms in the discussion under Factor D.

The WDFW has designated sage-grouse habitat as a "priority habitat" which classifies it as a priority for conservation and management, and provides species and habitat information to interested parties for land use planning purposes (Schroeder *et al.* 2003, pp. 17-4 to 17-6, Stinson *et al.* 2004, p. 31). However, the recommendations provided under this program are guidelines, and we cannot be assured they will be implemented. Similarly, programs like Utah's Watersheds Restoration Initiative are partnership driven efforts intended to

conserve, manage, and restore habitats. We recognize projects and cooperative efforts that are beneficial for sage-grouse may occur as a result of this program.

Summary of Nonregulatory Conservation Efforts

There are several non-regulatory conservation efforts that address impacts to the sage-grouse, mostly at a local scale (e.g. local working group plans, CCAA). Their voluntary nature is appreciated, but their implementation and effectiveness may be compromised as a result. We are encouraged by the number and scale of these efforts, but lacking data on exact locations, scale, and effectiveness, we do not know if threats to the greater sage-grouse will be ameliorated as a result. We strongly encourage implementation of the WAFWA Conservation Strategy as we believe its implementation could be effective in reducing threats to this species.

Summary of Factor D

To our knowledge, no current local land use or development planning regulations provide adequate protection to sage-grouse from development or other harmful land uses. Development and fragmentation of private lands is a threat to greater sage-grouse (see discussion under Factor A), and current local regulations do not adequately address this threat.

Wyoming and Colorado have implemented State regulations regarding energy development that could provide significant protection for greater sage-grouse. In Wyoming, regulations regarding new energy development have the potential to provide adequate protection to greater sage-grouse by protecting core areas of the species' habitat. BLM Wyoming has adopted Wyoming's approach for projects under their authorities through a short-term IM. However, the restrictive regulations do not apply to existing leases, or to habitats outside of core areas. Thus, sage-grouse may continue to experience population-level impacts associated with activities (e.g., energy development) in Wyoming (see discussion under Factor A) both inside and outside core areas. In Colorado, the regulations describe a required process rather than a specific measure that can be evaluated; the regulations are only recently in place and their implementation and effectiveness remains to be seen.

The majority of sage-grouse habitat in the United States is managed by Federal agencies (Table 3). The BLM and USFS have the legal authority to regulate land use activities on their respective lands. Under Factor A, we describe the ways that oil, natural gas, and other energy development activities, fire, invasive species, grazing, and human disturbance are or may be adversely affecting sage-grouse populations and habitat. Overall, Federal agencies' abilities to adequately address the issues of wildfire and invasive species across the landscape, and particularly in the Great Basin, are limited. However, we believe that new mechanisms could be adopted to target the protection of sage-grouse habitats during wildfire suppression activities or fuels management projects, which could help reduce this threat in some situations. There is limited opportunity to implement and apply new regulatory mechanisms that would provide adequate protections or amelioration for the threat of invasive species. For grazing, the regulatory mechanisms available to the BLM and USFS are adequate to protect sage-grouse habitats; however, the application of these mechanisms varies widely across the landscape. In some areas, rangelands are not meeting the habitat standards necessary for sage-grouse, and that contributes to threats to the species.

Our assessment of the implementation of regulations and associated stipulations guiding energy development indicates that current measures do not adequately ameliorate impacts to sage-grouse. Energy and associated infrastructure development, including both nonrenewable and renewable energy resources, are expected to continue to expand in the foreseeable future. Unless protective measures consistent with new research findings are widely implemented via a regulatory process, those measures cannot be considered an adequate regulatory mechanism in the context of our review. For the BLM and USFS, RMPs and LRMPs are mechanisms through which adequate protections for greater sage-grouse could be implemented. However, the extent to which appropriate measures to conserve sage-grouse have been incorporated into those planning documents, or are being implemented, varies across the range. As evidenced by the discussion above, and the ongoing threats described under Factor A, BLM and the USFS are not fully implementing the regulatory mechanisms available to conserve greater sage-grouse on their lands.

Based on our review of the best scientific and commercial information available, we conclude that existing regulatory mechanisms are inadequate to protect the species. The absence of adequate regulatory mechanisms is a significant threat to the species, now and in the foreseeable future.

Factor E: Other Natural or Manmade Factors Affecting the Species' Continued Existence

Pesticides

Few studies have examined the effects of pesticides to sage-grouse, but at least two have documented direct mortality of greater sage-grouse from use of these chemicals. Greater sage-grouse died as a result of ingestion of alfalfa sprayed with organophosphorus insecticides (Blus *et al.* 1989, p. 1142; Blus and Connelly 1998, p. 23). In this case, a field of alfalfa was sprayed with methamidophos and dimethoate when approximately 200 sage-grouse were present; 63 of these sage-grouse were later found dead, presumably as a result of pesticide exposure (Blus *et al.* 1989; p. 1142, Blus and Connelly 1998, p. 23). Both methamidophos and dimethoate remain registered for use in the United States (Christiansen and Tate in press, p. 21), but we found no further records of sage-grouse mortalities from their use. In 1950, Rangelands treated with toxaphene and chlordane bait in Wyoming to control grasshoppers resulted in game bird mortality of 23.4 percent (Christian and Tate in press, p. 20). Forty-five sage-grouse deaths were recorded, 11 of which were most likely related to the pesticide (Christiansen and Tate in press, p. 20, and references therein). Sage-grouse who succumbed to vehicle collisions and mowing machines in the same area also were likely compromised from pesticide ingestion (Christian and Tate in press, p. 20). Neither of these chemicals has been registered for grasshopper control since the early 1980s (Christiansen and Tate in press, p. 20, and references therein).

Game birds that ingested sub-lethal levels of pesticides have been observed exhibiting abnormal behavior that may lead to a greater risk of predation (Dahlen and Haugen 1954, p. 477; McEwen and Brown 1966, p. 609; Blus *et al.* 1989, p. 1141). McEwen and Brown (1966, p. 689) reported that wild sharp-tailed grouse poisoned by malathion and dieldrin exhibited depression, dullness, slowed reactions, irregular flight, and uncoordinated walking. Although no research has explicitly studied the indirect levels of mortality from sub-lethal doses of pesticides (e.g., predation of impaired birds), it has been assumed to be the reason for mortality among some study birds (McEwen and Brown 1966 p. 609; Blus *et al.* 1989, p. 1142; Connelly and Blus 1991, p. 4). Both Post (1951, p. 383) and Blus *et al.* (1989, p. 1142) located depredated sage-grouse carcasses in areas that had been treated with insecticides. Exposure to these

insecticides may have predisposed sage-grouse to predation. Sage-grouse mortalities also were documented in a study where they were exposed to strychnine bait type used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16).

Cropland spraying may affect populations that are not adjacent to agricultural areas, given the distances traveled by females with broods from nesting areas to late brood-rearing areas (Knick *et al.* in press, p. 17). The actual footprint of this effect cannot be estimated, because the distances traveled to get to irrigated and sprayed fields is unknown (Knick *et al.* in press, p. 17). Similarly, actual mortalities from pesticides may be underestimated if sage-grouse disperse from agricultural areas after exposure.

Much of the research related to pesticides that had either lethal or sub-lethal effects on greater sage-grouse was conducted on pesticides that have been banned or have their use further restricted for more than 20 years due to their toxic effects on the environment (e.g., dieldrin). We currently do not have any information to show that the banned pesticides are presently having negative impacts to sage-grouse populations through either illegal use or residues in the environment. For example, sage-grouse mortalities were documented in a study where they were exposed to strychnine bait used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16). According to the U.S. Environmental Protection Agency (EPA), above-ground uses of strychnine were prohibited in 1988 and those uses remain temporarily cancelled today. We do not know when, or if, above ground uses will be permitted to resume. Currently strychnine is registered for use only below-ground as a bait application to control pocket gophers (*Thomomys* sp.; EPA 1996, p. 4). Therefore, the current legal use of strychnine baits is unlikely to present a significant exposure risk to sage-grouse. No information on illegal use, if it occurs, is available. We have no other information regarding mortalities or sublethal effects of strychnine or other banned pesticides on sage-grouse.

Although a reduction in insect population levels resulting from insecticide application can potentially affect nesting sage-grouse females and chicks (Willis *et al.* 1993, p. 40; Schroeder *et al.* 1999, p. 16), we have no information as to whether insecticides are impacting survivorship or productivity of the greater sage-grouse. Eng (1952, pp. 332,334) noted that after a pesticide was sprayed to reduce grasshoppers, songbird and corvid nestling deaths ranged from 50 to 100 percent depending on the chemical used, and stated it appeared that nestling development was adversely affected due to the reduction in grasshoppers. Potts (1986 as cited in Connelly and Blus 1991, p. 93) determined that reduced food supply resulting from the use of pesticides ultimately resulted in high starvation rates of partridge chicks (*Perdix perdix*). In a similar study on partridges, Rands (1985, pp. 51-53) found that pesticide application adversely affected brood size and chick survival by reducing chick food supplies.

Three approved insecticides, carbaryl, diflubenzuron, and malathion, are currently available for application across the extant range of sage-grouse as part of implementation of the Rangeland Grasshopper and Mormon Cricket Suppression Control Program, under the direction of the Animal and Plant Health Inspection Service (APHIS) (APHIS 2004, entire). Carbaryl is applied as bait, while diflubenzuron and malathion are sprayed. APHIS requires that application rates be in compliance with EPA regulations, and APHIS has general guidelines for buffer zones around sensitive species habitats. These pesticides are only applied for grasshopper and Mormon cricket (*Anabrus simplex)* control when requested by private landowners (APHIS 2004). Due to delays in developing nationwide protocols for application procedures, APHIS did not perform any grasshopper or Mormon cricket suppression activities in 2006, 2007, or 2008 (Gentle 2008, pers. comm.). However, due to an anticipated peak year of these pests in 2010, plans for suppression are already in progress.

In the Rangeland Grasshopper and Mormon Cricket Suppression Program Final Environmental Impact Statement—2002 (p.10), APHIS concluded that there "is little likelihood that the insecticide APHIS would use to suppress grasshoppers would be directly or indirectly toxic to sage-grouse. Treatments would typically not reduce the number of grasshoppers below levels that are present in non-outbreak years." APHIS (2002, p. 69) stated that although "malathion is also an organophosphorus insecticide and carbaryl is a carbamate insecticide, malathion and carbaryl are much less toxic to birds" than other insecticides associated with effects to sage-grouse or other wildlife. The APHIS risk assessment (pp. 122-184) for this EIS determined that the grasshopper treatments would not directly affect sage-grouse. As to potential effects on prey abundance, APHIS noted that during "grasshopper outbreaks when grasshopper densities can be 60 or more per square meter (Norelius and Lockwood, 1999), grasshopper treatments that have a 90 to 95 percent mortality still leave a density of grasshoppers (3 to 6) that is generally greater than the average density found on rangeland, such as in Wyoming, in a normal year (Schell and Lockwood, 1997)."

Herbicide applications can kill sagebrush and forbs important as food sources for sage-grouse (Carr 1968 as cited in Call and Maser 1985, p. 14). The greatest impact resulting from a reduction of either forbs or insect populations is for nesting females and chicks due to the loss of potential protein sources that are critical for successful egg production and chick nutrition (Johnson and Boyce 1991, p. 90; Schroeder *et al.* 1999, p. 16). A comparison of applied levels of herbicides with toxicity studies of grouse, chickens, and other gamebirds (Carr 1968, as cited in Call and Maser 1985, p. 15) concluded that herbicides applied at recommended rates should not result in sage-grouse poisonings.

In summary, pesticides can result in direct mortality of individuals, and also can reduce the availability of food sources, which in turn could contribute to mortality of sage-grouse. Despite the potential effects of pesticides, we could find no information to indicate that the use of these chemicals, at current levels, negatively affects greater sage-grouse population numbers. Schroeder *et al.*'s (1999, p.16) literature review found that the loss of insects can have significant impacts on nesting females and chicks, but those impacts were not detailed. Many of the pesticides that have been shown to have an effect on sage-grouse have been banned in the United States for more than 20 years. As previously noted, we currently do not have any information to show that the banned pesticides through either illegal use or residues in the environment are presently having negative impacts to sage-grouse populations.

Contaminants

Greater sage-grouse exposure to various types of environmental contaminants may potentially occur as a result of agricultural and rangeland management practices, mining, energy development and pipeline operations, nuclear energy production and research, and transportation of materials along highways and railroads.

A single greater sage-grouse was found covered with oil and dead in a wastewater pit associated with an oil

field development in 2006; the site was in violation of legal requirements for screening the pit (Domenici 2008, pers. comm.). To the extent that this source of mortality occurs, it would be most likely in MZ I and II, as those zones are where most of the oil and gas development occurs in relation to occupied sage-grouse habitat. The extent to which such mortality to greater sage-grouse is occurring is extremely difficult to quantify due to difficulties in retrieving and identifying oiled birds and lack of monitoring. We expect that the number of sage-grouse occurring in the immediate vicinity of such wastewater pits would be small due to the typically intense human activity in these areas, the lack of cover around the pits, and the fact that sage-grouse do not require free water. Most bird mortalities recorded in association with wastewater pits are water-dependent species (e.g., waterfowl), whereas dead ground-dwelling birds (such as the greater sage-grouse) are rarely found at such sites (Domenici 2008, pers. comm.). However, if the wastewater pits are not appropriately screened, sage-grouse may have access to them and could ingest water and/or become oiled while pursing insects. If these birds then return to sagebrush cover and die their carcasses are unlikely to be found as only the pits are surveyed. The effects of areal pollutants resulting from oil and gas development on greater sage-grouse are discussed under the energy development section in Factor A.

Numerous gas and oil pipelines occur within the occupied range of several populations of the species. Exposure to oil or gas from pipeline spills or leaks could cause mortalities or morbidity to greater sage-grouse. Similarly, given the extensive network of highways and railroad lines that occur throughout the range of the greater sage-grouse, there is some potential for exposure to contaminants resulting from spills or leaks of hazardous materials being conveyed along these transportation corridors. We found no documented occurrences of impacts to greater sage-grouse from such spills, and we do not expect they are a significant source of mortality because these types of spills occur infrequently and involve only a small area that might be within the occupied range of the species.

Exposure of sage-grouse to radionuclides (radioactive atoms) has been documented at the DOE's Idaho National Engineering Laboratory in eastern Idaho. Although radionuclides were present in greater sage-grouse at this site, there were no apparent harmful effects to the population (Connelly and Markham 1983, pp. 175-176). There is one site in the range formerly occupied by the species (Nuclear Energy Institute 2004), and construction is scheduled to begin on a new nuclear power plant facility in 2009 in Elmore County, Idaho, near Boise (Nuclear Energy Institute 2008) in MZ IV. At this new facility and any other future facilities developed for nuclear power, if all provisions regulating nuclear energy development are followed, it is unlikely that there will be impacts to sage-grouse as a result of radionuclides or any other nuclear products.

Recreational Activities

Boyle and Samson (1985, pp. 110-112) determined that non-consumptive recreational activities can degrade wildlife resources, water, and the land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and simplifying plant communities. Sage-grouse response to disturbance may be influenced by the type of activity, recreationist behavior, predictability of activity, frequency and magnitude, activity timing, and activity location (Knight and Cole 1995, p. 71). Examples of recreational activities in sage-grouse habitats include hiking, camping, pets, and off-highway vehicle (OHV) use. We have not located any published literature concerning measured direct effects of recreational activities on greater sage-grouse, but can infer potential impacts from studies on related species and from research on non-recreational activities. Baydack and Hein (1987, p. 537) reported displacement of male sharp-tailed grouse at leks from human presence, resulting in loss of reproductive opportunity during the disturbance period. Female sharp-tailed grouse were observed at undisturbed leks while absent from disturbed leks during the same time period (Baydack and Hein 1987, p. 537). Disturbance of incubating female sage-grouse could cause displacement from nests, increased predator risk, or loss of nests. However, disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood rearing could affect reproduction or survival (Baydack and Hein 1987, pp. 537-538).

Sage-grouse avoidance of activities associated with energy field development (e.g., Holloran 2005, pp. 43, 53, 58; Doherty *et al.* 2008, p. 194) suggests these birds are likely disturbed by any persistent human presence. Additionally, Aldridge *et al.* (2008, p. 988) reported that the density of humans in 1950 was the best predictor of extirpation of greater sage-grouse. The authors also determined that sage-grouse have been extirpated in virtually all counties reaching a human population density of 25 people/km^2 (65people/mi^2) by 1950. However, their analyses considered all impacts of human presence and did not separate recreational activities from other associated activities and infrastructure. The presence of pets in proximity to sage-grouse can result in sage-grouse mortality or disturbance, and increases in garbage from human recreationists can attract sage-grouse predators and help maintain their numbers at increased levels (cite). Leu *et al.* (2008, p. 1133) reported that slight increases in human densities in ecosystems with low biological productivity (such as sagebrush) may have a disproportionally negative impact on these ecosystems due to the potentially reduced resiliency to anthropogenic disturbance.

Indirect effects to sage-grouse from recreational activities include impacts to vegetation and soils, and facilitating the spread of invasive species. Payne *et al.* (1983, p. 329) studied off-road vehicle impacts to rangelands in Montana, and found long-term (2 years) reductions in sagebrush shrub canopy cover as the result of repeated trips in the area. Increased sediment production and decreased soil infiltration rates were observed after disturbance by motorcycles and four-wheel drive trucks on two desert soils in southern Nevada (Eckert *et al.* 1979, p. 395), and noise from these activities can cause disturbance (Knick *et al.* in press, p.24).

Recreational use of OHVs is one of the fastest-growing outdoor activities. In the western United States, greater than 27 percent of the human population used OHVs for recreational activities between 1999 and 2004 (Knick *et al.*, *in press*, p. 19). Off-highway vehicle use was a primary factor listed for 13 percent of species either listed under the Act or proposed for listing (Knick *et al.* in press, p. 24). Knick *et al.* (in press, p. 1) reported that widespread motorized access for recreation subsidized predators adapted to humans and facilitated the spread of invasive plants. Any high-frequency human activity along established corridors can affect wildlife through habitat loss and fragmentation (Knick *et al.* in press, p. 25). The effects of OHV use on sagebrush and sage-grouse have not been directly studied (Knick *et al.* in press, p. 25). However, a review of local sage-grouse conservation plans indicated that local working groups considered off-road vehicle use to be a risk factor in many areas.

We are unaware of scientific reports documenting direct mortality of greater sage-grouse through collision with off-

road vehicles. Similarly, we did not locate any scientific information documenting instances where snow compaction as a result of snowmobile use precluded greater sage-grouse use, or affected their survival in wintering areas. Off-road vehicle or snowmobile use in winter areas may increase stress on birds and displace sage-grouse to less optimal habitats. However, there is no empirical evidence available documenting these effects on sage-grouse, nor could we find any scientific data supporting the possibility that stress from vehicles during winter is limiting greater sage-grouse populations.

Given the continuing influx of people into the western United States (see discussion under Urbanization, Factor A; Leu and Hanser, in press, p. 4), which is contributed to in part by access to recreational opportunities on public lands, we anticipate effects from recreational activity will continue to increase. The foreseeable future for this effect spans for greater than 100 years, as we do not anticipate the desire for outdoor recreational activities will diminish.

Life History Traits Affecting Population Viability

Sage-grouse have comparatively low reproductive rates and high annual survival (Schroeder *et al.* 1999 pp. 11, 14; Connelly *et al.* 2000a, pp. 969-970), resulting in slower potential or intrinsic population growth rates than is typical of other game birds. Therefore, recovery of populations after a decline may require years. Also, as a consequence of their site fidelity to breeding and brood-rearing habitats (Lyon and Anderson 2003, p. 489), measurable population effects may lag behind negative habitat impacts (Wiens and Rotenberry 1985, p. 666). While these natural history characteristics would not limit sage-grouse populations across large geographic scales under historical conditions of extensive habitat, they may contribute to local population declines when humans alter habitats or mortality rates.

Sage-grouse have one of the most polygamous mating systems observed among birds (Deibert 1995, p. 92). Asymmetrical mate selection (where only a few of the available members of one sex are selected as mates) should result in reduced effective population sizes (Deibert 1995, p. 92), meaning the actual amount of genetic material contributed to the next generation is smaller than predicted by the number of individuals present in the population. With only 10 to 15 percent of sage-grouse males breeding each year (Aldridge and Brigham 2003, p. 30), the genetic diversity of sage-grouse would be predicted to be low. However, in a recent survey of 16 greater sage-grouse populations, only the Columbia Basin population in Washington showed low genetic diversity, likely as a result of long-term population declines, habitat fragmentation, and population isolation (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1307). The level of genetic diversity in the remaining range of sage-grouse has generated a great deal of interest in the field of behavioral ecology, specifically sexual selection (Boyce 1990, p. 263; Deibert 1995, p. 92-93). There is some evidence of off-lek copulations by subordinate males, as well as multiple paternity within one clutch (Connelly *et al.* 2004, p. 8-2; Bush 2009, p. 108). Dispersal also may contribute to genetic diversity, but little is known about dispersal in sage-grouse (Connelly *et al.* 2004, p. 3-5). However, the lek breeding system suggests that population sizes in sage-grouse must be greater than in non-lekking bird species to maintain long-term genetic diversity.

Aldridge and Brigham (2003, p. 30) estimated that up to 5,000 individual sage-grouse may be necessary to maintain an effective population size of 500 birds. Their estimate was based on individual male breeding success, variation in reproductive success of males that do breed, and the death rate of juvenile birds. We were unable to find any other published estimates of minimal population sizes necessary to maintain genetic diversity and long-term population sustainability in sage-grouse. However, the minimum viable population size necessary to sustain the evolutionary potential of a species (retention of sufficient genetic material to avoid the effect of inbreeding depression or deleterious mutations) has been estimated as high as an adult population of 5,000 individuals (Traill *et al.* 2010, p. 32). Many sage-grouse populations have already been estimated at well below that value (see Garton *et al.* in press and discussions under Factor A), suggesting their evolutionary potential (ability to persist long-term) has already been compromised if that value is correct.

Drought

Drought is a common occurrence throughout the range of the greater sage-grouse (Braun 1998, p. 148) and is considered a universal ecological driver across the Great Plains (Knopf 1996, p.147). Infrequent, severe drought may cause local extinctions of annual forbs and grasses that have invaded stands of perennial species, and recolonization of these areas by native species may be slow (Tilman and El Haddi 1992, p. 263). Drought reduces vegetation cover (Milton *et al.* 1994, p. 75; Connelly *et al.* 2004, p. 7-18), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity. Drought also can exacerbate other natural events such as defoliation of sagebrush by insects. For example, approximately 2,544 km^2 (982 mi^2) of sagebrush shrublands died in Utah in 2003 as a result of drought and infestations with the *Aroga* (webworm) moth (Connelly *et al.* 2004, p. 5-11). Sage-grouse are affected by drought through the loss of vegetative habitat components, reduced insect production (Connelly and Braun 1997, p. 9), and potentially exacerbation of WNv infections as described in Factor C above. These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality associated with decreased nest cover and food availability (Braun 1998, p. 149; Moynahan 2007, p. 1781).

Sage-grouse populations declined during the 1930s period of drought (Patterson 1952, p. 68; Braun 1998, p. 148). Drought conditions in the late 1980s and early 1990s also coincided with a period when sage-grouse populations were at historically low levels (Connelly and Braun 1997, p. 8). From 1985 through 1995, the entire range of sage-grouse experienced severe drought (as defined by the Palmer Drought Severity Index) with the exceptions of north-central Colorado (MZ II) and southern Nevada (MZ III). During this time period drought was particularly prevalent in southwestern Wyoming, Idaho, central Washington and Oregon, and northwest Nevada (University of Nebraska 2008). Abnormally dry to severe drought conditions still persist in Nevada and western Utah (MZ III and IV), Idaho (MZ IV), northern California and central Oregon (MZ V), and southwest Wyoming (MZ II) (University of Nebraska 2008).

Aldridge *et al.* (2008, p. 992) found that the number of severe droughts from 1950 to 2003 had a weak negative effect on patterns of sage-grouse persistence. However, they cautioned that drought may have a greater influence on future sage-grouse populations as temperatures rise over the next 50 years, and synergistic effects of other threats affect habitat quality (Aldridge *et al.* 2008, p. 992). Populations on the periphery of the range may suffer extirpation during a severe and prolonged drought (Wisdom *et al.* in press, p. 22).

In summary, drought has been a consistent and natural part of the sagebrush-steppe ecosystem and there is no information to suggest that drought was a cause of persistent population declines of greater sage-grouse under historic conditions. However, drought impacts on the greater sage-grouse may be exacerbated when combined with other habitat impacts that reduce cover and food (Braun 1998, p. 148).

Summary of Factor E

Numerous factors have caused sage-grouse mortality, and probably morbidity, such as pesticides, contaminants, as well as factors that contribute to direct and indirect disturbance to sage-grouse and sagebrush, such as recreational activities. Drought has been correlated with population declines in sage-grouse, but is only a limiting factor where habitats have been compromised. Although we anticipate use of pesticides, recreational activities, and fluctuating drought conditions to continue indefinitely, we did not find any evidence that these factors, either separately, or in combination are resulting in local or range-wide declines of greater sage-grouse. New information regarding minimum population sizes necessary to maintain the evolutionary potential of a species suggests that sage-grouse in some areas throughout their range may already be at population levels below that threshold. This is a result of habitat loss and modification (discussed under Factor A).

We have evaluated the best available scientific information on other natural or manmade factors affecting the species' continued existence and determined that this factor does not singularly pose a significant threat to the species now or in the foreseeable future.

Findings

Finding on Petitions to List the Greater Sage-Grouse Across Its Entire Range

As required by the Act, we have carefully examined the best scientific and commercial information available in relation to the five factors used to assess whether the greater sage-grouse is threatened or endangered throughout all or a significant portion of its range. We reviewed the petitions, information available in our files, other available published and unpublished information, and other information provided to us after our notice initiating a status review of the greater sage-grouse was published. We also consulted with recognized greater sage-grouse and sagebrush experts and other Federal and State agencies.

In our analysis of Factor A, we identified and evaluated the present or threatened destruction, modification, or curtailment of the habitat or range of the greater sage-grouse from various causes, including: habitat conversion for agriculture; urbanization; infrastructure (e.g., roads, powerlines, fences) in sagebrush habitats; fire; invasive plants; pinyon-juniper woodland encroachment; grazing; energy development; and climate change. All of these, individually and in combination, are contributing to the destruction, modification, or curtailment of the greater sage-grouse's habitat or range. Almost half of the sagebrush habitat estimated to have been present historically has been destroyed. The impact has been greatly compounded by the fragmented nature of this habitat loss, as fragmentation results in functional habitat loss for greater sage-grouse even when otherwise suitable habitat is still present. Although sagebrush habitats are increasingly being destroyed, modified, and fragmented for multiple reasons, the impact is especially great in relation to fire and invasive plants (and the interaction between them) in more westerly parts of the range, and energy development and related infrastructure in more easterly areas. In addition, direct loss of habitat and fragmentation is occurring due to agriculture, urbanization, and infrastructure such as roads and powerlines built in support of several activities. Some of these habitat losses due to these activities occurred many years ago, but they continue to have an impact due to the resulting fragmentation. Renewed interest in agricultural activities in areas previously defined as unsuitable for these activities, due to economic and technological incentives are likely to increase habitat loss and fragmentation from agricultural conversion. Encroachment of pinyon and juniper woodland into sagebrush is increasing and likely to continue in several areas, altering the structure and composition of habitat to the point that is it is greatly diminished or of no value to sage-grouse. While effects of livestock grazing must be assessed locally, the continued removal of sagebrush to increase forage directly fragments habitat, and indirectly provides for fragmentation through fencing and opportunities for invasive plant incursion. Habitat loss and fragmentation also is very likely to increase as a result of increased temperatures and changes in precipitation regimes associated with the effects of climate change; also, the impacts of fire and invasive plants likely already are, and will continue to be, exacerbated by the effects of climate change.

Sagebrush restoration techniques are limited and generally ineffective. Further, restoring full habitat function may not be possible in some areas because alteration of vegetation, nutrient cycles, topsoil, and cryptobiotic crusts have exceeded the point beyond which recovery to pre-disturbance conditions or conditions suitable to populations of greater sage-grouse, is possible.

The impacts to habitat are not uniform across the range; some areas have experienced less habitat loss than others, and some areas are at relatively lower risk than others for future habitat destruction or modification. Nevertheless, the destruction and modification of habitat has been substantial in many areas across the range of the species, it is ongoing, and it will continue or even increase in the future. Many current populations of greater sage-grouse already are relatively small and connectivity of habitat and populations has been severely diminished across much of the range; and further isolation is likely for several populations. Even the Wyoming Basin and the Great Basin area where Oregon, Nevada, and Idaho intersect, which are the two stronghold areas with relatively large amounts of contiguous sagebrush and sizeable populations of sage-grouse, are experiencing habitat destruction and modification (e.g. as a result of oil and gas development and other energy development in the Wyoming Basin) and this will continue in the future. Several recent studies have demonstrated that sagebrush area is one of the best landscape predictors of greater sage-grouse persistence. Continued habitat destruction and modification, compounded by fragmentation and diminished connectivity, will result in reduced abundance and further isolation of many populations over time, increasing their vulnerability to extinction. Overall, this increases the risk to the entire species across its range.

Therefore, based on our review of the best scientific and commercial information available, we find that the present or threatened destruction, modification, or curtailment of the habitat or range of the greater sage-grouse is a significant threat to the species now and in the foreseeable future.

During our review of the best scientific and commercial information

available, we found no evidence of risks from overutilization for commercial, recreational, scientific, or education affecting the species as a whole. Although the allowable harvest of sage-grouse through hunting was very high in past years, substantial reductions in harvest began during the 1990s and have continued to drop, and since approximately 2000 total mortality due to hunting has been lower than in the last 50 years. The present level of hunting mortality shows no sign of being a significant threat to the species. However, in light of present and threatened habitat loss (Factor A) and other considerations (e.g. West Nile virus outbreaks in local populations), States and tribes will need to continue to carefully manage hunting mortality, including adjusting seasons and harvest levels, and imposing emergency closures if needed. Therefore, we conclude that the greater sage-grouse is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

We found that while greater sage-grouse are subject to various diseases, the only disease of concern is West Nile virus. Outbreaks of WNv have resulted in disease-related mortality is local areas. Because greater sage-grouse have little or no resistance to this disease, the likelihood of mortality of affected individuals is extremely high. Currently the annual patchy distribution of the disease is resulting in minimal impacts except at local scales. We are concerned by the proliferation of water sources associated with various human activities, particularly water sources developed in association with coal bed methane and other types of energy development, as they provide potential breeding habitat for mosquitoes that can transmit WNv. We expect the prevalence of this disease is likely to increase across much of the species' range, but understand the long-term response of different populations is expected to vary markedly. Further, a complex set of conditions that support the WNv cycle must coincide for an outbreak to occur, and consequently although we expect further outbreaks will occur and may be more widespread, they likely will still be patchy and sporadic. We found that while greater sage-grouse are prey for numerous species, and that nest predation by ravens and other human-subsidized predators may be increasing and of potential concern in areas of human development, no information indicates that predation is having or is expected to have an overall adverse effect on the species. Therefore, at this time, we find that neither disease nor predation is a sufficiently significant threat to the greater sage-grouse now or in the foreseeable future that it requires listing under the Act as threatened or endangered based on this factor.

Our review of the adequacy of existing regulatory mechanisms included mechanisms in both Canada (less than 2 percent of the species' range) and the United States. Greater sage-grouse are federally protected in Canada as an endangered species under that country's Species at Risk Act. The species also is listed as endangered by the provinces of Alberta and Saskatchewan, and neither province allows harvest. In Alberta, individual birds are protected, but their habitat is not. The Saskatchewan Wildlife Act restricts development within 500 m (1,640 ft) of leks and prohibits construction within 1,000 m (3,281 ft) of leks from March 15 – May 15, but numerous studies have shown these buffers are inadequate to protect sage-grouse, particularly in nesting areas.

We found very few mechanisms in place at the level of local governments that provide, either directly or indirectly, protections to the greater sage-grouse or its habitat. The species receives some protection under laws of each of the States currently occupied by greater sage-grouse, including hunting regulations and various other direct and indirect mechanisms. However, in most states these provide little or no protection to greater sage-grouse habitat. Colorado recently implemented State regulations regarding oil and gas development, but they apply only to new developments and prescribe a process rather than specific measures that we can evaluate or rely on to provide protection related to the covered actions. In Wyoming, a Governor's Executive Order (E. O. 2008-2) outlines a strategic framework of core habitat areas that may provide the adequate scale of conservation needed over time to ensure the long-term conservation of greater sage-grouse in the state, but currently only the provisions for Wyoming State lands show promise as regulatory mechanisms, affecting only a small portion of the species' range in Wyoming.

The majority of greater sage-grouse habitat is on Federal land, particularly areas administered by the Bureau of Land Management, and to a lesser extent the U.S. Forest Service. We found a diverse network of laws and regulations that relate directly or indirectly to protections for the greater sage-grouse and its habitat on Federal lands, including BLM and FS lands. However, the extent to which the BLM and FS have adopted and adequately implemented appropriate measures to conserve the greater sage-grouse and its habitat varies widely across the range of the species. Regulatory mechanisms addressing the ongoing threats related to habitat destruction and modification, particularly as related to fire, invasive plants, and energy development, are not adequate. There are no known existing regulatory mechanisms currently in place at the local, State, national, or international level that effectively address climate-induced threats to greater sage-grouse habitat. In summary, based on our review of the best scientific information available, we conclude that the inadequacy of existing regulatory mechanisms is a significant threat to the greater sage-grouse now and in the foreseeable future.

We assessed the potential risks from other natural or manmade factors including pesticides, contaminants, recreational activities, life history traits, and drought. We did not find any evidence these factors, either separately or in combination, pose a risk to the species. Therefore, we find that other natural and manmade factors affecting the continued existence of the species do not threaten the greater sage-grouse now or in the foreseeable future.

The greater sage-grouse occurs across 11 western States and 2 Canadian provinces and is a sagebrush obligate. Although greater sage-grouse have a wide distribution, their numbers have been declining since consistent data collection techniques have been implemented. Recent local moderations in the decline of populations indicate a period of relative population stability, particularly since the mid-1990s. This trend information was one key basis for our decision in 2005 that listing the greater sage-grouse was not warranted. The population trends appear to have continued to be relatively stable. However, our understanding of the status of the species and the threats affecting it has changed substantially since our decision in 2005. In particular, numerous scientific papers and reports with new and highly relevant information have become available, particularly during the past year.

Although the declining population trends have moderated over the past several years, low population sizes and relative lack of any sign of recovery across numerous populations is troubling. Previously, fluctuations in sage-grouse populations were apparent over time (based on lek counts as an index). However, these have all but ceased for several years, suggesting

some populations may be at a point where they are unable and unlikely to increase due to habitat limitations, perhaps in combination with other factors. Also, we are aware of the likelihood of a lag effect in some areas, because population trend and abundance estimates are not based on information about reproductive success and population recruitment, but instead are based on the number of adult males observed during lek counts. Because of the relative longevity of adult sage-grouse, the lek counts of males could continue to suggest relative stability even when a population is actually declining.

Overall, the range of the species is now characterized by numerous relatively small populations existing in a patchy mosaic of increasingly fragmented habitat, with diminished connectivity. Many areas lack sufficient unfragmented sagebrush habitats on a scale, and with the necessary ecological attributes (e.g., connectivity and landscape context), needed to address risks to population persistence and support robust populations. Relatively small and isolated populations are more vulnerable to further reduction over time, including increased risk of extinction due to stochastic events. Two strongholds of relatively contiguous sagebrush habitat (southwestern Wyoming and northern Nevada, southern Idaho, southeastern Oregon and northwestern Utah) with large populations which are considered strongholds for the species are also being impacted by direct habitat loss and fragmentation that will continue for the foreseeable future.

We have reviewed and taken into account efforts being made to protect the species, as required by the Act. Although some local conservation efforts have been implemented and are effective in small areas, they are neither individually nor collectively at a scale that is sufficient to ameliorate threats to the species or populations. Many other conservation efforts are being planned but there is substantial uncertainty as to whether, where, and when they will be implemented, and whether they will be effective.

We have carefully assessed the best scientific and commercial information available regarding the present and future threats to the greater sage-grouse. We have reviewed the petition, information available in our files, and other published and unpublished information, and consulted with recognized greater sage-grouse and sagebrush experts. We have reviewed and taken into account efforts being made to protect the species. On the basis of the best scientific and commercial information available, we find that listing the greater sage-grouse is warranted across its range. However, listing the species is precluded by higher priority listing actions at this time, as discussed in the **Preclusion and Expeditious Progress** section below.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the greater sage-grouse is not warranted at this time (see discussion of listing priority, below). However, if at any time we determine that issuing an emergency regulation temporarily listing the species is warranted, we will initiate this action at that time.

Finding on the Petition to List the Western Subspecies of the Greater Sage-Grouse

As described in the Taxonomy section, above, we have reviewed the best scientific information available on the geographic distribution, morphology, behavior, and genetics of sage-grouse in relation to putative eastern and western subspecies of sage-grouse, as formally recognized by the AOU in 1957 (AOU 1957, p. 139). The AOU has not published a revised list of subspecies of birds since 1957, and has acknowledged that some of the subspecies probably cannot be validated by rigorous modern techniques (AOU 1998, p. xii). The Service previously made a finding that the eastern subspecies is not a valid taxon and thus is not a listable entity (69 FR 933, January 7, 2004,), and the Court dismissed a legal challenge to that finding (see Previous Federal Action, above). Thus the 12–month petition finding we are making here is limited to the petition to list the western subspecies.

To summarize the information presented in the Taxonomy section (above), our status review shows the following with regard to the putative western subspecies: (1) there is insufficient information to demonstrate that the petitioned western sage-grouse can be geographically differentiated from other greater sage-grouse throughout the range of the taxon; (2) there is insufficient information to demonstrate that morphological or behavioral aspects of the petitioned western subspecies are unique or provide any strong evidence to support taxonomic recognition of the subspecies; and (3) genetic evidence does not support recognition of the western sage-grouse as a subspecies. To be eligible for listing under the Act, an entity must fall within the Act's definition of a species, "*** any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (Act, section 3(16)). Based on our review of the best scientific information available, we conclude that the western subspecies is not a valid taxon, and consequently is not a listable entity under the Act. Therefore, we find that listing the western subspecies is not warranted.

We note that greater sage-grouse covered by the petition to list the putative western subspecies (except for those in the Bi-State area, which are covered by a separate finding, below) are encompassed by our finding that listing the greater sage-grouse rangewide is warranted but precluded (see above). Further, greater sage-grouse within the Columbia Basin of Washington were designated as warranted, but precluded for listing as a DPS of the western subspecies in 2001 (65 FR 51578, May 7, 2001). However, with our finding that the western subspecies is not a listable entity, we acknowledge that we must reevaluate the status of the Columbia Basin population as it relates to the greater sage-grouse; we will conduct this analysis as our priorities allow.

Finding on the Petitions to List the Bi-State Area (Mono Basin) Population

As described above we received two petitions to list the Bi-State (Mono Basin) area populations of greater sage-grouse as a Distinct Population Segment. Please see the section titled "Previous federal actions" for a detailed history and description of these petitions. In order to make a finding on these petitions, we must first determine whether the greater sage-grouse in the Bi-State area constitute a DPS, and if so, we must conduct the relevant analysis of the five factors that are the basis for making a listing determination.

Distinct Vertebrate Population Segment (DPS) Analysis

Under section 4(a)(1) of the Act, we must determine whether any species is an endangered species or a threatened species because of any of the five threat factors identified in the Act. Section 3(16) of the Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (16 U.S.C.

1532 (16)). To interpret and implement the distinct population segment portion of the definition of a species under the Act and Congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration–Fisheries) published, on February 7, 1996, an interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (61 FR 4722) (DPS Policy). The DPS Policy allows for more refined application of the Act that better reflects the conservation needs of the taxon being considered and avoids the inclusion of entities that may not warrant protection under the Act.

Under our DPS Policy, we consider three elements in a decision regarding the status of a possible DPS as endangered or threatened under the Act. We apply them similarly for additions to the List of Endangered and Threatened Wildlife, reclassification, and removal from the List. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (whether the population segment is, when treated as if it were a species, endangered or threatened). Discreteness is evaluated based on specific criteria provided in the DPS Policy. If a population segment is considered discrete under the DPS Policy we must then consider whether the discrete segment is "significant" to the taxon to which it belongs. If we determine that a population segment is discrete and significant, we then evaluate it for endangered or threatened status based on the Act's standards. The DPS evaluation in this finding concerns the Bi-State (Mono Basin) area greater sage-grouse that we were petitioned to list as threatened or endangered, as stated above.

Discreteness Analysis

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or

(2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated From Other Populations of the Taxon

Bi-State area greater sage-grouse are genetically unique compared with other populations of greater sage-grouse. Investigations using both mitochondrial DNA sequence data and data from nuclear microsatellites have demonstrated that Bi-State area greater sage-grouse contain a large number of unique haplotypes not found elsewhere within the range of the greater sage-grouse (Benedict *et al.* 2003, p. 306; Oyler–McCance *et al.* 2005, p. 1300). The genetic diversity present in the Bi-State population was comparable to other populations suggesting that the differences were not due to a genetic bottleneck or founder event (Oyler–McCance and Quinn *in press*, p. 18). These genetic studies provide evidence that the present genetic uniqueness exhibited by Bi-State area greater sage-grouse developed over thousands and perhaps tens of thousands of years (Benedict *et al.* 2003, p. 308; Oyler–McCance *et al.* 2005, p. 1307), which predates Euro-American settlement.

The Service's DPS Policy states that quantitative measures of genetic or morphological discontinuity may be used as evidence of the marked separation of a population from other populations of the same taxon. In the Bi-State area, the present genetic uniqueness is most likely a manifestation of prehistoric physical isolation. Based on the reported timeline (thousands to tens of thousands of years) (Benedict *et al.* 2003, p. 308), isolation of this population may have begun during the Wisconsin Stage of the Pleistocene Epoch (from approximately 25,000 to 9,000 years before present (ybp)), when Ancient Lake Lahontan covered much of western Nevada. After the lake receded (approximately 9,000 ybp), barriers to genetic mixing remained. Physical barriers in the form of inhospitable habitats (Sierra-Nevada Mountains, salt desert scrub, Mojave Desert) in most directions maintained this isolation. With the establishment of Virginia City, Nevada (1859), any available corridor that connected the Bi-State area to the remainder of the greater sage-grouse range was removed.

Currently, no greater sage-grouse occur in the Virginia Range, having been extirpated several decades ago. The population in closest proximity to the Bi-State area occurs in the Pah Rah Range to the northeast of Reno, Nevada, and approximately 50 km (31 mi) to the north of the Bi-State area. The Pah Rah Range occurs immediately to the north of the Virginia Range and south of the Virginia Mountains. It is currently unknown if the small remnant population occurring in the Pah Rah Range aligns more closely with the Bi-State birds or the remainder of the greater sage-grouse. The range delineation occurs south of the Virginia Mountains in one of three locations: (1) the small population occurring in the Pah Rah Range, (2) the extirpated population historically occurring in the Virginia Range, or (3) the Pine Nut Mountains. Limited studies of behavioral differences between the Bi-State population and other populations have not demonstrated any gross differences that suggest behavioral barriers (Taylor and Young 2006, p. 39).

Conclusion for Discreteness

We conclude the Bi-State population of greater sage-grouse is markedly separate from other populations of the greater sage-grouse based on genetic data from mitochondrial DNA sequencing and from nuclear microsatellites. The Bi-State area greater sage-grouse contain a large number of unique haplotypes not found elsewhere within the range of the species. The present genetic uniqueness exhibited by Bi-State area greater sage-grouse occurred over thousands and perhaps tens of thousands of years (Benedict *et al.* 2003, p. 308; Oyler-McCance *et al.* 2005, p. 1307) and continues through today due to physical isolation from the remainder of the range. These genetic data are the principal basis for our conclusion that the Bi-State area greater sage-grouse are markedly separated from other populations of greater sage-grouse and therefore are discrete under the Service's DPS Policy.

Significance Analysis

The DPS Policy states that if a population segment is considered discrete under one or both of the discreteness criteria, its biological and ecological significance will then be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In carrying out this examination, the Service considers available scientific evidence of the DPS's importance to the taxon to which it belongs. As specified in the DPS Policy, this consideration of the significance may include, but is not limited to, the following: (1) persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) evidence that its loss would result in a significant gap in the range of the taxon; (3) evidence that it

is the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The DPS Policy further states that because precise circumstances are likely to vary considerably from case to case, it is not possible to describe prospectively all the classes of information that might bear on the biological and ecological importance of a discrete population segment.

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon. The Bi-State area greater sage-grouse population occurs in the Mono province (Rowland *et al.* 2003, p. 63). This ecological province is part of the Great Basin, and on a gross scale the ecological provinces that comprise this area are characterized by basin and range topography. Basin and range topography covers a large portion of the western United States and northern Mexico. It is typified by a series of north–south-oriented mountain ranges running parallel to each other, with arid valleys between the mountains. Most of Nevada and eastern California comprise basin and range topography with only slight variations in floristic patterns. Hence, we do not consider Bi-State area greater sage-grouse to occur in an ecological setting that is unique for the taxon.

(2) Evidence that its loss would result in a significant gap in the range of the taxon. The estimated total extant range of greater sage-grouse is 668,412 km^2 (258,075 mi^2) (Schroeder *et al.* 2004, p. 363) compared to approximately 18,310 km^2 (7,069 mi^2) for the Bi-State area sage-grouse (Bi-State Plan 2004). Bi-State area sage-grouse therefore occupy about 3 percent of the total extant range of greater sage-grouse. Loss of this population would not create a gap in the remainder of the species range because the Bi-State population does not provide for connectivity for other portions of the range. Therefore, we conclude that loss of this population would not represent a significant gap in the range of the species.

(3) Evidence that it is the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range. Bi-State area greater sage-grouse are not the only surviving occurrence of the taxon and represent a small proportion of the total extant range of the species.

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Genetic analyses show the Bi-State area sage-grouse have a large number of unique haplotypes not found elsewhere in the range of the species (Benedict *et al.* 2003, p. 306; Oyler-McCance *et al.* 2005, p. 1300). Benedict *et al.* (2003, p. 309) indicated that the preservation of genetic diversity represented by this unique allelic composition is of particular importance for conservation.

On the basis of the discussion presented above, we conclude the Bi-State greater sage-grouse population meets the significance criterion of our DPS Policy.

Conclusion of Distinct Population Segment Review

Based on the best scientific and commercial data available, as described above, we find that under our DPS Policy, the Bi-State greater sage-grouse population is discrete and significant to the overall species. Because the Bi-State greater sage-grouse population is both discrete and significant, we find that it is a distinct population segment under our DPS Policy. We refer to this population segment as the Bi-State DPS of the greater sage-grouse.

Conservation Status

Pursuant to the Act, as stated above, we announced our determination that the petitions to list the Bi-State area population of greater sage-grouse contained substantial information that the action may be warranted. Having found the Bi-State population qualifies as a DPS, we now must consider, based on the best available scientific and commercial data whether the DPS warrants listing. We have evaluated the conservation status of the Bi-State DPS of the greater sage-grouse in order to make that determination. Our analysis follows below.

Life History Characteristics

Please see this section of the greater sage-grouse 12–month petition finding (GSG finding) above for life history information.

Habitat Description and Characteristics

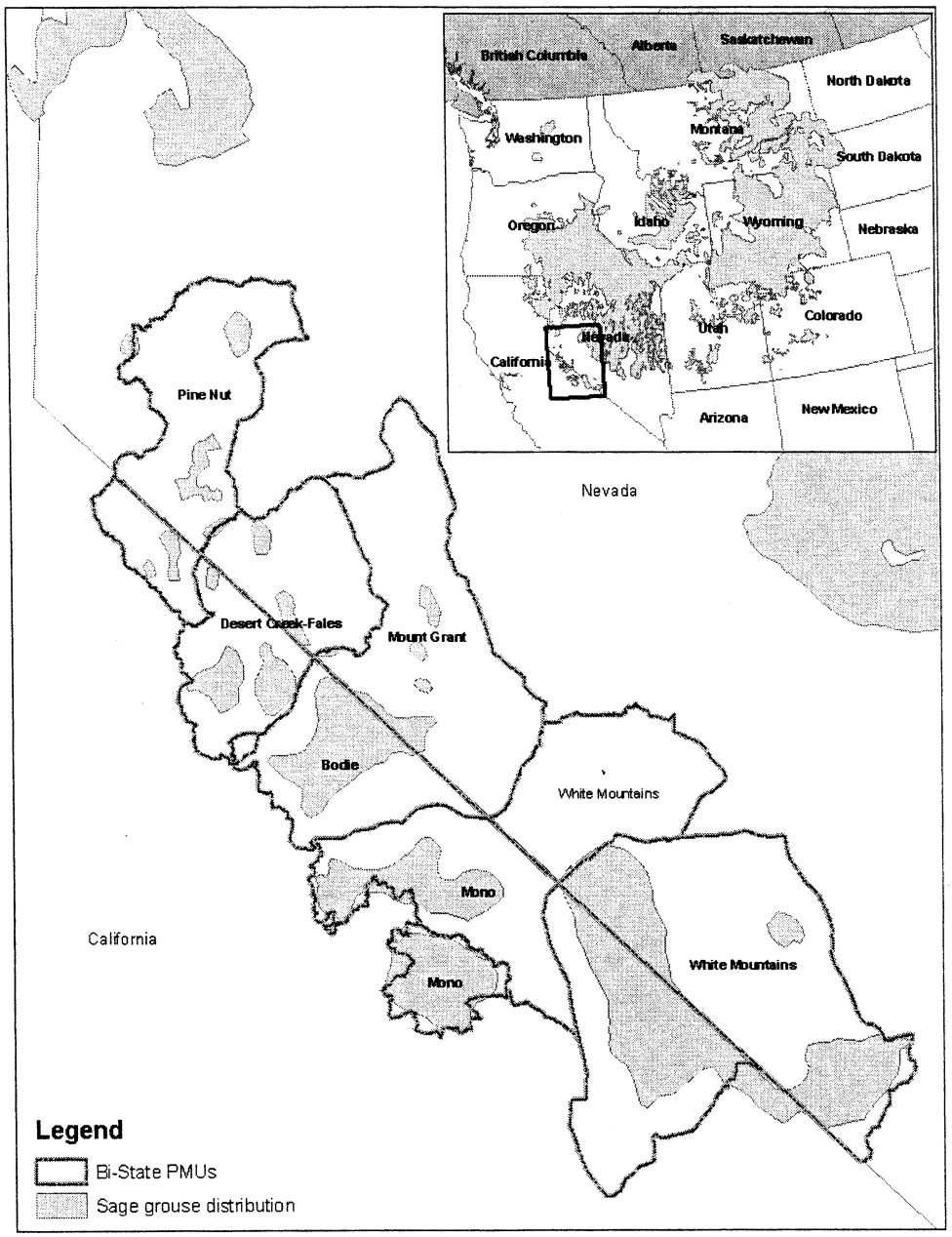
Please see this section of the GSG finding, above, for information on sage-grouse habitat.

Distribution

The Bi-State DPS of the greater sage-grouse historically occurred throughout most of Mono, eastern Alpine, and northern Inyo Counties, California (Hall *et al.* 2008, p. 97), and portions of Carson City, Douglas, Esmeralda, Lyon, and Mineral Counties, Nevada (Gullion and Christensen 1957, pp. 131–132; Espinosa 2006a, pers. comm.). Although the current range of the population in California was presumed reduced from the historical range (Leach and Hensley, 1954, p. 386; Hall 1995, p. 54; Schroeder *et al.* 2004, pp. 368–369), the extent of loss is not well understood and there may, in fact, have been no net loss (Hall *et al.* 2008, p. 96) in the California portion of the Bi-State area. Gullion and Christensen (1957, pp. 131–132) reported that greater sage-grouse occurred in Esmeralda, Mineral, Lyon, and Douglas Counties. However, parts of Carson City County were likely part of the original range of the species in Nevada and it is possible that greater sage-grouse still persist there (Espinosa 2006a, pers. comm.). The extent of the range loss in the Nevada portion of the Bi-State area not been estimated (Stiver 2002, pers. comm.).

In 2001, the State of Nevada sponsored development of the *Nevada Sage-Grouse Conservation Strategy* (Sage-Grouse Conservation Planning Team 2001). This Strategy established Population Management Units (PMUs) for Nevada and California as management tools for defining and monitoring greater sage-grouse distribution (Sage-Grouse Conservation Planning Team 2001, p. 31). The PMU boundaries are based on aggregations of leks, greater sage-grouse seasonal habitats, and greater sage-grouse telemetry data (Sage-Grouse Conservation Planning Team 2001, p. 31). The PMUs that comprise the Bi-State planning area are Pine Nut, Desert Creek–Fales, Mount Grant, Bodie, South Mono, and White Mountains (Figure 4).

Figure 4—Population Management Units (PMUs) and greater sage-grouse distribution within the Bi-State planning area, California and Nevada.



Currently in the Bi-State area, sage-grouse leks occur in all of the delineated PMUs, with the greatest concentration of leks occurring in the Bodie and South Mono PMUs. Historically there were as many as 122 lek locations in the Bi-State area, although not all were active in any given year. This number is likely inflated due to observer and mapping error. The Nevada Department of Wildlife (NDOW) reports a total of 89 known leks in the Bi-State area (NDOW 2008, p. 7; NDOW 2009, unpublished data). Of these, approximately 39 are considered active and approximately 30 appear to be core leks or occupied annually.

- In the Pine Nut PMU, there are 10 known leks, 4 of which are considered active. Only 1 or 2 appear to be core leks (occupied annually) with the remainder considered satellite leks (active during years of high bird abundance).
- In the Desert Creek–Fales PMU, there are 19 known leks on the Nevada portion consisting of 8 active leks and probably 4 core leks. In California, on the Fales portion of this PMU, there are 6 known leks consisting of 2 or 3 core leks and 3 satellite leks.
- In the Mount Grant PMU, there are 12 known leks with 8 active leks. Of the active leks, 2 to 4 appear to be annually attended. Survey data are limited, and it is not known how many leks are active on an annual basis versus in years of high bird abundance.

- In the Bodie PMU, 29 leks have been mapped. Approximately 7 to 8 appear to be core leks, 6 to 12 appear to be satellite locations, and the remainder are not well defined (i.e., satellites or changes in lek focal activity, poorly mapped, one-time observations).
- In the South Mono PMU there are 9 leks in the Long Valley area near Mammoth Lakes, most of which are annually active. Additionally, 1 lek occurs in the Parker Meadows area south of Lee Vining, and 2 leks occurred along Highway 120 at the base of Granite Mountain and in Adobe Valley but these 2 leks may be extirpated.
- In the White Mountains PMU 2 leks appear active in California in the vicinity of the Mono and Inyo County line, and the NDOW reports 5 active leks in Esmeralda County.

Due to long-term and extensive survey efforts, it is unlikely that new leks will be found in the Nevada or California portions of the Pine Nut and Desert Creek–Fales PMUs or the Bodie and South Mono PMUs in California (Espinosa 2006b, pers. comm.; Gardner 2006, pers. comm.). It is possible that unknown leks exist in the Mount Grant PMU and the Nevada and California portions of the White Mountains PMU, as these PMUs are less accessible resulting in reduced survey effort (Espinosa 2006b, pers. comm.; Gardner 2006, pers. comm.).

Based on landownership, 46 percent of leks in the Bi-State area occur on Bureau of Land Management (BLM) lands, 25 percent occur on U.S. Forest Service (USFS) lands, 17 percent occur on private land, 7 percent occur on Los Angeles Department of Water and Power (LADWP) lands, 4 percent occur on Department of Defense (DOD) lands, and 1 percent occur on State of California lands (Espinosa 2006c, pers. comm.; Taylor 2006, pers. comm.). Of the 30-35 core leks in the Bi-State area, only 3 are known to occur on private lands.

Population Trend and Abundance

In 2004, WAFWA conducted a partial population trend analysis for the Bi-State area (Connelly *et al.* 2004, Chapter 6). The WAFWA recognizes four populations of greater sage-grouse in the Bi-State area but only two populations (North Mono Lake and South Mono Lake) had sufficient data to warrant analysis (Connelly *et al.* 2004, pp. 6-60, 6-61, 6-62). Essentially, the South Mono Lake population encompasses the South Mono PMU, while the North Mono Lake population encompasses the Bodie, Mount Grant, and Desert Creek–Fales PMUs. The authors reported that the North Mono Lake population displayed a significant negative trend from 1965 to 2003, and the South Mono Lake population displayed a non-significant positive trend over this same period (Connelly *et al.* 2004, pp. 6-69, 6-70).

In 2008, WAFWA conducted a similar trend analysis on these two populations using a different statistical method for the periods from 1965 to 2007, 1965 to 1985, and 1986 to 2007 (WAFWA 2008, Appendix D). The 2008 WAFWA analysis reports the trend for the North Mono Lake population, as measured by maximum male attendance at leks, was negative from 1965 to 2007 and 1965 to 1985 but variable from 1986 to 2007, and suggests an increasing trend beginning in about 2000. WAFWA's results for the South Mono Lake population suggest a negative trend from 1965 to 2007, a stable trend from 1965 to 1985, and a variable trend from 1986 to 2007, again suggesting a positive trend beginning around 2000. These two populations do not encompass the entire Bi-State area but do represent a large percentage of known leks. The two PMUs excluded from this analysis were the Pine Nut and White Mountains, which WAFWA delineates as separate populations that lacked sufficient data for analysis.

A new analysis by Garton *et al.* (*in press*, pp. 36, 37), also reports a decline in the North Mono Lake population from the 1965–1969 to 2000–2007 assessment periods, with no consistent long-term trend. In the South Mono Lake population, Garton *et al.* (*in press*, pp. 37, 38) report an increase in the 1965–1969 to 1985–1989 assessment periods but a decline in the 1985–1989 to 2000–2007 assessment periods, with no obvious trend. Garton *et al.* (in press, pp. 36, 38) report that the estimated average annual rate of change for both of these populations suggests that growth of these two populations has been, at times, both positive and negative.

The CDFG and NDOW annually conduct greater sage-grouse lek counts in the California and Nevada portions, respectively, of the Bi-State area. These lek counts are used by the CDFG and NDOW to estimate greater sage-grouse populations for each PMU in the Bi-State area. Low and high population estimates are derived by combining a corrected number of males detected on a lek, an assumed sex ratio of two females to one male, and two lek detection rates (intended to capture the uncertainty associated with finding leks). The lek detection rates vary by PMU but range between 0.75 and 0.95.

Beginning in 2003, the CDFG and NDOW began using the same method to estimate population numbers, and consequently, the most comparable population estimates for the entire Bi-State area start in 2003. Prior to 2003, Nevada survey efforts varied from year to year, with no data for some years, and inconsistent survey methodology. The CDFG methods for estimating populations of greater sage-grouse in California were more consistent than NDOW's prior to 2003. However, using population estimates for greater sage-grouse derived before 2003 could lead to invalid and unjustified conclusions given the variation in the number of leks surveyed, survey methodology, and population estimation techniques between the NDOW and CDFG. Therefore, we are presenting population numbers from 2003 to 2009. Population estimates derived from spring lek counts are problematic due to unknown or uncontrollable biases such as the true ratio of females to males or the percentage of uncounted leks. We provide this information in order to place into context what we consider to be a reasonable range as to the extent of the population in the Bi-State area as well as to demonstrate the apparent variability in annual estimates over the short term. For reasons described above we caution against assigning too much certainty to these results.

Spring population estimates are presented in Tables 11 and 12 for the South Mono, Bodie, Mount Grant, and Desert Creek–Fales PMUs (CDFG 2009, unpublished data; NDOW 2009, unpublished data). They also include population estimates for the Nevada portion of the Pine Nut PMU (NDOW 2009, unpublished data). However, they do not include population estimates for the White Mountains PMU or the California portion of the Pine Nut PMU. Due to the difficulty in accessing the White Mountains PMU, no consistent surveys have been conducted and it appears that birds are not present in the California portion of the Pine Nut PMU (Gardner 2006, pers. comm.).

TABLE 11—COMBINED SPRING POPULATION ESTIMATES FOR BI-STATE AREA GREATER SAGE-GROUSE. (SEE TEXT FOR CITATIONS.)

Survey year	Population estimate range
2003	2,820 to 3,181
2004	3,682 to 4,141
2005	3,496 to 3,926
2006	4,218 to 4,740
2007	3,287 to 3,692
2008	2,090 to 2,343
2009	2,712 to 3,048

TABLE 12—POPULATION MANAGEMENT UNIT (PMU) SIZE, OWNERSHIP AND ESTIMATED SUITABLE GREATER-SAGE-GROUSE HABITAT, AND ESTIMATED GREATER SAGE-GROUSE POPULATION FOR 2009. (SEE TEXT FOR DETAILS AND CITATIONS.)

Population Management Unit (PMU)	Total Size acres (ha)	Percent Federal Land	Estimated Habitat acres (ha)	Estimated Population (2009)
Pine Nut	574,373 (232,441)	72	233,483 (94,488)	89–107
Desert Creek-Fales	567,992 (229,859)	88	191,985 (77,694)	512–575
Mount Grant	699,079 (282,908)	90	254,961 (103,180)	376–427
Bodie	349,630 (141,491)	74	183,916 (74,428)	829–927
South Mono	579,483 (234,509)	88	280,492 (113,512)	906–1,012
White Mountains	1,753,875 (709,771)	97	418,056 (169,182)	NA

As shown in Table 12, Federal lands comprise the majority of the area within PMUs. Although other land ownership is small in comparison, these other lands contain important habitat for greater sage-grouse life cycle requirements. In particular, mesic areas that provide important brood rearing habitat are often on private lands.

Movement, Habitat Use, Nest Success, and Survival

Casazza *et al.* (2009, pp. 1-49) conducted a 3–year study on greater sage-grouse movements in the Bi-State area. The researchers radio-marked 145 birds, including 104 females and 41 males, in Mono County within the Desert Creek–Fales, Bodie, White Mountains, and South Mono PMUs (Casazza *et al.* 2009, p. 6). The greatest distance moved by radio-marked birds between any two points is as follows: 29 percent moved from 0 to 8 km (0 to 5 mi); 41 percent moved from 8 to 16 km (5 to 10 mi); 25 percent moved from 16 to 24 km (10 to 15 mi); 4 percent moved from 24 to 32 km (15 to 20 mi); and 1 percent moved greater than 32 km (20 mi).

Female greater sage-grouse home range size ranged from 2.3 to 137.1 km^2 (0.9 to 52.9 mi^2), with a mean home range size of 38.6 km^2 (14.9 mi^2) (Overton 2006, unpublished data). Male greater sage-grouse home range size ranged from 6.1 to 245.7 km^2 (2.3 to 94.9 mi^2) with a mean home range size of 62.9 km^2 (24.1 mi^2) (Overton 2006, unpublished data). Annual home ranges were largest in the Bodie PMU and smallest in the Parker Meadows area of the South Mono PMU and the California portion of the Desert Creek–Fales PMU.

The data from more than 7,000 telemetry locations, representing the 145 individuals indicate movement between populations in the Bi-State area is limited. No birds caught within the White Mountains, South Mono, or Desert Creek–Fales PMUs made movements outside their respective PMUs of capture. Previously, the NDOW tracked a female greater sage-grouse radio-marked near Sweetwater Summit in the Nevada portion of the Desert Creek–Fales PMU to Big Flat in the northern portion of the Bodie PMU, suggesting possible interaction between these PMUs. Also, some birds caught in the Bodie PMU made seasonal movements on the order of 8 to 24 km (5 to 15 mi) east into Nevada and the adjacent Mount Grant PMU. Within the Bi-State area some known bird movements would be classified as migratory, but the majority of radio-marked individuals have not shown movements large enough to be characterized as migratory (Casazza *et al.* 2009, p. 8).

In association with Casazza *et al.* (2009), Kolada (2007) conducted a study examining nest site selection and nest survival of greater sage-grouse in Mono County, These greater sage-grouse selected nest sites high in shrub cover (42 percent on average), and these shrubs were often species other than sagebrush (i.e., bitterbrush (*Purshia tridentata*)) (Kolada 2007, p. 18). The reported amount of shrub cover was not outside the normal range found in other studies (Connelly *et al.* 2000a, p. 970). However, there was a large contribution of non-sagebrush shrubs to greater sage-grouse nesting habitat in Mono County. There was no evidence that greater sage-grouse hens were selecting for nest sites with greater residual grass cover or height as compared to random sites. Overall nest success among birds in Mono County during the 3–year study (2003–2005) appears to be among the highest of any population rangewide (Kolada 2007, p. 70). However, nest

success in Long Valley (South Mono PMU) was substantially lower than for either the Bodie or Desert Creek–Fales PMUs.

Also in association with Casazza *et al.* (2009), Farinha *et al.* (2008, unpublished data) found that survival of adults was lowest in the northern Bi-State area and highest in Long Valley. Near Sonora Junction, California (Desert Creek–Fales PMU) and in the Bodie Hills (Bodie PMU), adult survival was 4 and 18 percent, respectively. Sedinger *et al.* (*unpublished data*, p. 12) derived a similar adult survival estimate (16 percent) for an immediately adjacent area in Nevada. Survival estimates at these three locations are unusually low (Sedinger *et al.* unpublished data, p. 12). In Long Valley, Farinha *et al.* (2008, unpublished data) estimated adult survival at 53 percent, which is more consistent with annual survival estimates reported in other portions of the species' range.

Summary of Factors Affecting the Bi-State DPS of the Greater Sage-Grouse

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below information regarding the status and threats to the Bi-State DPS of the greater sage-grouse in relation to the five factors provided in section 4(a)(1) of the Act. Under section (4) of the Act, we may determine a species to be endangered or threatened on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We evaluated whether threats to the Bi-State area greater sage-grouse DPS may affect its survival. Our evaluation of threats is based on information provided in the petitions, available in our files, and other sources considered to be the best scientific and commercial information available including published and unpublished studies and reports.

Our understanding of the biology, ecology, and habitat associations of the Bi-State DPS of the greater sage-grouse, and the potential effects of perturbations such as disease, urbanization, and infrastructure development on this population, is based primarily on research conducted across the range of the entire greater sage-grouse species. The available information indicates that the members of the species have similar physiological and behavioral characteristics, and consequently similar habitat associations. We believe the potential effects of specific stressors on the Bi-State DPS of the greater sage-grouse are the same as those described in the GSG finding, above. To avoid redundancy, the descriptions of these effects are omitted below and further detail and citations may be found in the corresponding analysis in the GSG finding, above.

The range of the Bi-State DPS of the greater sage-grouse is roughly 3 percent of the area occupied by the entire greater sage-grouse species, and the relative impact of effects caused by specific threats may be greater at this smaller scale. We have considered these differences of scale in our analysis and our subsequent discussion is focused on the degree to which each threat influences the Bi-State DPS of the greater sage-grouse. Individual threats described within Factors A through E below are not all present across the entire Bi-State area. However, the influence of each threat on specific populations may influence the resiliency and redundancy of the entire Bi-State greater sage-grouse population.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Urbanization

Changing land uses have and continue to occur in the Bi-State area. Where traditional private land use was primarily farming and ranching operations, today, some of these lands are being sold and converted to low-density residential housing developments. About 8 percent of the land base in the Bi-State area is privately owned. A 2004 threat analysis recognized urban expansion as a risk to greater sage-grouse in the Pine Nut, Desert Creek–Fales, Bodie, and South Mono PMUs (Bi-State Plan 2004, pp. 24, 47, 88, 169). The CDFG reports that private lands have been sold and one parcel was recently developed on Burcham Flat within the Desert Creek–Fales PMU (CDFG 2006). Additionally, a planned subdivision of a 48 ha (120 ac) parcel that is in close proximity to the Burcham Flat lek, 1 of 3 remaining leks in the California portion of the Desert Creek–Fales PMU, is currently under review by the County of Mono, California. The subdivision would replace a single ranch operation with three private residences.

Sagehen (16.2 ha (40 ac)) and Gaspipe (16.2 ha (40 ac)) Meadows located in the South Mono PMU have recently been affected by development. Also, Sinnamon (~485 ha, ~1,200 ac) and Upper Summers Meadows (~1,214 ha; ~3,000 ac) located in the Bodie PMU are currently for sale (Taylor 2008, pers. comm.). Each of these private parcels is important to greater sage-grouse because of the summer brood-rearing habitat they provide (Taylor 2008, pers. comm.). The NDOW is concerned that the urbanization or the division of larger tracts of private lands into smaller ranchettes will adversely affect greater sage-grouse habitat in the Nevada portion of the Pine Nut and Desert Creek–Fales PMUs (NDOW 2006, p. 4). The NDOW reported that expansions of Minden, Gardnerville, and Carson City, Nevada, are encroaching into the Pine Nut Range (within the Pine Nut PMU) and that housing development in Smith Valley and near Wellington, Nevada, has fragmented and diminished greater sage-grouse habitats in the north portion of the Desert Creek–Fales PMU (NDOW 2006, p. 4).

Development of private lands is known to impact greater sage-grouse habitat (Connelly *et al.* 2004, pp. 7-25, 7-26), and federal and state agencies may actively work to purchase parcels important for greater sage-grouse conservation. Recently, the State of California purchased a 470 ha (1,160 ac) parcel in the Desert Creek–Fales PMU comprising the largest contiguous private land parcel in the California portion of the PMU.

When private lands adjacent to public lands are developed, there can be impacts to greater sage-grouse on the public lands. Approximately 89 percent of the land contained within the Bi-State area is federally managed land, primarily by the USFS and BLM. The BLM and USFS manage public lands under federal laws that provide for multiple-use management, which allows a number of actions that are either detrimental or beneficial to sage-grouse (Bi-State Plan 2004). The Bi-State Plan (2004, pp. 24, 88) reported within the Pine Nut and Bodie PMUs, habitat loss and fragmentation associated with land use change and development is not restricted to private lands. Rights-of-way (ROW) across public lands for roads, utility lines, sewage treatment plants, and other public purposes are frequently granted to support development activities on adjacent private parcels.

Based on location data from radio-marked birds in the Desert Creek–Fales, Bodie, and South Mono PMUs, greater sage-grouse home ranges consist of a

combination of public and privately owned lands (Casazza 2009, p. 9). In the Desert Creek–Fales PMU, use of private lands was most pronounced near Burcham and Wheeler Flats. Home ranges of these individuals encompassed between 10 and 15 percent private lands, depending on the season (Casazza *et al.* 2009, p. 19). In the Bodie PMU radio-marked birds were found to use private lands between 10 and 20 percent of the time, with use most pronounced during the summer and winter months (Casazza 2009, p. 27). In the South Mono and White Mountains PMUs, use of private lands was greatly restricted. We have limited quantitative data for birds breeding in the Nevada portion of the Bi-State area. However, some greater sage-grouse breeding in the Bodie PMU moved to wintering habitat on private land in Nevada on the adjacent Mount Grant PMU. Also, private lands in the Nevada portion of the Desert Creek–Fales PMU and the Mount Grant PMU are used by sage-grouse throughout the year, especially during the late summer brood-rearing period (Espinosa 2008, pers. comm.).

The Town of Mammoth Lakes, California, located in the southern extent of the Bi-State planning area recently adopted measures that will allow for more development on private lands (Town of Mammoth Lakes General Plan 2007). Increased indirect effects to greater sage-grouse habitat are expected due increases in the human population in the area.

The proposed expansion of the Mammoth Yosemite Airport is located in occupied greater sage-grouse habitat within the South Mono PMU. Approximately 1.6 ha (4 ac) of land immediately surrounding the airport is zoned for development. Also, the Federal Aviation Administration (FAA) recently resumed regional commercial air service at the Airport with two winter flights per day beginning in 2008 and potentially increasing to a maximum of eight winter flights per day by 2011 (FAA 2008, ES-1). The Mammoth Yosemite Airport formerly had regional commercial air service from 1970 to the mid-1990's (FAA 2008, p. 1-5), and it currently supports about 400 flights per month of primarily single-engine, private aircraft (Town of Mammoth Lakes 2005, p. 4-204). All greater sage-grouse in the Long Valley portion of the South Mono PMU occur in close proximity to the Airport and have been exposed to commercial air traffic in the past, and are currently exposed to private air traffic. Effects of reinstating commercial air service at the Mammoth Yosemite Airport on greater sage-grouse are unknown as the level of commercial flight traffic these birds may be exposed to is undetermined as is the impact this exposure will have on population dynamics.

The Benton Crossing landfill in Mono County is located north of Crowley Lake in Long Valley (South Mono PMU) on a site leased from the LADWP. Common ravens (*Corvus corax*) and California gulls (*Larus californicus*) are known to heavily use the facility (Coates 2008, pers. comm.), although no specific surveys of either species' abundance have been conducted. The influence these known predators have on the population dynamics of the South Mono PMU is not known. However, Kolada (2007, p. 66) reported that nest success in Long Valley was significantly lower in comparison to other populations within the Bi-State planning area. This result may be attributable to the increased avian predators subsidized by landfill operations (Casazza 2008, pers. comm.).

Summary: Urbanization

Development of private lands for housing and the associated infrastructure within the Bi-State area is resulting in the destruction and modification of habitat of the Bi-State area greater sage-grouse DPS. The threat of development is greatest in the Pine Nut, Desert Creek–Fales, and Bodie PMUs, where development is, and will likely continue to impact Bi-State area greater sage-grouse DPS use of specific seasonal sites. The small private holdings in the Bi-State area are typically associated with mesic meadow or spring habitats that play an important role in greater sage-grouse life history. Greater sage-grouse display strong site fidelity to traditional seasonal habitats and loss of specific sites can have pronounced population impacts. The influence of land development on the population dynamics of greater sage-grouse in the Bi-State area is greater than a simple measure of spatial extent. As noted above, resumption of commercial air service at the Mammoth Yosemite Airport, combined with the construction of an adjacent business park, will likely affect greater sage-grouse in the South Mono PMU through increasing aircraft and human activity in or near sage-grouse habitat.

Development of public and private lands for a variety of purposes, including residential homes and ROWs to support associated infrastructure can negatively affect sage-grouse and their habitat, and while these threats may not be universal, localized areas of impacts are anticipated. Based on the data available, direct and indirect effects of urbanization have exerted and will continue to exert a negative influence in specific portions of greater sage-grouse range in the Bi-State area. This is already especially apparent in the northern portion of the range of the Bi-State DPS of the greater sage-grouse, in the Pine Nut, Desert Creek–Fales, and Bodie PMUs (NDOW 2006, p. 4; Bi-State Plan 2004, pp. 24, 88).

Infrastructure - Fences, Powerlines, and Roads

Fences are considered a risk to greater sage-grouse in all Bi-State PMUs (Bi-State Plan 2004, pp. 54, 80, 120, 124, 169). As stated in the December 19, 2006, 90–day finding (71 FR 76058), the BLM Bishop Field Office reported increased greater sage-grouse mortality and decreased use of leks when fences were in close proximity. Known instances of collision, and the potential to fragment and degrade habitat quality by providing movement pathways and perching substrates for invasive species and predators have been cited.

Fences can also provide a valuable rangeland management tool. If properly sited and designed, fencing may ultimately improve habitat conditions for greater sage-grouse. Near several leks in the Long Valley area of the South Mono PMU, the BLM and LADWP are currently using "let down" fences as a means of managing cattle. This design utilizes permanent fence posts but allows the horizontal wire strands to be effectively removed (let down) during the greater sage-grouse breeding season or when cattle are not present. While this method does not ameliorate all negative aspects of fence presence such as perches for avian predators, it does reduce the likelihood of collisions. Currently, data on the total extent (length and distribution) of existing fences and the amount of new fences being constructed are not available for the Bi-State area.

Powerlines occur in all Bi-State PMUs and are a known threat to the greater sage-grouse, but the degree of effect varies by location. In the Pine Nut PMU, powerlines border the North Pine Nut lek complex on two sides (Bi-State Plan 2004, p. 28). An additional line segment to the northwest of this complex is currently undergoing review by the BLM Carson City District. If this additional line is approved, powerlines will surround the greater sage-grouse habitat in the area. Of the four leks considered active in the area, the distance between the leks and the powerlines ranges from approximately 1.2 to 2.9 km (0.74 to 1.8 mi). Additionally, one line currently bisects the relatively limited nesting habitat in

the area. Proximity to powerlines is negatively associated with greater sage-grouse habitat use, with avoidance of otherwise suitable breeding habitat (as indicated by the location of active leks), which may be the result of predator avoidance (e.g., ravens and raptors) (Bi-State Plan 2004, p. 81; and see *Powerlines* discussion under Factor A in the GSG finding above).

In the Desert Creek–Fales PMU, powerlines are one of several types of infrastructure development that impact greater sage-grouse through displacement and habitat fragmentation (Bi-State Plan 2004, p. 54). Recent declines in populations near Burcham and Wheeler Flats in the California portion of the Desert Creek–Fales PMU may be related to construction of powerlines and associated land use activities (Bi-State Plan 2004, p. 54). This area continues to see urban development which will likely require additional distribution lines. In the Bodie PMU, utility lines are a current and future threat that affects multiple sites (Bi-State Plan 2004, p. 81). In northern California, utility lines have a negative effect on lek attendance and strutting activity. Radio-tagged greater sage-grouse loss to avian predation increased as the distance to utility lines decreased (Bi-State Plan 2004, p. 81). Common ravens are a capable nest predator and often nest on power poles or are found in association with roads. The Bi-State Plan also identifies numerous small-distribution utility lines in the Bodie PMU that are likely negatively affecting greater sage-grouse. The plan references the expected development of new lines to service private property developments. The BLM Bishop Field Office reported reduced activity at one lek adjacent to a recently developed utility line and suggested this may have been influenced by the development (Bi-State Plan 2004, p. 81). Since 2004, however, numbers at this lek have rebounded. Currently, there are no high-voltage utility lines in the Bodie PMU, nor are there any designated corridors for this use in existing land use plans (Bi-State Plan 2004, p. 82).

A high-voltage powerline currently fragments the Mount Grant PMU from north to south, with two to three additional smaller distribution lines extending from Hawthorne, Nevada, west to the California border. The larger north–south trending powerline is sited in a corridor that was recently adopted as part of the West-wide Energy Corridor Programmatic EIS (BLM/USFS 2009), thus future development of this corridor is anticipated. There are two leks that likely represent a single complex in proximity to this line segment that have been sporadically active over recent years. Whether this variation in active use is due to the powerline is not clear. Additionally, there is strong potential for geothermal energy development in the Mount Grant PMU that will require additional distribution lines to tie into the existing electrical grid (see *Renewable Energy Development* below; RETAAC 2007). Of significant concern will be additional distribution lines in proximity to the historic mining district of Aurora, Nevada, which supports the largest lek in the Mount Grant PMU and occurs about 2.5 km (1.5 mi) from the main north-south line.

The Bi-State Plan (2004, p. 169) mentions three transmission lines in the South Mono PMU that may be impacting birds in the area on a year round basis including three leks that are in proximity to existing utility lines. Future geothermal development may also result in expansion of transmission lines in the South Mono PMU (Bi-State Plan 2004, p. 169). Threats posed by powerlines to the White Mountains PMU are not currently imminent, although future development is possible.

An extensive road network occurs throughout the Bi-State area. The type of road varies from paved, multilane highways to rough jeep trails but the majority of road miles are unpaved, dirt two-track roads. Traffic volume varies significantly, as does individual population exposure. For a comprehensive discussion of the effects of roads on greater sage-grouse see *Roads* under Factor A in the GSG finding above. In the Desert Creek–Fales PMU, roads are a risk to greater sage-grouse (Bi-State Plan 2004, p. 54). All leks in this PMU are in close proximity to dirt two-track roads. Seven of eight consistently occupied leks in recent years are in relatively close proximity (< 2.5 km (1.5 mi)) to well- traveled highways. Although abundant, roads were not presented as a specific risk factor for the Pine Nut, Bodie, or Mount Grant PMUs during the development of their respective risk assessments (Bi-State Plan 2004). Large portions of these PMUs are not accessible, due to heavy winter snow until early summer after the completion of the breeding season and many of the roads are not frequently traveled. However, several leks in the Bodie PMU are in proximity to well-maintained and traveled roads.

In the South Mono PMU, roads are recognized as a risk factor that affects greater sage-grouse habitat and populations (Bi-State Plan 2004, p. 169). A variety of roads in this area have access to many significant lek sites. In Long Valley, lek sites are accessible via well maintained gravel roads. Recreational use of these areas is high and road traffic is substantial. Two lek sites that were in close proximity (< 300 m (1,000 ft)) to Highway 120 are thought to be extirpated although the exact cause of extirpation is unknown. Roads in the White Mountains PMU may negatively impact greater sage-grouse populations and their habitats, and construction of new roads in this PMU will fragment occupied or potential habitat for the species (Bi-State Plan 2004, pp. 120, 124).

Although greater sage-grouse have been killed due to vehicle collisions in the Bi-State area (Wiechmann 2008, p. 3), the greater threat with respect to roads is their influence on predator movement, invasion by nonnative annual grasses, and human disturbance. Currently in the Bi-State area, all federal lands except those managed by the BLM's Carson City District Office have restrictions limiting vehicular travel to designated routes. The lands where these restrictions apply account for roughly 1.6 million ha (4 million ac) or 86 percent of the land base in the Bi-State area. Both the Inyo and Humboldt–Toiyabe National Forests have recently mapped existing roads and trails on Forest Lands in the Bi-State area as part of a USFS Travel Management planning effort including identification of designated routes (Inyo National Forest 2009; Humboldt–Toiyabe National Forest 2009). These planning efforts will most directly influence the South Mono, Desert Creek–Fales, and Mount Grant PMUs; however, the degree to which they will influence greater sage-grouse populations is unclear. While the planning effort of the Inyo National Forest has, and the planning effort of the Humboldt-Toiyabe National Forest will likely add many miles of unauthorized routes to the National Forest System, these routes have already been in use for decades and any future negative impacts will be the result of an increase in use of these routes.

Starting in 2005, the BLM's Bishop Field Office implemented seasonal closures of several roads in proximity to three lek complexes in the Long Valley area of the South Mono PMU during the spring breeding season as part of a greater sage-grouse management strategy (BLM 2005c, p. 3). The Field Office is also rehabilitating several miles of redundant routes to consolidate use and minimize habitat degradation and disturbance for these same lek complexes.

Summary: Infrastructure - Fences, Powerlines, and Roads

Existing fences, powerlines, and roads fragment and degrade greater sage-grouse habitat, and contribute to direct mortality through collisions. Additionally, new fences, powerlines, and roads increase predators and invasive plants that increase fire risk and or displace native sagebrush vegetation. In the Bi-State area, all of these linear features adversely affect each of the PMUs both directly and indirectly to varying degrees. However, we do not have consistent and comparable information on miles of existing or new fences, powerlines and roads, or densities of these features within PMUs for the Bi-State area as a whole. Wisdom *et al.* (*in press*, p. 58) reported that across the entire range of the greater sage-grouse species, the mean distance to highways and transmission lines for extirpated populations was approximately 5 km (3.1 mi) or less. In the Bi-State area between 35 and 45 percent of annually occupied leks, which are indicative of the presence of nesting habitat, are within this distance to state or federal highways and between 40 and 50 percent are within this distance to existing transmission lines.

Lek counts suggest that greater sage-grouse populations in Long Valley, and to a lesser degree Bodie Hills, have been relatively stable over the past 15 years. The remaining populations in the Bi-State area appear considerably less stable. Research on adult and yearling survival suggests that annual survival is relatively low in the northern half of the Bi-State area (Farinha 2008, unpublished data). Annual survival was lowest in birds captured in association with the Wheeler and Burcham Flat leks in the California portion of the Desert Creek–Fales PMU, an area in very close proximity to Highway 395 and several transmission lines. Research conducted on nest success, however, shows an opposite trend from that of adult survival, with overall nest success relatively high in the northern half of the Bi-State area and lower in the southern half (Kolada 2007, p. 52). In Long Valley, where nest success was lowest, the combination of linear features (infrastructure) and an increased food source (Benton Crossing landfill) for avian predators may be influencing nest survival. Given current and future development (based on known energy resources), the Mount Grant, Desert Creek–Fales, Pine Nut, and South Mono PMUs are likely to be the most directly influenced by new powerlines and associated infrastructure.

Greater sage-grouse in the Bi-State area have been affected by roads and associated human disturbance for many years. The geographic extent, density, type, and frequency of disturbance have changed over time, and the impact has likely increased with the proliferation of off-highway vehicles. There are no indications that the increasing trend of these activities will diminish in the near future.

Mining

Mineral extraction has a long history throughout the Bi-State area. Currently, the PMUs with the greatest exposure are Bodie, Mount Grant, Pine Nut, and South Mono (Bi-State Plan 2004, pp. 89, 137, 178). Although mining represents a year round risk to greater sage-grouse, direct loss of key seasonal habitats or population disturbances during critical seasonal periods are of greatest impact. In the Bodie PMU, mining impacts to the ecological conditions were most pronounced in the late 1800's and early 1900's when as many as 10,000 people inhabited the area. The area is still open to mineral development, and exploration is likely to continue into the future (Bi-State Plan 2004, pp. 89–90). In the Bodie Hills, current mining operations are restricted to small-scale gold and silver exploration and sand and gravel extraction activities with limited impacts on greater sage-grouse (Bi-State Plan 2004, p. 90). An exploratory drilling operation is currently authorized in the Bodie Hills near the historic Paramount Mine, approximately 8 km (5 mi) north of Bodie, California. The proposed action may influence movement and use of important seasonal habitats near Big Flat. If subsequent development occurs, restricted use of or movement through this area will adversely influence connectivity between the Bodie and Mount Grant PMUs.

The Mount Grant and Pine Nut PMUs also have a long history of mining activity. Activity in the Mount Grant PMU has typically consisted of open pit mining. Two open pit mines exist, one of which is currently active. It is likely that mining will continue and may increase during periods when prices for precious metals are high, negatively effecting the sage-grouse populations in those areas. Mining in the Mount Grant PMU is largely concentrated around the Aurora historic mining district. This area contains the largest remaining lek in the PMU, which is located on private land. In the Pine Nut PMU, most mining activity is confined in woodland habitat but there is some overlap with sage-grouse habitats.

Summary: Mining

The effect of mining is not evenly distributed throughout the Bi-State area. It is greatest in the Mount Grant and Bodie PMUs where mining impacts to habitat may decrease the persistence of greater sage-grouse in the Mount Grant PMU Aurora lek complex area. This area represents a significant stronghold for the Mount Grant PMU and serves as a potential connection between breeding populations in the Bodie Hills to the west with breeding populations occurring further east in the Wassuk Range located on the eastern edge of the Mount Grant PMU. Further mineral extraction in either of these PMUs will negatively influence the spatial extent of the breeding population occurring in the Bodie Hills and the long term persistence of these populations.

Energy Development

Although energy development and the associated infrastructure was identified as a risk for greater sage-grouse occurring in the Bi-State area (Bi-State Plan 2004, pp. 30, 178), the risk assessment preceded the current heightened interest in renewable energy and underestimated the threats to the species. Several locations in the Bi-State area have suitable wind resources, but currently only the Pine Nut Mountains have active leases that overlap sage-grouse distribution. Approximately 3,696 ha (9,135 ac) have been leased from the BLM Carson City District and are being evaluated for wind development. The areas under lease are on the main ridgeline of the Pine Nut Mountains extending from Sunrise Pass near the Lyon and Douglas County line south to the Mount Siegel area. The area is a mix of shrub and woodland habitats containing year-round greater sage-grouse habitat. The ridgeline occurs between the north and south greater sage-grouse populations in the Pine Nut PMU. The area was recently designated as a renewable energy "wind zone" by Nevada Governor Jim Gibbons' Renewable Energy Transmission Access Advisory Committee (RETAAC; RETAAC 2007, Figure 2). Development of the Pine Nut area will have a significant impact on the connectivity within this small population and greatly restrict access to nesting and brooding habitat. Additional areas located in sage-grouse habitat may have suitable wind resources and could be developed in the future.

In the South Mono PMU there are two geothermal plants located on private land immediately east of U.S. 395 at

Casa Diablo. These are the only operating geothermal plants in the Bi-State area. Within the South Mono PMU about 3,884 ha (9,600 ac) are under geothermal lease. The leased areas are located to the west of U.S. 395 and immediately north of Highway 203 and largely outside of occupied sage-grouse habitat.

Within the Desert Creek–Fales PMU, about 2,071 ha (5,120 ac) on the north end of the Pine Grove Hills near Mount Etna are leased for geothermal development. The leases in this area are valid through 2017. Several locations within the Mount Grant PMU are also under current leases and several more areas are currently proposed for leasing. Based on location and vegetation community, two of the leased areas in the Mount Grant PMU are of great importance to sage-grouse. Four sections (1,035 ha, 2,560 ac) are leased approximately 1.6–4.8 km (1–3 mi) southeast of the confluence between Rough Creek and the East Walker River near the Lyon and Mineral County line on lands managed by the USFS. This area is considered year-round greater sage-grouse habitat with from one to three active leks in proximity. Additionally, approximately 13 sections (3,366 ha, 8,320 ac) are leased around the Aurora historic mining district near the Nevada and California border. Much of this area is dominated by pinyon–juniper woodlands, but at least three sections (776 ha, 1,920 ac) contain sagebrush communities and there is one known lek in close proximity. The leased sections within the Desert Creek–Fales and Mount Grant PMUs also fall within the boundary delineated for geothermal development proposed by RETAAC (RETAAC 2007, Figure 2).

Summary: Energy Development

The likelihood of renewable energy facility development in the Bi-State area is high. There is strong support for energy diversification in both Nevada and California, and the energy industry considers the available resources in the area to warrant investment (RETAAC 2007, p. 8). Greater sage-grouse habitat in the Pine Nut and Mount Grant PMUs will likely be most affected by facility and infrastructure development. Given this anticipated development, additional fragmentation and isolation as well as some degree of range contraction will occur that will significantly affect the Pine Nut and Mount Grant PMUs. Renewable energy development is not evenly distributed across the entire Bi-State area, but it will likely be a significant threat to populations in the Pine Nut and Mount Grant PMUs.

Grazing

In the Bi-State area, all PMUs are subject to livestock grazing with the majority of "public" allotments allocated to cattle and sheep (Bi-State Plan 2004). Determining how grazing impacts greater sage-grouse habitat and populations is complicated. There are data to support both beneficial and detrimental aspects of grazing (Klebenow 1981, p. 122; Beck and Mitchell 2000, p. 993), suggesting that the risk of livestock grazing to greater sage-grouse is dependent on site-specific management.

Kolada (2007, p. 52) reports nest success of greater sage-grouse in the Bi-State area on average to be as high as any results reported across the range of the species. However, nest success is varied among PMUs, and residual grass cover did not appear to be as significant a factor to nest success as in other western U.S. locations. These findings suggest that grazing in the Bi-State area may not be strongly influencing this portion of the bird's life history.

Important mesic meadow sites are relatively limited outside of Long Valley and the South Mono PMU, especially north of Mono Lake (Bi-State Plan 2004, pp. 17, 65, 130). This limitation may influence greater sage-grouse population growth rates. Although most of the grazed lands in the Bi-State area are managed by the BLM and USFS under rangeland management practices and are guided by agency land use plans, much of the suitable mesic habitats are located on private lands. Given their private ownership assessing the condition of these sites is difficult and conditions are not well known. Although there are federal grazing allotments that are exhibiting adverse impacts from livestock grazing, such as the Churchill Allotment in the Pine Nut PMU (Axtell 2008, pers. comm.), most allotments in the Bi-State area are classified as being in fair to good condition (Axtell 2008, pers. comm.; Murphy 2008, pers. comm.; Nelson 2008, pers. comm.). We have no information indicating how allotment condition classifications used by the BLM and USFS correlate with greater sage-grouse population health.

Feral horses are present in the Bi-State area. Connelly *et al.* (2004, pp. 7-36–7-37) stated that areas occupied by horses have lower grass, shrub, and total vegetative cover and that horse alteration of spring or other mesic areas may be a concern with regard to greater sage-grouse brood rearing. The most significant impact from feral horses has occurred in the Mount Grant and Pine Nut PMUs (Axtell 2008, pers. comm.). The Bodie PMU has also been impacted by feral horses and these animals pose a risk of disturbance to the 7-Troughs lek population (Bi-State Plan 2004, pp. 86–87). The intent of the agencies involved is to maintain horse numbers at or below those established for the herd management areas (HMA) and wild horse territories (WHT). In 2003, the BLM captured and removed 26 horses from the Powell Mountain WHT located in the Mount Grant PMU and 7 horses from the Bodie PMU. Currently there are relatively low numbers of horses (10 to 20) in the Bodie PMU. The Bodie Hills have no defined HMA/WHT but the horses present are likely coming from the Powell Mountain WHT located in the Mount Grant PMU (Bi-State Plan 2004, pp. 86–87). In 2007, the USFS took an additional 87 horses off the Powell Mountain WHT (Murphy 2008, pers. comm.). The herd management level set for the Powell Mountain WHT is 35 individuals. Although management of feral horse populations is an ongoing issue, local land managers consider it to be controllable given sufficient funding and public support.

Summary: Grazing

There are localized areas of habitat degradation attributable to grazing that indirectly and cumulatively affect greater sage-grouse. Overall population estimates, while variable from year-to-year, show no discernable trend attributable to grazing. The impact on ecosystems by different ungulate taxa may have a combined negative influence on greater sage-grouse habitats (Beever and Aldridge in press, p. 20). Cattle, horses, mule deer, and antelope each use the sagebrush ecosystem somewhat differently and the combination of multiple species may produce a different result than simply more of a single species. Greater sage-grouse habitat in the Pine Nut PMU, as well as limited portions of the Bodie PMU, is affected by grazing management practices and has a negative effect on sage-grouse in those areas. Overall, the available data do not provide evidence that grazing by domestic or feral animals is a major impact to habitat of greater sage-grouse throughout the entire Bi-State area. However, the loss or degradation of habitat due to grazing contributes to the risk of extirpation of some local populations, which in turn contributes to increased risk to the persistence of the Bi-State DPS.

Fire

As discussed above, in the GSG finding, changes in the fire ecology that result in an altered wildfire regime are a present and future risk in all PMUs in

the Bi-State area (Bi-State Plan 2004). A reduction in fire occurrence has facilitated the expansion of woodlands into montane sagebrush communities. In the Pine Nut and Desert Creek–Fales PMUs this has resulted in a loss of sagebrush habitat (Bi-State Plan 2004, pp. 20, 39), while in other locations such as the Bodie and Mount Grant PMUs the most significant impact of conifer expansion is the additional fragmentation of sage-grouse habitat and isolation of the greater sage-grouse populations (Bi-State Plan 2004, pp. 95-96, 133).

Invasion by annual grasses (e.g., *Bromus tectorum*) can lead to a shortening of the fire frequency that is difficult to reverse. Often invasive species become established or become apparent only following a fire or similar disturbance event. In the Bi-State area, there has been little recent fire activity (Finn *et al.* 2004, *http://wildfire.cr.usgs.gov/firehistory/data.html*). One exception is in the southern portion of the Pine Nut PMU where *B. tectorum* has readily invaded a recent burn in the Minnehaha Canyon area. In 2007, the Adrian Fire burned about 5,600 ha (14,000 ac) of important nesting habitat at the north end of the Pine Nut PMU. Although there does appear to be native grass establishment in the burn, *B. tectorum* is present and recovery of this habitat will likely be slow or impossible (Axtell 2008, pers. comm.). In 1996, a wildfire burned in the center of the Pine Nut PMU, in important brood rearing habitat. The area is recovering and has little invasive annual grass establishment. However, after 15 years the burned area has very limited sagebrush cover. While birds still use the meadow habitat, the number of individuals in the Pine Nut PMU is small. It is not known to what degree this loss of habitat has influenced population dynamics in the area but it is likely that it has and will continue to be a factor in the persistence of the Pine Nut population given its small size. Across the remainder of the Bi-State area wildfires occur on an annual basis, however, impacts to sagebrush habitats have been limited to date. Most species of sagebrush are killed by fire (West 1983, p. 341; Miller and Eddleman 2000, p. 17; West and Young 2000, p. 259), and historic fire-return intervals were as long as 350 years, depending on sagebrush type and environmental conditions (Baker in press, p. 16). Natural sagebrush recolonization in burned areas depends on the presence of adjacent live plants for a seed source or on the seed bank, if present (Miller and Eddleman 2000, p. 17), and requires decades for full recovery.

Summary: Fire

Within the Bi-State area, wildfire is a potential threat to greater sage-grouse habitat in all PMUs. To date few large landscape scale fires have occurred and we have not yet seen changes to the fire cycle (e.g., shorter) due to invasion by nonnative annual grasses. The BLM and USFS manage the area under what is essentially a full-suppression fire-fighting policy given adequate resources. Based on the available information, wildfire is not currently a significant threat to the Bi-State DPS of the greater sage-grouse. However, the future threat of wildfire, given the fragmented nature and small size of the populations within the DPS, would have a significant effect on the overall viability of the DPS based on its effects on the habitat in the Pine Nut PMU.

Invasive Species, Noxious Weeds, and Pinyon-Juniper Encroachment

A variety of nonnative, invasive plant species are present in all PMUs that comprise the Bi-State area, with *Bromus tectorum* (cheatgrass) being of greatest concern. (For a general discussion on the effects of non-native and invasive plant species, please see *Invasive plants* under Factor A in the GSG finding above).

Wisdom *et al.* (2003, pp. 4-3 to 4-13) assessed the risk of *Bromus tectorum* displacement of native vegetation for Nevada and reported that 44 percent of existing sagebrush habitat is either at moderate or high risk of displacement and correspondingly 56 percent of sagebrush habitat is at low risk of displacement. In conjunction with Wisdom *et al.* (2003), Rowland *et al.* (2003, p. 40) found that 48 percent of greater sage-grouse habitat on lands administered by the BLM Carson City Field Office is at low risk of *B. tectorum* replacement, about 39 percent is at moderate risk, and about 13 percent is at high risk. Both assessments, however, included large portions of land outside the Bi-State area. Peterson (2003), in association with the Nevada Natural Heritage Program, estimated percent cover of *B. tectorum* in approximately the northern half of the Bi-State area using satellite data. Land managers and this satellite data assessment indicate that *B. tectorum* is present throughout the Bi-State area but percent cover is low. Conversion to an annual grass dominated community is limited to only a few locations. Areas of greatest concern are along main travel corridors and in the Pine Nut, Bodie, and Mount Grant PMUs.

Bromus tectorum out-competes beneficial understory plant species and can dramatically alter fire ecology (See *Wildfire* discussion above). In the Bi-State area, essential sage-grouse habitat is often highly concentrated and a fire event would have significant adverse effects to sage-grouse populations. Land managers have had little success preventing *B. tectorum* invasion in the West. Occurrence of *B. tectorum* in the Bi-State area is apparent at elevations above that thought to be relatively immune based on the grass's ecology. This suggests that few locations in the Bi-State area will be safe from *B. tectorum* invasion in the future. Climate change may strongly influence the outcome of these interactions; the available data suggest that future conditions will be most influenced by precipitation (Bradley 2008, p. 9) (Also see *Climate Change* discussion below).

Pinyon–juniper encroachment into sagebrush habitat is a threat occurring in the Bi-State area (USFS 1966, p. 22). Pinyon–juniper encroachment is occurring to some degree in all PMUs, with the greatest loss and fragmentation of important sagebrush habitat in the Pine Nut, Desert Creek–Fales, Mount Grant, and Bodie PMUs (Bi-State Plan 2004, pp. 20, 39, 96, 133, 137, 167). No data exist for the Bi-State area that quantify the amount of sagebrush habitat lost to encroachment, or that clearly demonstrate pinyon–juniper encroachment has caused greater sage-grouse populations to decline. However, land managers consider it a significant threat impacting habitat quality, quantity and connectivity and increasing the risk of avian predation to sage-grouse populations (Bi-State Plan 2004, pp. 20, 39, 96) and several previously occupied locations are thought to have been abandoned due to encroachment (Bi-State Plan 2004, pp. 20, 133). Management treatment of pinyon–juniper is feasible but is often constrained by competing resource values and cost. Several thinning projects have been completed in the Bi-State area, accounting for approximately 1,618 ha (4,000 ac) of woodland removed.

Summary: Invasive Species, Noxious Weeds, Pinyon-Juniper Encroachment

While the current occurrence of *Bromus tectorum* in the Bi-State area is relatively low, it is likely the species will continue to expand and adversely impact sagebrush habitats and the greater sage-grouse by out-competing beneficial understory plant species and altering the fire ecology of the area. Alteration of the fire ecology of the Bi-State area is of greatest concern (see *Fire*

discussion above). Land managers have had little success preventing *B. tectorum* invasion in the West and elevational barriers to invasion are not apparent in the Bi-State area. While climate change may strongly influence the outcome of these interactions, the available data suggest that future conditions will be most influenced by precipitation (Bradley 2008, p. 9). *Bromus tectorum* is a serious threat to the sagebrush shrub community and will be detrimental to greater sage-grouse in the Bi-State area. Encroachment of sagebrush habitats by woodlands is occurring throughout the Bi-State area and continued isolation and reduction of suitable habitats will influence both short- and long-term persistence of sage-grouse.

Climate Change

Global climate change is expected to affect the Bi-State area (Lenihan *et al.* 2003, p. 1674; Diffenbaugh *et al.* 2008, p. 3; Lenihan *et al.* 2008, p. S223). Impacts are not well defined and precise predictions are problematic due to the coarse nature of the climate models and relatively small geographic extent of the area. In general, model predictions tend to agree on an increasing temperature regime (Cayan *et al.* 2008, pp. S38–S40). Model predictions for the Bi-State area, using the mid-range ensemble emissions scenario, show an overall increase in annual temperatures, with some areas projected to experience mean annual temperature increases of 1 to 3 degrees Fahrenheit over the next 50 years (TNC Climate Wizard, 2009). Of greater uncertainty is the influence of climate change on local precipitation (Diffenbaugh *et al.* 2005, p. 15776; Cayan *et al.* 2008, p. S28). This variable is of major importance to greater sage-grouse, as timing and quantity of precipitation greatly influences plant community composition and extent, specifically forb production, which in turn affects nest and chick survival. Across the west, models predict a general increase in precipitation (Neilson *et al.* 2005, p. 150), although scaled-down predictions for the Bi-State area show an overall decrease in annual precipitation ranging from under 1 inch up to 3 inches over the next 50 years (TNC Climate Wizard 2009).

A warming trend in the mountains of western North America is expected to decrease snow pack, accelerate spring runoff, and reduce summer stream flows (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 11). Specifically in the Sierra Nevada, March temperatures have warmed over the last 50 years resulting in more rain than snow precipitation, which translates into earlier snowmelt. This trend is likely to continue and accelerate into the future (Kapnick and Hall 2009, p. 11). This change in the type of precipitation and the timing of snow melt will influence reproductive success by altering the availability of understory vegetation and meadow habitats. Increased summer temperature is also expected to increase the frequency and intensity of wildfires. Westerling *et al.* (2009, pp. 10-11) modeled potential wildfire occurrences as a function of land surface characteristics in California. Their model predicts an overall increase in the number of wildfires and acreage burned by 2085 (Westerling *et al.* 2009, pp. 17-18). Increases in the number of sites susceptible to invasive annual grass and increases in WNv outbreaks are reasonably anticipated (IPCC 2007, p. 13; Lenihan *et al.* 2008, p. S227). Reduction in summer precipitation is expected to produce the most suitable condition for *B. tectorum*. Recent warming is linked, in terrestrial ecosystems, to poleward and upward shifts in plant and animal ranges (IPCC 2007, p. 2).

While it is reasonable to assume the Bi-State area will experience vegetation changes, we do not know how climate change will ultimately effect this greater sage-grouse population. It is unlikely that the current extent of shrub habitat will remain unchanged, whether the shift is toward a grass or woodland dominated system is unknown. Either result will negatively affect greater sage-grouse in the area. Additionally, it is also reasonable to assume that changes in atmospheric carbon dioxide levels, temperature, precipitation, and timing of snowmelt, will act synergistically with other threats such as wildfire and invasive species to produce yet unknown but likely negative effects to greater sage-grouse habitat and populations in the Bi-State area.

Summary of Factor A

Destruction and modification of greater sage-grouse habitat is occurring and will continue in the Bi-State area due to urbanization, infrastructure (e.g., fences, powerlines, and roads), mining, renewable energy development, grazing, wildfire, and invasive plant species. At the individual PMU level the impact and timing of these threats vary. The Pine-Nut PMU has the lowest number of individuals of all Bi-State area (approximately 89 to 107 in 2009) PMUs and is threatened by urbanization, grazing management, wildfire, invasive species, and energy development. The threats to habitat in this PMU are likely to continue in the future which may result in continued declines in the populations over the short term.

The Desert-Creek Fales PMU contains the greatest number of sage-grouse of all Bi-State PMUs in Nevada (approximately 512 to 575 in 2009). The most significant threats in this PMU are wildfire, invasive species (specifically conifer encroachment), urbanization, and fragmentation. Private lands purchase in California and pinyon-juniper forest removal in Nevada reduced some of the threats at two important locations within this PMU. However, a recent proposal for a land parcel subdivision in proximity to Burcham Flat, California, threatens nesting habitat and one of the two remaining leks in the area. The imminence of these threats varies, however, with urbanization and fragmentation being the most imminent threats to habitat in this PMU.

The Mount Grant PMU has an estimated population of 376 to 427 individuals based on 2009 surveys. Threats in this PMU include renewable energy development and mining associated infrastructure. Additional threats include infrastructure (fences, powerlines, and roads), conifer encroachment, fragmentation, and impacts to mesic habitat on private land from grazing and water table alterations. These threats currently fragment, and may in the future continue to fragment habitat in this PMU and reduce or eliminate connectivity to populations in the Bodie Hills PMU to the west.

The Bodie and South Mono PMUs are the core of greater sage-grouse populations in the Bi-State area, and have estimated populations of 829 to 927 and 906 to 1,012 individuals based on 2009 surveys, respectively. These two PMUs comprise approximately 65 percent of the total population in the Bi-State area. Future loss or conversion of limited brood rearing habitat on private lands in the Bodie PMU is a significant threat to the population. The threat of future wildfire and subsequent habitat loss of conversion to annual grassland is of great concern. Threats from existing and future infrastructure, grazing, mineral extraction, and conifer encroachment are also present but believed to have a relatively lower impact. The most significant threat in the South Mono PMU involves impacts associated with human activity in the forms of urbanization and recreation. Other threats in this PMU include existing and future infrastructure, mining activities, and wildfire, but pose a relatively lower risk to habitat and the DPS.

Information on threats in White Mountains PMU is limited. The area is

remote and difficult to access and most data are in the form of random observations. Threats to the habitat in this PMU are low due to the remote location. Activities such as grazing, recreation, and invasive species may be influencing the population but this is speculation. Potential future actions in the form of transmission line, road, and mineral developments are threats that could lead to the loss of the remote but contiguous nature of the habitat.

Predicting the impact of global climate change on sage-grouse populations is challenging due to the relatively small spatial extent of the Bi-State area. It is likely that vegetation communities will not remain static and the amount of sagebrush shrub habitat will decrease. Further, increased variation in drought cycles due to climate change will likely place additional stress on sage-grouse habitat and populations. While greater sage-grouse evolved with drought, drought has been correlated with population declines and shown to be a limiting factor to population growth in areas where habitats have been compromised.

Taken cumulatively, the habitat-based threats in all PMUs will likely act to fragment and isolate populations of the DPS in the Bi-State area. Over the short term (10 years) the persistence of the Pine Nut PMU is not likely. Populations occurring in the Desert Creek–Fales and Mount Grant PMUs are under significant pressure and continued threats to habitat will likely increase likelihood of extirpation. The Bodie and South Mono PMUs are larger and more stable and should continue to persist. While the South Mono PMU appears to be an isolated entity, the Bodie PMU interacts with the Mount Grant and the Desert Creek–Fales PMUs, and the continued loss of habitat in these other locations will likely influence the population dynamics and possibly the persistence of the breeding population occurring in the Bodie PMU. The White Mountain PMU is likely already an isolated population and does not currently or would in the future contribute to the South Mono PMU.

Therefore, based on our review of the best scientific and commercial data available, we conclude threats from the present or threatened destruction, modification, or curtailment of greater sage-grouse habitat or range are significant to the Bi-State DPS of the greater sage-grouse.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting

The only known assessment of hunting effects specific to the Bi-State area is an analysis conducted by Gibson (1998) for the Bodie Hills and Long Valley lek complexes. This assessment indicated that populations in the South Mono PMU (Long Valley area) were depressed by hunting from the late 1960's to 2000 but the Bodie Hills population was not. The results of Gibson (1998) influenced the CDFG management of the Long Valley population through the limitation of allocated hunting permits (Gardner 2008, pers. comm.).

Prior to 1983, California had no limit on hunting permits in the area which covers the Bodie Hills portion of the Bodie PMU (North Mono Hunt Area) and the Long Valley portion of the South Mono PMU (South Mono Hunt Area). In 1983, CDFG closed the hunting season (Bi-State Plan 2004, pp. 73–74); however, it was reopened in 1987 when CDFG instituted a permit system that resulted in limiting the number of permits (hundreds) issued annually. In 1998, the number of permits issued was significantly reduced (Bi-State Plan 2004, pp. 74–75; Gardner 2008, pers. comm.).

From 1998 to the present, the number of hunting permits issued by the CDFG has ranged from 10 to 35 per year for the North Mono and South Mono Hunt Areas (Bi-State Plan 2004, p. 173; CDFG 2008). In 2008, 25 single bird harvest permits were issued for the North Mono Hunt Area, and 35 single bird harvest permits were issued for the South Mono Hunt Area (CDFG 2008). Assuming all permits were filled, and comparing these estimated harvest levels to the low spring population estimates for the Bodie and South Mono PMUs for 2008, there was an estimated loss of about 4 percent for each population (25 of 573 and 35 of 838 for Bodie PMU and South Mono PMU, respectively). These harvest levels are within the harvest rate of 10 percent or less recommended by Connelly *et al.* (2000a, p. 976). The CDFG evaluated the effect of their greater sage-grouse hunting season for California as part of an overall assessment of the effects of their resident game bird hunting seasons (CDFG 2002). They concluded that the removal of individual animals from resident game bird populations statewide (including greater sage-grouse) will not significantly reduce those populations and will therefore not have a significant environmental impact on resident game birds (CDFG 2002, p. 7).

Hunting (gun) has been closed in the Nevada portion of the Bi-State area since 1999 (NDOW 2006, p. 2). The falconry season in this area was closed in 2003 (Espinosa 2006b, pers. comm.). The Washoe Tribe has authority over hunting on tribal allotments in the Pine Nut PMU. There are anecdotal reports of harvest by Tribal members but currently the Washoe Tribe Hunting and Fishing Commission does not issue harvest permits for greater sage-grouse nor are historical harvest records available (J. Warpea 2009, pers. comm.).

Neither the CDFG nor NDOW had any information on poaching of greater sage-grouse or the accidental taking of this species by hunters pursuing other upland game birds with open seasons for the Bi-State area. Gibson (2001, p. 4) does mention that a low level of known poaching occurred in Long Valley. Hunting has suppressed some populations in the Bi-State area historically. Harvest has been estimated to be as much as 4 percent of the population in Bodie and South Mono PMUs. While this may be considered to be at levels considered compensatory and within harvest guidelines, in Long Valley it likely continues to impact population growth.

Recreational, Scientific, and Religious Use

The CDFG and NDOW provide public direction to leks and guidelines to minimize viewing disturbance on a case-by-case basis. Overall, lek locations in the Bi-State area are well known and some are frequently visited. Disturbance is possible; however, we have no data to suggest that non-consumptive recreational uses of greater sage-grouse are impacting local populations in the Bi-State area (Gardner 2008, pers. comm.; Espinosa 2008, pers. comm.). We are not aware of any studies of lek viewing or other forms of non-consumptive recreational uses related to greater sage-grouse population trends. We have no information that this type of recreational activity is having a negative impact on local populations or contributing to declining population trends of greater sage-grouse in the Bi-State area.

Regarding possible effects from scientific studies of greater sage-grouse, in the past 5 years, approximately 200 greater sage-grouse have been captured and handled by researchers. Casazza *et al.* (2009, p. 45) indicates that, in 3 years of study of radio-marked greater sage-grouse, the deaths of four birds in the Bi-State area were attributed to researchers.

Summary of Factor B

Overall in the Bi-State area hunting is limited to such a degree that it is not apparently restrictive to overall population growth. However, hunting was shown to limit the population of greater sage-grouse occurring within the South Mono PMU historically and even at its current reduced level still likely suppresses this population. While hunting in the Bodie PMU appears to be compensatory, given this PMU's connection with the neighboring and non-hunted Mount Grant PMU and the current declines apparent in the Mount Grant population, additional evaluation of this hunting across jurisdictional boundaries is warranted. We have no information indicating poaching, non-consumptive uses, or scientific use significantly impact Bi-State greater sage-grouse populations, either separately of collectively. Therefore, based on our review of the best scientific and commercial data available we find that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to the Bi-State DPS of the greater sage-grouse.

Factor C: Disease and Predation

Disease

West Nile virus (WNv) is the only identified disease that warrants concern for greater sage-grouse in the Bi-State area. Small populations, such as those in the Bi-State area, are at higher risk of extirpation due to their low numbers and the additive mortality WNv causes (see *Disease* discussion under Factor C in the GSG finding, above). Larger populations may be better able "absorb" losses due to WNv simply due to their size (Walker and Naugle in press, p. 25). The documented loss of four greater sage-grouse to WNv in the Bodie (n=3) and Desert Creek–Fales (n=1) PMUs (Casazza *et al.* 2009, p. 45) has heightened our concern about the impact of this disease in the Bi-State area, especially given the small population sizes. These mortalities represented four percent of the total greater sage-grouse mortalities observed, but additional reported mortality due to predation could have been due in part to disease-weakened individuals. Mortality caused by disease acts in a density independent, or additive, manner. While four percent may not appear substantial, the fact that it can act independently of habitat and has the potential to suppress a population below carrying capacity makes disease of a greater concern.

Annual and spatial variations in temperature and precipitation influence WNv outbreaks. Much of the Bi-State area occurs at relatively high elevations with short summers, and these conditions likely limit the extent of mosquito and WNv occurrence, or at least may limit outbreaks to the years with above-average temperatures. The Bi-State area represents the highest known elevation at which greater sage-grouse have been infected with WNv, about 2,300 m (7,545 ft; Walker and Naugle *in press*, p. 12). Casazza *et al.* (2009) captured birds in the White Mountains, South Mono, Bodie, and California portion of the Desert Creek–Fales PMUs, and mortality rates at these locations may not be representative of the remainder of the Bi-State area, which occurs at lower elevations on average. The WNv was first documented in the State of California in 2003 (Reisen *et al.* 2004, p. 1369), thus, the impact of the virus during the 2003–2005 study years may be an underrepresentation of current conditions. From 2004 to 2008, the U.S. Geological Survey reported 79 cases of WNv in birds (species undefined) from Mono, Douglas, Lyon, and Mineral Counties (*http://diseasemaps.usgs.gov*), accessed February 27, 2009).

The extent that WNv influences greater sage-grouse population dynamics in the Bi-State area is uncertain, and barring a severe outbreak, natural variations in survival and reproductive rates that drive population growth may be masking the true impact of the disease. However, the dramatic fluctuations in recent lek counts in the Desert Creek–Fales and Mount Grant PMUs may indicate past outbreaks. Based on our current knowledge of the virus, the relatively high elevations and cold temperatures common in much of the Bi-State area likely reduce the chance of a population-wide outbreak. However, there may be localized areas of significant outbreaks that could influence individual populations. West Nile virus is a relatively new source of mortality for greater sage-grouse and to date has been limited in its impact in the Bi-State area. Although predicting precisely when and where further outbreaks will occur is not possible, the best scientific data available support a conclusion that outbreaks are very likely to continue to occur. However, the loss of individual populations from WNv outbreaks, which is particularly a risk for smaller populations, may influence the persistence of the Bi-State DPS through the loss of redundancy to the overall population and the associated challenges of recolonizing extirpated sites through natural emigration.

Predation

Range-wide, annual mortality of breeding-age greater sage-grouse varies from 55 to 75 percent for females and 38 to 60 percent for males, with the majority of mortality attributable to predation (Schroeder and Baydack 2001, p. 25). Although not delineated by sex, the best data available for the Bi-State population reports apparent annual adult mortality due to predation of between 58 and 64 percent (Casazza *et al.* 2009, p. 45). This loss of radio-collared greater sage-grouse in the Bi-State area to predators is well within normal levels across the range of the species. However, estimates of adult survival vary substantially across the Bi-State area and in several locations adult survival in the Bi-State area is below that considered sustainable by some researchers (Farinha *et al.* 2008, unpublished data; Sedinger *et al.* unpublished data., p. 12). Where good-quality habitat is not a limiting factor, research suggests it is unlikely that predation influences the persistence of the species (see *Predation* under the Greater sage-grouse finding above). Thus, we consider the low estimates of adult survival in the northern half of the Bi-State area to be a manifestation of habitat degradation or other anthropogenic factors that can alter natural predator–prey dynamics such as introduced nonnative predators or human-subsidized native predators.

Nest success across the Bi-State area is within the normal range, with some locations even higher than previously documented (Kolada 2007, p. 52). The lowest estimates occur in Long Valley (21 percent; Kolada 2007, p. 66). The low estimates in Long Valley are of concern as this population represents the stronghold for the species in the Bi-State area and is also the population most likely exposed to the greatest predation (Coates 2008, pers. comm.). Although significantly more birds were present in the past, the Long Valley population appears stable. The negative impact from reduced nesting success is presumably being offset by other demographic statistics such as high chick or adult survival.

Summary of Factor C

We have a poor understanding of the effects of disease on Bi-State greater sage-grouse populations, and we are concerned about the potential threat, especially in light of recent documented presence of WNv and the potential impacts this disease can have on population growth. WNv is a substantial mortality factor for greater sage-grouse populations when outbreaks occur. We

will continue to monitor future infections and observe population response. Predation is the primary cause of mortality in the Bi-State area (Casazza *et al.* 2009, p. 45), as it is for greater sage-grouse throughout its range (see discussion of predation related to the greater sage-grouse rangewide, above). In several locations in the northern Bi-State area (Bodie Hills, Desert Creek, Fales), adult survival is below what some researchers consider to be sustainable (Farinha *et al.* 2008, unpublished data; Sedinger *et al.* unpublished data., p. 12). Low (21 percent) nest success in at least one area (Long Valley) may be associated with higher local densities of predators (Coates 2008, pers. comm.). Studies suggest predator influence is more pronounced in areas of poor habitat conditions. The ultimate cause of reduced population growth and survival appears to stem from impacts from degraded habitat quality. The impacts from roads, powerlines, and other anthropogenic features (landfills, airports, and urbanization) degrade habitat quality and increase the densities of native and nonnative predators which results in negative effects to greater sage-grouse population dynamics. Therefore, after reviewing the best scientific and commercial data available we have determined that disease and predation are threats to the Bi-State DPS, although the impact of these threats is relatively low and localized at this time compared to other threats.

Factor D: Inadequacy of Existing Regulatory Mechanisms

As discussed in Factor D of the GSG finding above, existing regulatory mechanisms that could provide some protection for greater sage-grouse include: (1) local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Actions adopted by local groups, states, or federal entities that are discretionary, including conservation strategies and guidance, are not regulatory mechanisms.

Local Laws and Regulations

Approximately 8 percent of the land in the Bi-State area is privately owned (Bi-State Plan 2004). We are not aware of any existing county or city ordinances that provide protection specifically for the greater sage-grouse or their habitats on private lands.

State Laws and Regulations

In the Bi-State area, greater sage-grouse are managed by two state wildlife agencies (NDOW and CDFG) as resident native game birds. The game bird classification allows the direct human taking of greater sage-grouse during hunting seasons authorized and conducted under state laws and regulations. Currently, harvest of greater sage-grouse is authorized in two hunt units in California, covering approximately the Long Valley and Bodie Hills populations (CDFG 2008). Greater sage-grouse hunting is prohibited in the Nevada portion of the Bi-State area, where the season has been closed since 1999 (Greater Sage-Grouse Conservation Plan for Nevada and Eastern California 2004, pp. 59-61).

Each State bases its hunting regulations on local population information and peer-reviewed scientific literature regarding the impacts of hunting on the greater sage-grouse. Hunting seasons or closures are reviewed annually, and States implement adaptive management based on harvest and population data (Espinosa 2008, pers. com.; Gardner 2008, pers. com.). Based on the best data available, we can not determine whether or how hunting mortality, is affecting the populations. Therefore, we do not have information to indicate how regulated hunting is affecting the DPS.

State agencies directly manage approximately 1 percent of the total landscape dominated by sagebrush in the Bi-State area, and various State laws and regulations identify the need to conserve wildlife habitat (Bi-State Plan 2004). Laws and regulations in both California and Nevada allow for acquisition of funding to acquire and conserve wildlife habitats, including land purchases and entering into easements with landowners. California recently purchased approximately 470 ha (1,160 ac) in the Desert Creek–Fales PMU largely for the conservation of greater sage-grouse (Taylor 2008, pers. com.). However, any acquisitions authorized are discretionary on the part of the agencies and cannot be considered an adequate mechanism that alleviates threats to the DPS or its habitat.

The Bi-State Plan (2004) represents more than 2 years of collaborative analysis by numerous local biologists, land managers, and land users who share a common concern for the greater sage-grouse occurring in western Nevada and eastern California. The intent of the plan was to identify factors that negatively affect greater sage-grouse populations in the Bi-State area as well as conservation measures likely to ameliorate these threats and maintain these populations. These efforts are in addition to current research and monitoring efforts conducted by the States. These voluntary recommended conservation measures are in various stages of development and depend on the cooperation and participation of interested parties and agencies. The Bi-State Plan does not include any prohibitions against actions that harm greater sage-grouse or their habitat. Since development of the Bi-State Plan, the NDOW has committed approximately $250,000 toward conservation efforts, some of which have been implemented while others are pending. Other support has come from various federal, state, and local agencies. For example, a partnership between the NDOW and the USFS resulted in a recently completed pinyon–juniper removal project in the Sweetwater Range in the Desert Creek–Fales PMU encompassing about 1,300 ha (3,200 ac) of important greater sage-grouse habitat (NDOW 2008, p. 24). Additional efforts are also being developed to target restoration of important nesting, brood rearing, and wintering habitat components across the Bi-State area. However, the Bi-State Plan is not a regulation and its implementation depends on voluntary efforts. Thus the Bi-State Plan can not be considered to be an adequate regulatory mechanism.

The California Environmental Quality Act (CEQA) (Public Resources Code sections 21000–21177), requires full disclosure of the potential environmental impacts of projects proposed by state and local agencies. The public agency with primary authority or jurisdiction over the project is responsible for conducting an environmental review of the project, and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. However, once significant effects are identified, the lead agency has the option to mitigate the effects through changes in the project, or decide that overriding considerations, such as social or economic considerations, make mitigation infeasible (CEQA section 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species, and their habitat. Protection of listed species through CEQA is dependent upon the

discretion of the agency involved. Therefore, CEQA may not act as a regulatory mechanism for the protection of the DPS.

Federal Laws and Regulations

Federally owned and managed land make up the majority of the landscape within the DPS's range. For a comprehensive discussion and analysis of federal laws and regulations please see this section under Factor D of the GSG finding.

Approximately 50 percent of the land base in the Bi-State area occurs on lands managed by the BLM. As stated in the GSG finding, FLPMA is the primary federal law governing most land uses on BLM-administered lands. Under FLPMA, the BLM has authority over livestock grazing, recreation, OHV travel and human disturbance, infrastructure development, fire management, and either in combination with or under the MLA and other mineral and mining laws, energy development and mining on its lands. In Nevada and California, the BLM manages for many of these activities within their jurisdiction. In Nevada and California, the BLM has designated the greater sage-grouse a sensitive species. BLM's management of lands in the Bi-State area is conducted consistent with its management of its lands across the greater sage-grouse range. Therefore, we refer the reader to the GSG finding above for a detailed discussion and analysis BLM's management of sage-grouse habitat on its lands.

The USFS manages approximately 35 percent of the land base in the Bi-State area. As stated in the GSG finding, management of activities on lands under USFS jurisdiction is guided principally by NFMA through associated LRMPs for each forest unit. Under NFMA and other federal laws, the USFS has authority to regulate recreation, OHV travel and other human disturbance, livestock grazing, fire management, energy development, and mining on lands within its jurisdiction. Please see the GSG finding for general information and analysis. All of the LRMPs that currently guide the management of sage-grouse habitats on USFS lands were developed using the 1982 implementing regulations for land and resource management planning (1982 Rule, 36 CFR 219), including two existing USFS LRMPs (USFS 1986, 1988) within greater sage-grouse habitat in the Bi-State area.

The greater sage-grouse is designated as a USFS Sensitive Species in the Intermountain Region (R4) and Pacific Southwest Region (R5), which include the Humboldt–Toiyabe National Forest's Bridgeport Ranger District and the Inyo National Forest in the Bi-State area. The specifics of how sensitive species status has conferred protection to sage-grouse on USFS lands varies significantly across the range, and is largely dependent on LRMPs and site-specific project analysis and implementation. The Inyo National Forest identifies sage-grouse as a Management Indicator Species. This identification requires the USFS to establish objectives for the maintenance and improvement of habitat for the species during all planning processes, to the degree consistent with overall multiple use objectives (1982 rule, 36 CFR 219.19(a)).

As part of the USFS Travel Management planning effort, both the Humboldt-Toiyabe National Forest and the Inyo National Forest are revising road designations in their jurisdictions. The Humboldt-Toiyabe National Forest released its Draft Environmental Impact Statement in July, 2009. The Inyo National Forest completed and released its Final Environmental Impact Statement and Record of Decision in August 2009 for Motorized Travel Management. The ROD calls for the permanent prohibition on cross country travel off designated authorized roads. However, since this prohibition is not specific to sage-grouse habitat and we cannot assess how this will be enforced, we cannot consider the policy to be a regulatory mechanism that can protect the DPS.

Additional federally managed lands in the Bi-State area include the DOD Hawthorne Army Depot, which represents less than 1 percent of the total land base. However, these lands provide relatively high quality habitat (Nachlinger 2003, p. 38) and likely provide some of the best greater sage-grouse habitat remaining in the Mount Grant PMU because of the exclusion of livestock and the public (Bi-State Plan 2004, p. 149). There are no National Parks or National Wildlife Refuges in any of the PMUs in the Bi-State area, and we are unaware of any private lands in the area that are enrolled in the United States Department of Agriculture Conservation Reserve Program.

Summary of Factor D

As described above, habitat destruction and modification in the Bi-State area is a threat to the DPS. Federal agencies' abilities to adequately address several issues such as wildfire, invasive species, and disease across the Bi-State area are limited. For other stressors such as grazing, the regulatory mechanisms in place could be adequate to protect sage-grouse habitats; however, the application of these mechanisms varies. In some locations rangelands are not meeting habitat standards necessary for sage-grouse persistence, however, overall population estimates, while variable from year-to-year, show no discernable trend attributable to grazing.

The statutes, regulations, and policies guiding renewable energy development and associated infrastructure development, and mineral extraction for the greater sage-grouse range-wide generally are implemented similarly in the Bi-State area as they are across the range of the greater sage-grouse, and it is our conclusion that this indicates that current measures do not ameliorate associated impacts to the DPS.

The existing state and federal regulatory mechanisms to protect greater sage-grouse in the Bi-State area afford sufficient discretion to decision makers as to render them inadequate to ameliorate threats to the Bi-State DPS. We do not suggest that all resource decisions impacting sage-grouse have failed to adequately address sage-grouse needs and in fact commend the individuals and agencies working in the Bi-State area. However, the flexibility built into the regulatory process greatly reduces the adequacy of these mechanisms. Because of this, the available regulatory mechanisms are not sufficiently reliable to provide for conservation of the species in light of the alternative resource demands. Therefore, after a review of the best scientific and commercial data available, we find that the existing regulatory mechanisms are inadequate to ameliorate the threats to the Bi-State DPS of the greater sage-grouse.

Factor E: Other Natural or Manmade Factors Affecting the Species' Continued Existence

Recreational Activities

A variety of recreational activities are pursued across the Bi-State area, including traditional activities such as fishing, hiking, horseback riding, and camping as well as more recently popularized activities, such as off-road-vehicle travel and mountain biking. As discussed under *Recreational Activities* under Factor E in the GSG finding above, these activities can degrade habitat and affect sage-grouse reproduction and survival by causing disturbance in these areas.

The Bi-State Plan (2004) discusses the risk associated with off-road vehicles in the Pine Nut and the Mount Grant PMUs (Bi-State Plan 2004, pp. 27, 137–138). Additionally, for the Bodie and South Mono PMUs, the Bi-State Plan (2004, pp. 91–92, 170–171) discusses off-road vehicles in the context of all

types of recreational activities (motorized and non-motorized). We are not aware of any scientific reports that document direct mortality of greater sage-grouse through collision with off-road vehicles (70 FR 2278), although mortality from collision with vehicles on U.S. 395 near Mammoth Lakes is known (Wiechmann 2008, p. 3). Off-road vehicle use has indirect impacts to greater sage-grouse habitat; it is known to reduce or eliminate sagebrush canopy cover through repeated trips in an area, degrade meadow habitat, increase sediment production, and decrease soil infiltration rates through compaction (70 FR 2278).

Potential disturbance caused by nonmotorized forms of recreation (fishing, camping, hiking, big game hunting, dog training) are most prevalent in the South Mono and Bodie PMUs. These PMUs are also exposed to tourism-associated activity centered around Mono Lake and the towns of Mammoth Lakes and Bodie. The exact amount of recreational activity or user days occurring in the area is not known, however, the number of people in the area is increasing annually (Nelson 2008, pers. comm.; Taylor 2008, pers. comm.). Additionally, with the recent reestablishment of commercial air service to the Mammoth Yosemite Airport during the winter, greater sage-grouse in the South Mono PMU will be exposed to more flights during leking and the early nesting season than previously experienced. The early nesting season (in addition to the already busy summer months) will present the most significant new overlap between birds and human activity in the area. Leu *et al.* (2008, p. 1133) reported that slight increases in human densities in ecosystems with low biological productivity (such as sagebrush) may have a disproportional negative impact on these ecosystems due to reduced resiliency to anthropogenic disturbances. The greatest concern is the relatively concentrated recreational activity occurring in the South Mono PMU, which overlaps with the single most abundant greater sage-grouse population in the Bi-State area.

We are unaware of instances where off-road vehicle (including snowmobile) activity precluded greater sage-grouse use, or affected survival in the Bi-State area. There are areas where concerns may arise though, especially in brood rearing and wintering habitats, which are extremely limited in the Bi-State area. For example, during heavy snow years, essentially the entire population of birds in Long Valley has congregated in a very small area (Gardner 2008, pers. comm.). Off-road vehicle or snowmobile use in occupied winter areas could displace them to less optimal habitats (Bi-State Plan 2004, p. 91). Given the likelihood of a continuing influx of people into Mono County, especially in proximity to Long Valley, with access to recreational opportunities on public lands, we anticipate effects from recreational activity will increase.

Life History Traits Affecting Population Viability

Greater sage-grouse have comparatively slower potential population growth rates than other species of grouse and display a high degree of site fidelity to seasonal habitats (see this section under Factor E in the GSG finding above for further discussion and analysis). While these natural history characteristics would not limit greater sage-grouse populations across large geographic scales under historical conditions of extensive habitat, they may contribute to local declines where humans alter habitats, or when natural mortality rates are high in small, isolated populations such as in the case of the Bi-State DPS.

Isolated populations are typically at greater risk of extinction due to genetic and demographic concerns such as inbreeding depression, loss of genetic diversity, and Allee effect (the difficulty of individuals finding one another), particularly where populations are small (Lande 1988, pp. 1456–1457; Stephens *et al.* 1999, p. 186; Frankham *et al.* 2002, pp. 312–317). The best estimates for the Bi-State DPS of the greater sage-grouse place the spring breeding population between 2,000 and 5,000 individuals annually (Gardner 2008, pers. comm.; Espinosa 2008, pers. comm.). Based on radio-telemetry and genetic data, the local populations of greater sage-grouse in the Bi-State area appear to be isolated to varying degrees from one another (Farinha 2008, pers. comm.). Birds occurring in the White Mountains PMU as well as those occurring in the Long Valley and Parker Meadows area of the South Mono PMU are isolated from the remainder of the Bi-State populations, and apparently from one another (Casazza *et al.* 2009, pp. 34, 41; Oyler–McCance 2009, pers. comm.). The isolation of populations occurring to the north of Mono Lake is less clear. Birds occurring in the Bodie and Mount Grant PMUs mix during parts of the year, as do birds occurring in the California and Nevada portions of the Desert Creek–Fales PMUs (Casazza *et al.* 2009, pp. 13, 21). Within the Mount Grant PMU, populations occurring on and around Mount Grant do not interact with populations in the remainder of the PMU. However, movement of birds between Mount Grant and Desert Creek–Fales or Bodie and Desert Creek–Fales PMUs appears less consistent. The interaction among birds occurring in the Pine Nut PMU with PMUs to the south is unknown. Based on about 150 marked individuals, no dispersal events were documented among any of the PMUs, suggesting that even though some populations were mixing during certain times of the year, there was no documented integration among breeding individuals (Farinha 2008, pers. comm.). While adults are unlikely to switch breeding populations, it is likely that genetic material is transferred among these northern populations through the natural movements of chicks or young of the year, as long as there are established populations available to emigrate into.

We have concern regarding viability of populations within PMUs in the Bi-State area due to their small size (Table 12) and isolation from one another. Although there is disagreement among scientists and considerable uncertainty as to the population size adequate for long-term persistence of wildlife populations, there is agreement that population viability is more likely to be ensured viability if population sizes are in the thousands of individuals rather than hundreds (Allendorf and Ryman 2002, p. 76; Aldridge and Brigham 2003, p. 30; Reed 2005, p. 565; Traill *et al.*, 2009 entire). For example, Traill *et al.* (2009, pp. 30, 32-33) concluded that, in general, both evolutionary and demographic constraints on wildlife populations require sizes to be at least 5,000 adult individuals.

The Bi-State population of greater sage-grouse is small and both geographically and genetically isolated from the remainder of the greater sage-grouse distribution, which increases risk of genetic, demographic, stochastic events. To date, however, available genetic data suggest genetic diversity in the Bi-State area is as high as or higher than most other populations of greater sage-grouse occurring in the West (Oyler–McCance and Quinn in press, p. 18). Thus, we currently do not have clear indications that genetic factors such as inbreeding depression, hybridization, or loss of genetic diversity place this DPS at risk. However, recent genetic analysis shows that greater sage-grouse occupying the White Mountains display a unique allelic frequency in comparison to other populations in the Bi-State area suggesting greater isolation (Oyler–McCance 2009, pers. comm.). Additionally, recent field studies in the Parker Meadows area (a single isolated lek system located in the South Mono

PMU) documented a disproportionally high degree of nest failures due to nonviable eggs (Gardner 2009, pers. comm.).

In addition to the potential negative effects to small populations due to genetic considerations, small populations such as those found in the Bi-State area are at greater risk than larger populations from stochastic events, such as environmental catastrophes or random fluctuations in birth and death rates, as well disease epidemics, predation, fluctuations in habitat available, and various other factors (see Traill *et al.*, p. 29.). Interactions between climate change, drought, wildfire, WNv, and the limited potential to recover from population downturns or extirpations place significant impediments to the persistence of the Bi-State DPS of the greater sage-grouse.

Summary of Factor E

Our analysis shows certain recreational activities have the potential to directly and indirectly affect sage-grouse and their habitats. However, based on the information available, it does not appear that current disturbances are occurring at such a scale that would adversely affect sage-grouse populations in the Bi-State area. While this determination is highly constrained by lack of data, populations in the South Mono PMU, which are arguably exposed to the greatest degree of recreational activity, appear relatively stable at present. When issues such as recreation and changes in habitat are considered in conjunction with other threats, it is likely that populations in the northern half of the Bi-State area will be extirpated. Reintroduction efforts involving greater sage-grouse have had very limited success elsewhere, and natural recolonization of these areas will be slow or impossible due to their isolation and the limited number of birds in surrounding PMUs, as well as the constraints inferred by the species' life history characteristics. Therefore, based on our evaluation of the best scientific and commercial data available, we find threats from other natural or manmade factors are significant to the Bi-State DPS of the greater sage-grouse.

Finding

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the Bi-State DPS of the greater sage-grouse. We have reviewed the petition, information available in our files, and other published and unpublished information, and consulted with recognized greater sage-grouse and sagebrush experts.

Threats identified under Factors A, C, D, and E are a threat to the Bi-State DPS of the greater sage-grouse. These threats are exacerbated by the small population sizes, isolated nature, and limited availability of important seasonal habitats for many Bi-State area populations. The major threat is current and future destruction, modification, or curtailment of habitats in the Bi-State area due to urbanization, infrastructure, mining, energy development, grazing, invasive and exotic species, pinyon–juniper encroachment, recreation, wildfire, and the likely effects of climate change. Individually, any one of these threats appears unlikely to severely affect persistence across the entire Bi-State DPS of the greater sage-grouse. Cumulatively, however, these threats interact in such a way as to fragment and isolate, and will likely contribute to the loss of populations in the Pine Nut and Desert Creek-Fales PMUs and will result in a significant range contraction for the Bi-State DPS. The Bodie and South Mono PMUs currently comprise approximately 65 percent of the entire DPS and will likely become smaller but persist barring catastrophic events. In light of on-going threats, the northern extent of the Bi-State area including the Pine Nut, Desert Creek–Fales, and Mount Grant PMUs are and will be most at risk. We anticipate loss of populations and contraction of others which would leave them susceptible to extirpation from stochastic events, such as wildfire, drought, and disease.

While sport hunting is currently limited and within harvest guidelines, if hunting continues it may add to the overall decline of adult populations in the Bodie and South Mono PMUs. Overall in the Bi-State area hunting is limited to such a degree that it is not apparently restrictive to overall population growth. We have no information indicating poaching, non-consumptive uses, or scientific use significantly impact Bi-State greater sage-grouse populations. Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a significant threat to the Bi-State area DPS.

West Nile virus is a threat to the greater sage-grouse, and its occurrence and impacts are likely underestimated due to lack of monitoring. While the impact of this disease is currently limited by ambient temperatures that do not allow consistent vector and virus maturation, predicted temperature increases associated with climate change may result in this threat becoming more consistently prevalent. Predation facilitated by habitat fragmentation due to infrastructure (fences, powerlines and roads) and other human activities may be altering natural population dynamics in localized areas such as Long Valley. We find that disease and predation are threats to the Bi-State area DPS, although the impact of these threats is relatively low and localized at this time compared to other threats.

An examination of regulatory mechanisms for both the Bi-State DPS of the greater sage-grouse and sagebrush habitats revealed that while some mechanisms exist, it appears that they are being implemented in a manner that is not consistent with our current understanding of the species' life history requirements, reaction to disturbances, and currently understood conservation needs. Therefore, we find the existing regulatory mechanisms are ineffective at ameliorating habitat-based threats. Furthermore, certain threats (disease, drought, fire) may not be able to be adequately addressed by existing regulatory mechanisms.

Our analysis under Factor E indicates the current level of recreational activities do not appear to be adversely affecting sage-grouse populations in the Bi-State area. Populations in the South Mono PMU, which are arguably exposed to the greatest degree of recreational activity, appear relatively stable at present.

The relatively low number of local populations of greater sage-grouse, their small size, and relative isolation is problematic. The Bi-State area is composed of approximately 35 active leks representing 4 to 8 individual populations. Research has shown fitness and population size are strongly correlated and smaller populations are more subject to environmental and demographic stochasticity. When coupled with mortality stressors related to human activity and significant fluctuations in annual population size, long-term persistence of small populations is always problematic.

Given the species' relatively low rate of growth and strong site fidelity, recovery and repopulation of extirpated areas will be slow and infrequent. Translocation of this species is difficult and to date has not been successful, and given the limited number of source individuals, translocation efforts, if needed, are unlikely.

Within 30 years it is likely that greater sage-grouse in the Bi-State area will only persist in one or two populations located in the South Mono PMU (Long Valley) and the Bodie Hills PMU. These populations will likely be isolated from one another and due to decreased

population numbers, each will be at greater risk to stochastic events.

As required by the Act, we have reviewed and taken into account efforts being made to protect the greater sage-grouse in the Bi-State area. Although some local conservation efforts have been implemented and are effective in small areas, they are neither individually nor collectively at a scale that is sufficient to ameliorate threats to the DPS as a whole, or to local populations. Other conservation efforts are being planned but there is substantial uncertainty as to whether, where, and when they will be implemented, and whether they will be effective.

We have carefully assessed the best scientific and commercial information available regarding the present and future threats to the Bi-State DPS of the greater sage-grouse. We have reviewed the petitions, information available in our files, and other published and unpublished information, and consulted with recognized greater sage-grouse and sagebrush experts. We have considered and taken into account efforts being made to protect the species. On the basis of the best scientific and commercial information available, we find that listing of the Bi-State DPS of the greater sage-grouse is warranted across its range. However, listing this DPS is precluded by higher priority listing actions at this time, as discussed in the **Preclusion and Expeditious Progress** section below.

We have reviewed the available information to determine if the existing and foreseeable threats render the Bi-State DPS of the greater sage-grouse at risk of extinction now such that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the Bi-State DPS is not warranted at this time (see discussion of listing priority for this DPS, below). However, if at any time we determine that issuing an emergency regulation temporarily listing the Bi-State DPS is warranted, we will initiate this action at that time.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for another species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. § 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107-103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat. Consequently, none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations, so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have, in effect, determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already-listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a "warranted but precluded" finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines for listing and the warranted-but-precluded finding requirements that are currently contained in the Act, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the

deadlines were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise."

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However these funds are not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we are using $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we have for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions, although there are currently no foreign species issues included in our high priority listing actions at this time. The allocations for each specific listing action are identified in the Service's FY 2010 Allocation Table (part of our administrative record).

In FY 2007, we had more than 120 species with a Listing Priority Number (LPN) of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40 candidates, we are applying the ranking criteria to the next group of candidates with LPNs of 2 and 3 to determine the next set of highest priority candidate species. There currently are 56 candidate species with an LPN of 2 that have not received funding for preparation of proposed listing rules.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or face the same threats as a species with an LPN of 2. In addition, available staff resources also are a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

We assigned the greater sage-grouse an LPN of 8 based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat, and the inadequacy of existing regulatory mechanisms to address such threats. Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the greater sage-grouse faces to be moderate in magnitude because the threats do not occur everywhere across the range of the species at this time, and where they are occurring, they are not of uniform intensity or of such magnitude that the species requires listing immediately to ensure its continued existence. Although many of the factors we analyzed (e.g, disease, fire, urbanization, invasive species) are present throughout the range, they are not to the level that they are causing a significant threat to greater sage-grouse in some areas. Other threats are of high magnitude in some areas but are of low magnitude or nonexistent in other areas such that overall across the species' range, they are of moderate magnitude. Examples of this include: oil and gas development, which is extensive in the eastern part of the range but limited in the western portion; pinyon-juniper encroachment, which is substantial in some parts of the west but is of less concern in Wyoming and Montana; and agricultural development which is extensive in the Columbia Basin, Snake River Plain, and eastern Montana, but more limited elsewhere. While sage-grouse habitat has been lost or altered in many portions of the species' range, substantial habitat still remains to support the species in many areas of its range (Connelly *et al.* in press c, p. 23), such as higher elevation sagebrush, and areas with a low human footprint (activities sustaining human development) such as the Northern and Southern Great Basin (Leu and Hanser in press, p. 14) indicating that threats currently are not high in these areas. The species has a wide distribution across 11 western states. In addition, two strongholds of contiguous sagebrush habitat (the southwest Wyoming Basin and the Great Basin area straddling the States of Oregon, Nevada, and Idaho) contain the highest densities of males in the range of the species (Wisdom *et al.* in press, pp. 24-25; Knick and Hanser (in press, p. 17). We believe that the ability of these strongholds to maintain high densities

in the presence of several threat factors is an indication that the magnitude of threats is moderate overall.

We also lack data on the actual future location of where some potential threats will occur (e.g., wind energy development exact location, location of the next wildfire). If these threats occur within unoccupied habitat, the magnitude of the threat to greater sage-grouse is greatly reduced. The likelihood that some occupied habitat will not be affected by threats in the foreseeable future leads us to consider the magnitude of threats to the greater sage-grouse as moderate. This likelihood is evidenced by our expectation that two strongholds of contiguous habitat will still remain in fifty years even though the threats discussed above will continue there.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats imminent because we have factual information that the threats are identifiable and that the species is currently facing them in many portions of its range. These actual, identifiable threats are covered in great detail in factor A of this finding and include habitat fragmentation from agricultural activities, urbanization, increased fire frequency, invasive plants, and energy development.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The greater sage-grouse is a valid taxon at the species level, and therefore receives a higher priority than subspecies or DPSs, but a lower priority than species in a monotypic genus.

We will continue to monitor the threats to the greater sage-grouse, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will re-visit our assessment of LPN.

Because we assigned the greater sage-grouse an LPN of 8, work on a proposed listing determination for the greater sage-grouse is precluded by work on higher priority candidate species (i.e., entities with LPN of 7 or lower); listing actions with absolute statutory, court ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from FY 2009. This work includes all the actions listed in the tables below under expeditious progress (see Tables 13 and 14).

We also have assigned a listing priority number to the Bi-State DPS of the greater sage-grouse. As described above, under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive a higher listing priority. Many of the threats to the Bi-State DPS that we analyzed are present throughout the range and currently impact the DPS to varying degrees (e.g. urbanization, invasive grasses, habitat fragmentation from existing infrastructure), and will continue into the future. The northern extent of the Bi-State area including the Pine Nut, Desert Creek–Fales, and Mount Grant PMUs are now and will continue to be most at risk. We anticipate loss of some local populations, and contraction of the range of others which would leave them susceptible to extirpation from stochastic events, such as wildfire, drought, and disease. Occupied habitat will continue to be affected by threats in the future and we expect that only two isolated populations in the Bodie and South Mono PMUs may remain in thirty years. The threats that are of high magnitude include: the present or threatened destruction, modification or curtailment of its habitat and range; the inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting the DPS's continued existence, such as the small size of the DPS (in terms of both the number of individual populations and their size) which increases the risk of extinction, particularly for the smaller local populations. Also the small number and size and isolation of the populations may magnify the impact of the other threats. We consider disease and predation to be relatively low magnitude threats compared to other existing threats.

The Bi-State DPS of the greater sage-grouse is composed of approximately 35 active leks representing 4 to 8 individual local populations, based on current information on genetics and connectivity. While some of the threats do not occur everywhere across the range of the DPS at this time (e.g. habitat-based impacts from wildfire, WNv infections), where threats are occurring, the risk they pose to the DPS may be exacerbated and magnified due to the small number and size and isolation of local populations within the DPS. We acknowledge that we lack data on the precise future location of where some impacts will manifest on the landscape (e.g., effects of climate change, location of the next wildfire). To the extent to which these impacts occur within unoccupied habitat, the magnitude of the threat to the Bi-State DPS is reduced. However, to the extent these impacts occur within habitat used by greater sage-grouse, due to the low number of populations and small size of most of them, the effects to the DPS may be greatly magnified. Due to the scope and scale of the high magnitude threats and current and anticipated future loss of habitat and isolation of already small populations, leads us to determine that the magnitude of threats to the Bi-State DPS of the greater sage-grouse is high.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We have factual information the threats imminent because we have factual information that the threats are identifiable and that the DPS is currently facing them in many areas of its range. In particular these actual, identifiable threats are covered in great detail in factor A of this finding and include habitat fragmentation and destruction due to urbanization, infrastructure (e.g. fences, powerlines, and roads), mining, energy development, grazing, invasive and exotic species, pinyon–juniper encroachment, recreation, and wildfire. Therefore, based on our LPN Policy the threats are imminent (ongoing).

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. We have determined the Bi-State greater sage-grouse population to be a valid DPS according to our DPS Policy. Therefore under our LPN guidance, the Bi-State DPS of the greater sage-grouse is assigned a lower priority than a species in a monotypic genus or a full species that faces the same magnitude and imminence of threats.

Therefore, we assigned the Bi-State DPS of the greater sage-grouse an LPN of 3 based on our determination that the DPS faces threats that are overall of high magnitude and are imminent (i.e. ongoing). We will continue to monitor the threats to the Bi-State DPS of the greater sage-grouse, and the DPS' status

on an annual basis, and should the magnitude or the imminence of the threats change, we will re-visit our assessment of LPN.

Because we assigned the Bi-State DPS of the greater sage-grouse an LPN of 3, work on a proposed listing determination for this DPS is precluded by work on higher priority candidate species (i.e., entities with LPN of 2 or lower); listing actions with absolute statutory, court ordered, or court-approved deadlines; and completion of listing determinations for those species for which work already has been initiated but is not yet completed. This work includes all the actions listed in the tables below under expeditious progress (see Tables 13 and 14).

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we also are making expeditious progress in removing species from the list under the Recovery Program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations (Table 13):

TABLE 13—FISCAL YEAR 2010 COMPLETED LISTING ACTIONS.

Publication Date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range	Final Listing Threatened	74 FR 52013-52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered	Notice of 90–day Petition Finding, Not substantial	74 FR 55177-55180
10/28/2009	Status Review of Arctic Grayling *(Thymallus arcticus*) in the Upper Missouri River System	Notice of Intent to Conduct Status Review	74 FR 55524-55525
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757-56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule	Proposed Listing Threatened	74 FR 56770-56791
11/23/2009	Status Review of Gunnison sage-grouse *(Centrocercus minimus*)	Notice of Intent to Conduct Status Review	74 FR 61100-61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered	Notice of 12 month petition finding, Not warranted	74 FR 63343-63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered	Notice of 90–day Petition Finding, Substantial	74 FR 63337-63343
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat	Notice of 90–day Petition Finding, Substantial	74 FR 66260-66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat; Proposed Rule	Notice of 90–day Petition Finding, Not substantial and Substantial	74 FR 66865-66905
12/17/2009	12–month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico	Notice of 12 month petition finding, Warranted but precluded	74 FR 66937-66950
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range	Proposed ListingEndangered	75 FR 605-649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed ListingEndangered	75 FR 286-310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310-316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges	Final Listing Threatened	75 FR 235-250

TABLE 13—FISCAL YEAR 2010 COMPLETED LISTING ACTIONS.—Continued

Publication Date	Title	Actions	FR Pages
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*	Notice of Intent to Conduct Status Review	75 FR 3190-3191
2/09/2010	12–month Finding on a Petition to List the American Pika as Threatened or Endangered; Proposed Rule	Notice of 12 month petition finding, Not warranted	75 FR 6437-6471
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment	Notice of 12 month petition finding, Not warranted	75 FR 8601-8621
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout *(Oncorhynchus clarki clarki*) as Threatened	Withdrawal of Proposed Rule to List	75 FR 8621-8644

Our expeditious progress also includes work on listing actions that we funded in FY 2010, and for which work is ongoing but not yet completed to date. These actions are listed below (Table 14). Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

TABLE 14—LISTING ACTIONS FUNDED IN FISCAL YEAR 2010 BUT NOT YET COMPLETED.

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination
Flat-tailed horned lizard	Final listing determination
6 Birds from Peru	Proposed listing determination
Sacramento splittail	Proposed listing determination
Mono basin sage-grouse	12–month petition finding
Greater sage-grouse	12–month petition finding
Big Lost River whitefish	12–month petition finding
White-tailed prairie dog	12–month petition finding
Gunnison sage-grouse	12–month petition finding
Wolverine	12–month petition finding
Arctic grayling	12–month petition finding
Agave eggergsiana	12–month petition finding
Solanum conocarpum	12–month petition finding
Mountain plover	12–month petition finding
Hermes copper butterfly	90–day petition finding
Thorne's hairstreak butterfly	90–day petition finding
Actions with Statutory Deadlines	
48 Kauai species	Final listing determination

TABLE 14—LISTING ACTIONS FUNDED IN FISCAL YEAR 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
Casey's June beetle	Final listing determination
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination
2 Hawaiian damselflies	Final listing determination
African penguin	Final listing determination
3 Foreign bird species (Andean flamingo, Chilean woodstar, St. Lucia forest thrush)	Final listing determination
5 Penguin species	Final listing determination
Southern rockhopper penguin – Campbell Plateau population	Final listing determination
5 Bird species from Colombia and Ecuador	Final listing determination
7 Bird species from Brazil	Final listing determination
Queen Charlotte goshawk	Final listing determination
Salmon crested cockatoo	Proposed listing determination
Black-footed albatross	12–month petition finding
Mount Charleston blue butterfly	12–month petition finding
Least chub[1]	12–month petition finding
Mojave fringe-toed lizard[1]	12–month petition finding
Pygmy rabbit (rangewide)[1]	12–month petition finding
Kokanee – Lake Sammamish population[1]	12–month petition finding
Delta smelt (uplisting)	12–month petition finding
Cactus ferruginous pygmy-owl[1]	12–month petition finding
Tucson shovel-nosed snake[1]	12–month petition finding
Northern leopard frog	12–month petition finding
Tehachapi slender salamander	12–month petition finding
Coqui Llanero	12–month petition finding
Susan's purse-making caddisfly	12–month petition finding
White-sided jackrabbit	12–month petition finding
Jemez Mountains salamander	12–month petition finding
Dusky tree vole	12–month petition finding
Eagle Lake trout[1]	12–month petition finding
29 of 206 species	12–month petition finding
Desert tortoise – Sonoran population	12–month petition finding
Gopher tortoise – eastern population	12–month petition finding
Amargosa toad	12–month petition finding
Wyoming pocket gopher	12–month petition finding
Pacific walrus	12–month petition finding
Wrights marsh thistle	12–month petition finding
67 of 475 southwest species	12–month petition finding

TABLE 14—LISTING ACTIONS FUNDED IN FISCAL YEAR 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
9 Southwest mussel species	12–month petition finding
14 parrots (foreign species)	12–month petition finding
Southeastern pop snowy plover & wintering pop. of piping plover[1]	90–day petition finding
Eagle Lake trout[1]	90–day petition finding
Berry Cave salamander[1]	90–day petition finding
Ozark chinquapin[1]	90–day petition finding
Smooth-billed ani[1]	90–day petition finding
Bay Springs salamander[1]	90–day petition finding
Mojave ground squirrel[1]	90–day petition finding
32 species of snails and slugs[1]	90–day petition finding
Calopogon oklahomensis[1]	90–day petition finding
Striped newt[1]	90–day petition finding
Southern hickorynut[1]	90–day petition finding
42 snail species	90–day petition finding
White-bark pine	90–day petition finding
Puerto Rico harlequin	90–day petition finding
Fisher – Northern Rocky Mtns. population	90–day petition finding
Puerto Rico harlequin butterfly[1]	90–day petition finding
42 snail species (Nevada & Utah)	90–day petition finding
HI yellow-faced bees	90–day petition finding
Red knot *roselaari* subspecies	90–day petition finding
Honduran emerald	90–day petition finding
Peary caribou	90–day petition finding
Western gull-billed tern	90–day petition finding
Plain bison	90–day petition finding
Giant Palouse earthworm	90–day petition finding
Mexican gray wolf	90–day petition finding
Spring Mountains checkerspot butterfly	90–day petition finding
Spring pygmy sunfish	90–day petition finding
San Francisco manzanita	90–day petition finding
Bay skipper	90–day petition finding
Unsilvered fritillary	90–day petition finding
Texas kangaroo rat	90–day petition finding
Spot-tailed earless lizard	90–day petition finding
Eastern small-footed bat	90–day petition finding
Northern long-eared bat	90–day petition finding
Prairie chub	90–day petition finding

TABLE 14—LISTING ACTIONS FUNDED IN FISCAL YEAR 2010 BUT NOT YET COMPLETED.—Continued

Species	Action
10 species of Great Basin butterfly	90–day petition finding
High Priority Listing Actions[3]	
19 Oahu candidate species[3] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9)	Proposed listing
17 Maui-Nui candidate species[3] (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing
Sand dune lizard[3] (LPN = 2)	Proposed listing
2 Arizona springsnails[3] *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing
2 New Mexico springsnails[3] *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11))	Proposed listing
2 mussels[3] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing
2 mussels[3] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing
Ozark hellbender[2] (LPN = 3)	Proposed listing
Altamaha spinymussel[3] (LPN = 2)	Proposed listing
5 southeast fish[3] (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5))	Proposed listing
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11))	Proposed listing
3 Colorado plants[3] (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parachute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8))	Proposed listing

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 or 2009

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

The greater sage-grouse and the Bi-State DPS of the greater sage-grouse will each be added to the list of candidate species upon publication of these 12–month findings. We will continue to monitor their status as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures. We acknowledge we must reevaluate the status of the Columbia Basin population as it relates to the greater sage-grouse; we will conduct this analysis as our priorities allow. Other populations of the greater sage-grouse, as appropriate, will be evaluated to determine if they meet the distinct population segment (DPS) policy prior to a listing action, if necessary and appropriate.

We intend that any proposed listing action for the greater sage-grouse or Bi-State DPS of the greater sage-grouse will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning these findings.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Wyoming Ecological Services Office (see ADDRESS section).

Author

The primary authors of this notice are the staff members of the Wyoming, Montana, Idaho, Nevada, and Oregon Ecological Services Offices.

Authority: The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 3, 2010

Daniel M Ashe,

Acting Director, Fish and Wildlife Service

[FR Doc. 2010–5132 Filed 3–22– 10; 8:45 am]

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Federal Register

Tuesday,
March 23, 2010

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090511911–91132–01]

RIN 0648–AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Bering Sea Pollock Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maximizing the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments must be received no later than May 7, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AX89, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (907) 586–7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand Delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Final Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, e-mailed to *David_Rostker@omb.eop.gov*, or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendment 91 to the FMP. The Council has submitted Amendment 91 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of this amendment was published in the **Federal Register** on February 18, 2010 (75 FR 7228) with comments invited through April 19, 2010. Respondents do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 91 and addressed in the response to comments in the final decision.

The Bering Sea Pollock Fishery

This proposed rule applies to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Theragra chalcogramma*) fishery in the Bering Sea (BS) subarea of the BSAI. A detailed physical description of the BS subarea is contained in Section 1.3 of the EIS (*see* **ADDRESSES**). The BS pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was more than 1.4 billion dollars in 2008.

The BS pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). Currently, pollock in the BSAI is managed as three separate units: the BS subarea, the Aleutian Islands (AI) subarea, and the Bogoslof District of the BS subarea. Separate overfishing limits, acceptable biological catch limits, and total allowable catch (TAC) limits are specified annually for BS pollock, AI pollock, and Bogoslof pollock. In 2009, the BS pollock TAC was 815,000 metric tons (mt), the AI pollock TAC was 19,000 mt, and the Bogoslof pollock TAC was 50 mt. Additional information about the pollock fisheries is in Section 1.4 of the EIS, Section 2.1 of the RIR (*see* **ADDRESSES**), and in the annual specifications for the BSAI groundfish fisheries (74 FR 7359; February 17, 2009).

Ten percent of the AI pollock TAC is allocated to the CDQ Program while the remaining 90 percent is divided between the Aleut Corporation and the incidental catch allowance (70 FR 9856; March 1, 2005). Under § 679.22(a)(7)(i), directed fishing for pollock is not allowed in the Bogoslof District and the entire TAC is allocated as an incidental catch allowance for pollock harvested in other groundfish directed fisheries that occur in this area. Amendment 91 would not affect the management of pollock fisheries in the AI or the status of pollock fishing in the Bogoslof District. This proposed rule applies only to management of the pollock fishery in the BS. Therefore, in this document, the word "fishery" refers only to the BS pollock fishery, unless otherwise specified.

In October 1998, Congress enacted the AFA, which "rationalized" the BS

pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. Under the AFA, 10 percent of the BS pollock TAC is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other BS groundfish fisheries is subtracted from the TAC. In 2009, the CDQ allocation was 81,500 mt of pollock and the incidental catch allowance was 29,340 mt. The "directed fishing allowance" is the remaining amount of pollock, after subtraction of the CDQ Program allocation and the incidental catch allowance. The directed fishing allowance is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Pollock allocations to the CDQ Program and the other three AFA sectors are further allocated annually between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1).

The allocation of pollock to the CDQ Program is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The percentage allocations of pollock among the six CDQ groups that currently are in effect were approved by NMFS in 2005 based on recommendations from the State of Alaska (State). These percentage allocations are now the required allocations of pollock among the CDQ groups under section 305(i)(1)(B) of the Magnuson-Stevens Act. More information about the allocations of pollock, other groundfish, crab, and prohibited species (including Chinook salmon) among the six CDQ groups is provided in a **Federal Register** notice that described the effect of the 2006 amendments to the Magnuson-Stevens Act on CDQ Program allocations (71 FR 51804; August 31, 2006). The CDQ Program also is described in more detail in the "Classification" section of this proposed rule.

CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by the CDQ group. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, to date, the vessels harvesting CDQ pollock have been AFA permitted vessels. The CDQ pollock allocations have most often been harvested by catcher/processors or catcher vessels delivering to a mothership. However, some pollock CDQ has been delivered to inshore processing plants in past years.

The AFA allowed for the formation of fishery cooperatives within the non-CDQ sectors. The purpose of these AFA cooperatives is to further subdivide each sector's or inshore cooperative's pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in the intercooperative agreement to reduce salmon bycatch.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessel's pollock catch history from 1995 through 1997, as required under section 210(b) of the AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the "inshore open access fishery". In recent years, all inshore catcher vessels have joined one of seven inshore cooperatives. However, NMFS has been notified that in 2010 one inshore catcher vessel will not join an inshore cooperative and will be fishing in the inshore open access fishery.

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and still active in the BS pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). The remaining catcher/processor, the F/V Ocean Peace, is not listed by name in the AFA, but is eligible to harvest up to 0.5 percent of the allocation of BS pollock to the catcher/processor sector. This portion of the catcher/processor sector's allocation of BS pollock is reserved for "unlisted" catcher/processors that meet certain requirements, which only the F/V Ocean Peace meets. Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catcher's Cooperative (HSCC).

The AFA mothership sector is made up of three motherships and the catcher vessels eligible under the AFA to deliver pollock to these motherships. These catcher vessels have formed a cooperative called the Mothership Fleet Cooperative (MFC). The MFC does not include the owners of the three motherships. The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock and to manage these allocations.

NMFS does not manage the sub-allocations of pollock among members of the PCC, HSCC, or MFC. The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

Chinook Salmon Bycatch in the Bering Sea Pollock Fishery

Pollock is harvested with fishing vessels using trawl gear, which are large nets towed through the water by the vessel. Chinook salmon and pollock occur in the same locations in the BS. Consequently, Chinook salmon are accidently caught in the nets as fishermen target pollock.

The Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon caught in the BS pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 of the Magnuson-Stevens Act requires the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP and are the most regulated and closely managed category of bycatch. Chinook salmon, all other species of salmon (a category called "non-Chinook salmon"),

steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska. As a prohibited species, fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program under § 679.26, or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The PSD Program was initiated to reduce the amount of edible protein discarded under prohibited species catch (PSC) regulatory requirements (§ 679.21). One reason for requiring the discard of prohibited species is that some of the fish may live if they are returned to the sea with a minimum of injury and delay. However, salmon caught incidentally in trawl nets always die as a result of that capture. The PSD Program allows enrolled seafood processors to retain salmon bycatch for distribution to economically disadvantaged individuals through tax-exempt hunger relief organizations.

The BS pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the BSAI groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the BS pollock fishery was 32,482. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon were taken in the BS pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,493 in 2008 and 12,410 in 2009. The causes of the decline in Chinook salmon bycatch in 2008 and 2009 are unknown. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, and changes in fleet behavior to avoid salmon bycatch.

Chinook salmon bycatch also varies seasonally and by sector. In most years, the majority of Chinook salmon bycatch occurs during the A season. Since 2002, catcher vessels in the inshore sector typically have caught the highest number of Chinook salmon and had the highest bycatch rates by sector in both the A and B seasons. Since 1999, under the AFA, the inshore sector has been allocated about 45 percent of the pollock TAC (the percentage changes slightly in some years because the amount of pollock subtracted from the TAC for incidental catch varies). However, the inshore sector has always caught more than 45 percent of Chinook salmon bycatch. For example, in 2007, the inshore sector was allocated 44 percent of the pollock TAC, but caught 63 percent of the Chinook salmon bycatch, and in 2008 it was allocated 43 percent of the TAC, but caught 55 percent of the Chinook salmon bycatch in the BS pollock fishery. Over this same time period, the catcher/processor sector has taken a smaller portion of the Chinook salmon bycatch relative to their 35 percent allocation of pollock TAC (26 percent of the Chinook salmon bycatch in 2007 and 18 percent in 2008). The variation in bycatch rates among sectors and seasons is due, in part, to the different fishing practices and patterns each sector uses to fully harvest their pollock allocations in the A and B seasons.

In years of historically high Chinook salmon bycatch in the BS pollock fishery (2003 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Development of intercooperative agreements that require vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably are the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, it will continue to be difficult to predict when and where large amounts of Chinook salmon bycatch will be encountered by the pollock fleet, primarily because of the current lack of understanding of the biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

Status of Chinook Salmon Stocks and Fisheries in Western Alaska

Chinook salmon taken in the BS pollock fishery originate from Alaska, the Pacific Northwest, Canada, and Asian countries along the Pacific Rim. Estimates vary, but more than half of the Chinook salmon bycatch in the BS pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained depressed in 2008 and 2009. Chapter 5 of the EIS provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (*see* **ADDRESSES**).

Chinook salmon support subsistence, commercial, personal use, and sport fisheries in their regions of origin. The Alaska Board of Fisheries adopts regulations through a public process to conserve fisheries resources and to allocate fisheries resources to the various users. The State of Alaska Department of Fish and Game (ADF&G) manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both state and federal law. Chinook salmon serves as a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. federal agencies where federal rules apply under the Alaska National Interest Lands Conservation Act.

In recent years of low Chinook salmon returns, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals. Surplus fish beyond escapement needs and subsistence use are made available for other uses. Commercial fishing for Chinook salmon may provide the only source of income for many people who live in remote villages. Chapter 3 of the RIR provides an overview of the importance of subsistence harvests and commercial harvests (*see* **ADDRESSES**).

Yukon River salmon fisheries management includes obligations under an international treaty with Canada. In 2007 and 2008, the United States did not meet the Yukon River Chinook salmon escapement goals established with Canada by the Yukon River Agreement to the Pacific Salmon Treaty (PST) of 2002. As of October 29, 2009, the preliminary estimate of escapement into Canada was approximately 68,400 Chinook salmon, which exceeds the 2009 interim management escapement goal of 45,000 Chinook salmon and provides for harvest sharing under the Yukon River Agreement to the PST.

Current Management of Chinook Salmon Bycatch in the Bering Sea and Aleutian Islands

Over the past 15 years, the Council and NMFS have implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information regarding the location and timing of Chinook salmon bycatch, Amendment 21b established annual PSC limits for Chinook salmon and

specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached. These regulations prohibited trawling in the Chinook Salmon Savings Area through April 15, once the PSC limit of 48,000 Chinook salmon was reached (60 FR 31215; November 29, 1995).

In 2000, the Council and NMFS implemented Amendment 58 to the FMP, which reduced the Chinook Salmon Savings Area closure limit to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas of the BSAI (Area 1 in the AI subarea and Area 2 in the BS subarea), and established new closure periods (65 FR 60587; October 12, 2000).

Chinook salmon bycatch management measures in the BSAI were most recently revised under Amendments 82 and 84 to the FMP. In 2005, Amendment 82 established the AI Chinook salmon PSC limit of 700 fish, which, when reached, closes the directed pollock fishery in Area 1 (the AI) of the Chinook Salmon Savings Area (70 FR 9856; March 1, 2005).

The Council adopted Amendment 84 in October 2005 to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and Chum Salmon Savings Areas. Amendment 84 established in Federal regulations the salmon bycatch intercooperative agreement (ICA) which allows vessels participating in the BS pollock fishery to use their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system (VRHS). Through the VRHS, industry members provide each other real-time salmon bycatch information so that they can avoid areas of high Chinook or non-Chinook salmon bycatch rates. The VRHS was implemented voluntarily by the fleet in 2002. Amendment 84 exempts vessels participating in the salmon bycatch reduction ICA from salmon savings area closures and revised the Chum Salmon Savings Area closure to only apply to vessels directed fishing for pollock, rather than to all vessels using trawl gear. The exemptions to savings area closures for participants in the VRHS ICA were implemented by NMFS in 2006 and 2007 through an exempted fishing permit. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007), and a salmon bycatch reduction ICA using the VRHS was approved by NMFS in January 2008. Amendment 84 requires that parties to the ICA be the AFA cooperatives or the CDQ groups. All AFA cooperatives and CDQ groups participate in the VRHS ICA.

Using a system specified in regulations, the VRHS ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate, and implements large area closures for vessels in tiers associated with higher bycatch rates. The VRHS ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures must be reported to the Council annually.

Objectives of and Rationale for Amendment 91 and this Proposed Rule

While the annual reports suggest that the VRHS ICA has reduced Chinook salmon bycatch rates compared to what they would have been without the ICA, the highest historical Chinook salmon bycatch occurred in 2007 when the ICA was in effect under an exempted fishing permit. This high level of bycatch illustrated that, while the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contain no effective upper limit on the amount of salmon bycatch that could occur in the BS pollock fishery.

The principal objective of Chinook salmon bycatch management in the BS pollock fishery is to minimize Chinook salmon bycatch to the extent practicable, while achieving optimum yield. Minimizing Chinook salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and comply with the Magnuson-Stevens Act and other applicable federal law.

In April 2009, the Council adopted Amendment 91 and recommended that NMFS develop regulations to implement that action. In developing Amendment 91, the Council considered consistency with the Magnuson-Stevens Act's 10 National Standards. The Council designed its recommended alternative to balance the competing demands of the National Standards. Specifically, the Council recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. The ability to harvest the entire pollock TAC in any given year is not determinative of whether the BSAI groundfish fishery achieves optimum yield. Providing the opportunity for the fleet to harvest its TAC is one aspect of achieving optimum yield in the long term.

Amendment 91 combines a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. In developing this program, the Council recognized that the number of Chinook salmon caught as bycatch in the BS pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch to the extent practicable in all years while providing the fleet the flexibility to harvest the pollock TAC.

Under Amendment 91, the PSC limit would be 60,000 Chinook salmon if some or all of the pollock industry participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA), that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA would be voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA would be subject to a restrictive opt-out allocation (also called a backstop cap).

To ensure participants develop effective IPAs, participants would demonstrate to the Council through performance and annual reports that the IPA is accomplishing the Council's intent that each vessel does its best to avoid Chinook salmon at all times while fishing for pollock and, that collectively, bycatch is minimized in each year. The Council believed that the addition of an

IPA that could impose rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both, would warrant setting the PSC limit at 60,000 Chinook salmon. The Council recognized that while the IPA should minimize bycatch in all years to a level below the limit, a limit of 60,000 Chinook salmon would provide the industry the flexibility to harvest the pollock TAC in high-encounter years when bycatch was extremely difficult to avoid.

A 47,591 Chinook salmon PSC limit would apply fleet-wide if industry does not form any IPAs. This PSC limit of 47,591 Chinook salmon is the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006. The Council determined that the 47,591 PSC limit was an appropriate limit on Chinook salmon bycatch in the BS pollock fishery if no other incentives were operating to minimize bycatch below this level.

Both PSC limits would be divided between the A and B seasons and allocated to AFA sectors, cooperatives, and CDQ groups as transferable PSC allocations. Transferability is expected to mitigate the variation in the encounter rates of salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a transferable PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

The Council also recommended a sector-level performance standard as an additional tool to ensure that the IPA is effective and that sectors do not fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its annual threshold amount in any three years within seven consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The Council believed that the risk of bearing the potential economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit would create incentives for fishery participants to cooperate in an effective IPA.

In selecting the appropriate Chinook salmon bycatch management program, the Council considered a wide range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while maximizing the potential for the full harvest of the pollock TAC. The Council considered the trade-offs between the potential Chinook salmon saved and the forgone pollock catch. The EIS and RIR contain a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (*see* **ADDRESSES**).

The Council considered an alternative that would implement a single PSC limit, with no additional measures. However, the Council determined that a single PSC limit alone is not the optimum mechanism to minimize Chinook salmon bycatch at all levels of Chinook salmon abundance and at all rates of Chinook salmon encounters in the pollock fishery.

A relatively high PSC limit alone would not constrain the pollock fishery in most years, so it would not achieve the Council's goal of minimizing Chinook salmon bycatch to the extent practicable. A high PSC limit in years of low Chinook salmon encounters would not provide incentives for the pollock fleet to reduce bycatch at all, even if lower bycatch could have been achieved at minimal expense. If low encounters are due to low Chinook salmon abundance in one or more stocks, a high PSC limit alone would not address biological concerns about the potential impact of bycatch on Chinook salmon stocks.

A low PSC limit would reduce Chinook salmon bycatch below historic high levels. However, it could limit the pollock fishery harvests below the pollock TAC in many years because a low PSC limit would not accommodate the high variability in Chinook salmon encounter rates experienced in the BS pollock fishery, or the unpredictability of these rates. While a low PSC limit alone would ensure bycatch does not exceed that level, it would not provide any incentives or mechanism to further reduce bycatch below that limit. As a result, if low encounters are due to low Chinook salmon abundance in one or more stocks, even a low PSC limit alone would not address biological concerns about the potential impact of bycatch on Chinook salmon stocks. Additionally, if the low PSC limit were allocated to sectors, cooperatives, and CDQ groups, it could result in allocations so small that it could effectively preclude pollock fishing by a vessel or group of vessels. On the other hand, not allocating the PSC limit could result in a race to fish, which would undermine the rationalized management of the AFA and the current pollock fishery management.

Proposed Bering Sea Chinook Salmon Bycatch Management Measures

This proposed rule to implement the provisions of Amendment 91, as recommended by the Council, includes two Chinook salmon PSC limits (60,000 Chinook salmon and 47,591 Chinook salmon). For each PSC limit, NMFS would issue Chinook salmon PSC allocations to the catcher/processor sector, the mothership sector, the inshore cooperatives, and the CDQ groups. Separate allocations would be issued for the A season and the B season. Chinook salmon remaining from the A season could be used in the B season ("rollover"). Entities could transfer PSC allocations within a season and could also receive transfers of Chinook salmon bycatch to cover overages ("post-delivery transfers").

If NMFS approves an IPA, NMFS would issue transferable allocations of the 60,000 Chinook salmon PSC limit to those sectors that remain in compliance with the performance standard. The performance standard requires each sector to maintain its Chinook salmon bycatch within its portion of 47,591 Chinook salmon in at least five out of every seven consecutive years. Sector and cooperative allocations would be reduced if members of the sector decided not to participate in an IPA. Vessels and CDQ groups that do not participate in an IPA would fish under a restricted opt-out allocation. If a whole sector does not participate in an IPA, all members of that sector would fish under the opt-out allocation.

NMFS would issue transferable allocations of the 47,591 Chinook salmon PSC limit to all sectors, cooperatives, and CDQ groups if no IPA is approved or to the sectors that exceed the performance standard.

Under Amendment 91, NMFS would remove from existing regulations the 29,000 Chinook salmon PSC limit in the BS, the Chinook Salmon Savings Areas in the BS, exemption from Chinook Salmon Savings Area closures for participants in the VRHS ICA, and Chinook salmon as a component of the VRHS ICA. This proposed action would not change any regulations affecting the management of Chinook salmon in the AI or non-Chinook salmon in the BSAI. The Council is currently considering a separate action to modify the non-Chinook salmon management measures to minimize non-Chinook salmon bycatch.

Allocations of the 60,000 or the 47,591 Chinook Salmon Prohibited Species Catch Limits

Both the 60,000 and the 47,591 Chinook salmon PSC limits would be allocated among the catcher/processor sector, the mothership sector, inshore sector, and CDQ Program using a method that recognizes that sectors have different fishing patterns and needs for salmon bycatch in order to harvest their AFA pollock allocation (Table 1). The percentage allocations recommended by the Council are based on an adjusted five-year (2002 to 2006) historical average proportion of the Chinook salmon bycatch by sector and season, and are shown in Table 1. The basis for these percentage allocations is explained in more detail in section 2.5.2 of the EIS (*see* **ADDRESSES**).

TABLE 1—PERCENTAGE ALLOCATIONS AND AMOUNTS OF THE CHINOOK SALMON PROHIBITED SPECIES CATCH LIMIT

Percentage allocations to each sector	PSC Limit (#s of Chinook salmon)	
	60,000	47,591
A season allocation: 70.0	42,000	33,314
CDQ Program—9.3	3,906	3,098
Inshore Sector—49.8	20,916	16,591
Mothership Sector—8.0	3,360	2,665
Catcher/Processor Sector—32.9	13,818	10,960
B season allocation: 30.0	18,000	14,277
CDQ Program—5.5	990	785
Inshore Sector—69.3	12,474	9,894
Mothership Sector—7.3	1,314	1,042
Catcher/Processor Sector—17.9	3,222	2,556

Allocations of Chinook salmon PSC to the inshore sector would be further allocated among the inshore cooperatives based on the proportion of the inshore pollock allocation made to each inshore cooperative under § 679.62(a)(1). Pollock allocations to the inshore cooperatives can change from year to year if membership in the cooperatives changes because the cooperative's pollock allocation is determined by the percentage of pollock assigned to each vessel in the sector. Column D of proposed Table 47c to part 679 shows the percentage of the inshore sector's pollock allocation assigned to each catcher vessel. The amount of Chinook salmon PSC that would be allocated to each inshore cooperative would be determined each year after the inshore cooperative permit applications are received on December 1. If the owner of an AFA catcher vessel eligible to deliver pollock to an inshore processor does not join an inshore cooperative in a particular year and fishes in the inshore open access fishery, the portion of Chinook salmon associated with that vessel also would be allocated to the inshore open access fishery.

The CDQ groups would continue to be allocated the same proportion of the CDQ Program allocation of Chinook salmon bycatch that each group has been allocated since 2005 (71 FR 51804; August 31, 2006). These percentage allocations are described in more detail in the "Classification" section of this preamble and would be published in proposed Table 47d to part 679.

Transferable and Non-transferable Allocations. Each year, NMFS would send a letter to each entity receiving a transferable Chinook salmon PSC allocation, notifying them of the amount of the allocation and identifying the vessels fishing under that allocation. Each entity that receives a transferable allocation would be prohibited from exceeding their allocation. Each entity would be required to manage its pollock fishing so that neither its pollock allocation nor its transferable Chinook salmon PSC allocation is exceeded. The Council intended that both the A season allocation and the annual allocation would not be exceeded. Therefore, the A season and B season allocations would be managed separately. Overages for the A season would be evaluated at the end of the A season and overages for the B season would be evaluated the end of the year. NMFS would not close directed fishing for pollock by the sectors, inshore cooperatives, or CDQ groups receiving transferable Chinook salmon PSC allocations when those allocations are reached. Rather, penalties could be assessed against the entity for an overage of its Chinook salmon PSC allocation.

If members of the catcher/processor or mothership sectors are unable to form their respective sector-level entities to receive transferable Chinook salmon PSC allocations, then these sectors would fish under a non-transferable sector allocation. If some inshore catcher vessels did not join an inshore cooperative, then they would fish under a non-transferable Chinook salmon PSC allocation assigned to the inshore open-access fishery. Similarly, if some vessels or CDQ groups did not participate in an IPA, then they would fish under the non-transferable opt-out allocation. NMFS would manage each non-transferable allocation with a directed fishery closure to prevent the non-transferable allocation being exceeded. The directed fishery closure would apply to all vessels fishing under that non-transferable allocation.

Separate allocations would be made for the A season and the B season for a total of up to 30 transferable PSC allocation accounts (see Table 2). NMFS could establish up to eight non-transferable PSC allocation accounts annually for the inshore open access fishery, the opt-out fishery, and for the mothership sector and catcher/processor sector.

TABLE 2—POTENTIAL NUMBER OF TRANSFERABLE CHINOOK SALMON PSC ALLOCATIONS

Entities that could receive transferable allocations					
	Catcher/processor sector	Mothership sector	Inshore co-ops	CDQ	Total transferable
A Season	1	1	7	6	15
B Season	1	1	7	6	15
Annual total	2	2	14	12	30

Entities Eligible To Receive Transferable Chinook Salmon Prohibited Species Catch Allocations. NMFS would issue transferable allocations to eligible entities representing the catcher/processor sector, mothership sector, inshore cooperatives, and CDQ groups. Each entity receiving a transferable allocation of Chinook salmon PSC must identify a "representative" and an "agent for service of process". The representative would represent all members of the entity with NMFS and would be authorized to transfer all or a portion of the entity's Chinook salmon PSC allocation to another entity or to receive a transfer from another entity. The agent for service of process is the person authorized and responsible to receive notices or other documents on behalf of all members of the entity. The representative and the agent for service of process could be the same person.

All members of an entity that receives transferable Chinook salmon PSC allocations would be jointly and severally liable for any violation of applicable regulations and for any penalties assessed against that entity for any regulatory violation, including if the Chinook salmon bycatch by the vessels fishing on behalf of that entity exceeded the amount of Chinook salmon allocated to the entity.

NMFS would issue transferable Chinook salmon PSC allocations to the catcher/processor sector or the mothership sector if they form a "sector-level entity" that is authorized by NMFS to receive transferable Chinook salmon PSC allocations. The sector-level entity would be responsible for ensuring that the collective Chinook salmon bycatch by its members does not exceed those allocations. The entity representing the catcher/processor sector and the entity representing the mothership sector would be required to identify their representative and agent for service or process on their application to NMFS to receive transferable Chinook salmon PSC allocations.

The catcher/processor sector and the mothership sector currently are not required to register as entities with NMFS to receive allocations of BS pollock. Non-transferable allocations of pollock are made to each of these two sectors by NMFS through the annual groundfish harvest specifications process. NMFS issues permits to individual AFA eligible vessels to harvest pollock under these sector allocations, but the catcher/processor sector and mothership sector as a whole do not need to be permitted by NMFS to receive such allocations. No more than one entity may be authorized by NMFS to represent the catcher/processor sector, and no more than one entity may be authorized to represent the mothership sector. Existing contracts forming the PCC, the HSCC, and the MFC could be modified to create the sector-level entities required to receive transferable Chinook salmon PSC allocations, or new entities could be formed by the owners of these same vessels to address only NMFS's requirements related to Chinook salmon PSC allocations.

The inshore cooperatives and the CDQ groups already are recognized by NMFS as entities eligible to receive allocations on behalf of others. The inshore cooperatives are permitted annually by NMFS under § 679.4(l)(6) and must submit copies of their cooperative contracts to NMFS to be issued a permit. The representative and agent for service of process for the inshore cooperatives would be the same person as named on the cooperative's annual application for pollock allocations. The CDQ groups are authorized under section 305(i)(1) of the Magnuson-Stevens Act to receive fishery allocations from NMFS. No additional authorizations are needed for the inshore cooperatives or CDQ groups to be eligible to receive transferable allocations of Chinook salmon PSC. The representative and agent for service of process for a CDQ group would be its chief executive officer. In either case, an inshore cooperative or a CDQ group could notify NMFS in writing if its representative or agent for service of process for purposes of Chinook salmon PSC allocations is a different person.

Assigning Portions of the Chinook Salmon PSC Limit

The proposed rule includes a series of tables, proposed Tables 47a through 47d to part 679, that show the percent of the pollock allocation, the corresponding amounts of Chinook salmon PSC, and the percent used to calculate the IPA minimum participation, that NMFS has assigned to each vessel in each sector and to each CDQ group. See Table 3, below, for an outline of proposed Tables 47a through 47d to part 679. NMFS would use the numbers in these tables to (1) Calculate adjustments to allocations of the 60,000 PSC limit for any vessels not participating in an IPA, (2) establish the amount of the opt-out allocation, (3) establish the annual threshold amount for the performance standard, and (4) determine if minimum participation requirements have been met for a proposed IPA. The methods NMFS would use to assign a percent of each sector's pollock allocation to each vessel or CDQ group are described below.

TABLE 3—LOCATION IN THE PROPOSED RULE OF THE TABLES THAT SHOW THE PERCENT OF THE POLLOCK ALLOCATION, THE CORRESPONDING AMOUNTS OF THE CHINOOK SALMON, AND PERCENT USED TO CALCULATE THE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH VESSEL IN EACH SECTOR AND TO EACH CDQ GROUP

Sector	Location in proposed rule
Catcher/processor sector	Table 47a to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation	Column E and F.
Annual threshold amount	Column G.
IPA minimum participation	Column H.
Mothership sector	Table 47b to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation	Column E and F.

TABLE 3—LOCATION IN THE PROPOSED RULE OF THE TABLES THAT SHOW THE PERCENT OF THE POLLOCK ALLOCATION, THE CORRESPONDING AMOUNTS OF THE CHINOOK SALMON, AND PERCENT USED TO CALCULATE THE IPA MINIMUM PARTICIPATION ASSIGNED TO EACH VESSEL IN EACH SECTOR AND TO EACH CDQ GROUP—Continued

Sector	Location in proposed rule
Annual threshold amount	Column G.
IPA minimum participation ...	Column H.
Inshore sector	Table 47c to part 679.
Percent of pollock allocation	Column D.
Opt-out allocation	Column E and F.
Annual threshold amount	Column G.
IPA minimum participation ...	Column H.
CDQ Program	Table 47d to part 679.
Percent of pollock allocation	Column B.
Opt-out allocation	Column C and D.
Annual threshold amount	Column E.
IPA minimum participation ...	Column F.

Catcher/processor sector. To implement Amendment 91, proportions of the catcher/processor sector's allocations of Chinook salmon must be developed for each AFA eligible catcher/processor and each of the catcher vessels eligible to deliver pollock to these catcher/processors. All but one of the AFA catcher/processors are represented by the PCC, and all catcher vessels are represented by the HSCC. The PCC assigns each vessel a percent of the catcher/processor sector's allocation of pollock. The Council recommended using each vessel's percent of the catcher/processor sector's allocation of pollock as a basis for assigning each vessel a percent of the sector's Chinook salmon PSC allocation. This approach is reasonable because it relies on already agreed upon proportions, so it eliminates the need for the Council or NMFS to develop a different set of proportions that may have unintended impacts on the sector members. In addition, the proportion assigned to each vessel in a sector does not affect the incentives or operation of the elements of Amendment 91 (the PSC limit, the IPA, and the performance standard) that are important to achieve the Council's overall objectives for Chinook salmon bycatch management.

The pollock allocated to the catcher/processor sector is further allocated as follows: 0.5 percent to the F/V Ocean Peace under section 208(e)(21) of the AFA, 8.5 percent to catcher vessels eligible to deliver pollock to AFA catcher/processors, and 91 percent to the catcher/processors listed in section 208(e)(1) through (20) and permitted under § 679.4(l)(2)(i).

The seven catcher vessels that are members of the HSCC are allocated 8.5 percent of the pollock allocated to the AFA catcher/processor sector. Members of the HSCC further allocate this pollock among the seven member vessels based on percentage allocations agreed upon in their HSCC contract. These percentage allocations are used to apportion the Chinook salmon bycatch associated with each of the seven catcher vessels listed at the bottom of proposed Table 47a to part 679. These proportions add up to 8.5 percent.

The 91 percent of the allocation of pollock to the catcher/processor sector is further allocated among the companies owning the AFA eligible catcher/processors that are members of the PCC. These allocations are negotiated among the PCC members and do not stem from any requirement of the AFA or NMFS regulation. The percentage allocations to each company are listed in the annual cooperative report submitted by PCC to the Council under requirements at § 679.61(f). The PCC recommended a method of apportioning Chinook salmon among the catcher/processors based on the catch of pollock by each of these vessels in 2006. This year was chosen as the basis for these proportions because it was the last year that the F/V American Dynasty fished in both the A and B seasons and, therefore, is the year that best represents the relative catching capacity of vessels that are currently members of the AFA catcher/processor sector.

AFA eligible catcher/processors that do not currently participate in the BS pollock fishery are not likely to return to the fishery. Therefore, the PCC board recommended that these vessels receive a proportion of zero for purposes of Amendment 91. Although unlikely, three of the four inactive vessels (F/V Katie Ann, F/V U.S. Enterprise, and F/V American Enterprise) could return to fish for pollock in the BS in the future. However, the owners of these vessels are members of the PCC so its recommendation for a proportion of zero for these three vessels is made at the recommendation and concurrence of the vessel owners. The fourth vessel, F/V Endurance, is listed as eligible in the AFA, but is permanently precluded from participation in the fishery because it is now a foreign flagged vessel, and, therefore, cannot receive endorsements to fish in the U.S. EEZ. In the unlikely event that a vessel currently assigned a zero proportion would return to the fishery and choose not to participate in an IPA, the portion and number of Chinook salmon associated with that vessel would be assigned within the sector based on revisions to the PCC contract that are made at the time a vessel returns to active fishing, until proposed Table 47a to part 679 could be revised to reflect the new proportions assigned to each vessel.

Mothership sector. The proportion associated with each catcher vessel in the mothership sector in proposed Table 47b to part 679 is based on the allocations of pollock made under the MFC contract. The proportions are published annually in the MFC's annual report to the Council, which is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/sustainablefisheries/afa/*). NMFS did not adjust any of these proportions and has published them as agreed upon by the members of the cooperative.

Inshore sector. NMFS calculated the proportions associated with each catcher vessel in the inshore sector based on ADF&G fish tickets submitted by the inshore processors for each delivery of pollock by a catcher vessel from 1995 through 1997, adjusted by the procedures described in § 679.62(a). These proportions have been used since 2000 to determine the amount of pollock allocated to the inshore cooperatives based on the catch history of the catcher vessels that are members of each cooperative. NMFS is proposing to publish these proportions in Table 47c to part 679 because they are needed for a number of important calculations under this proposed rule. These calculations must be made in a short period of time at the end of each year, prior to the start of the next year's fishery. Having these proportions available to the public as part of the regulations provides an early opportunity for public comment on these proportions and improves the transparency of how important annual calculations related to the Chinook salmon PSC allocations would be made. Although these proportions were based on ADF&G fish tickets and the information on the fish tickets is confidential, the proportions of the total pollock catch over this three-year period is not confidential because no confidential information from the fish tickets about the amount, location, or value of pollock catch for a specific

vessel can be determined from these proportions.

Community Development Quota Program. The proportion of Chinook salmon associated with each CDQ group in Table 47d to part 679 of this proposed rule are the percentage allocations of pollock and Chinook salmon PSC that have been made to each group since 2005 (71 FR 51804; August 31, 2006). These percentage allocations are described in more detail in the Classification section of this proposed rule.

Replacement vessels. If an AFA permitted vessel listed in proposed Tables 47a through 47c is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c would be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action until, Tables 47a through 47c to this part can be revised through subsequent proposed and final rulemaking.

Opt-Out Allocation

If at least some members of a given sector are participating in an approved IPA, and the sector has not exceeded its performance standard, then the vessels in that sector whose owners do not participate in an IPA, or vessels fishing on behalf of a CDQ group that does not participate in an IPA, would fish for BS pollock under a seasonal opt-out allocation. Vessel owners, inshore cooperatives, or CDQ groups not participating in an IPA do not have to notify NMFS that they are not participating in an IPA because NMFS would know the list of vessels and CDQ groups participating in each approved IPA. NMFS would post on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) whether each AFA-permitted vessel is participating or not participating in an IPA and the Chinook salmon PSC allocation under which each vessel would be managed. Vessel owners would be expected to notify NMFS if a vessel they own is incorrectly listed as fishing under the opt-out allocation.

The purpose of the opt-out allocation is to require those not participating in an IPA to fish under a separate allocation that is considerably more restrictive than the transferable Chinook salmon PSC allocations issued to entities representing those who do participate in an IPA. The Council intends the opt-out allocation to be low enough to provide an incentive to participate in an IPA. The concept of the opt-out allocation was originally developed as a component of the Council's preliminary preferred alternative under which the higher PSC limit was 68,392 Chinook salmon and the maximum amount of the "backstop cap" was 32,482 Chinook salmon. The amount of the backstop cap under the preliminary preferred alternative represented the 1992 through 2001 10-year average Chinook salmon bycatch and is one of the lower and most restrictive of the PSC limits considered by the Council (Alternative 2, Sub-option vii in the EIS (*see* **ADDRESSES**)). For Amendment 91, the Council reduced the maximum amount of the backstop cap (or opt-out allocation) to 28,496, which is 47.5 percent of 60,000 Chinook salmon, the same percentage that the 32,482 backstop cap is of the 68,392 PSC limit under the Council's preliminary preferred alternative.

The annual opt-out allocation would be some number less than 28,496 Chinook salmon. Before each fishing year, NMFS would calculate the amount of the opt-out allocation for each season based on the number of vessels or CDQ groups that chose not to participate in an approved IPA. NMFS would also reduce the allocation of the 60,000 Chinook salmon PSC limit for sectors or cooperatives with members that participate in the opt-out fishery. To calculate the opt-out allocation for each season, NMFS would take the sum of the number of Chinook salmon associated with each vessel or CDQ group that opted out of an IPA, as shown in Columns E and F in proposed Tables 47a through 47c to part 679, and Column C and D in proposed Table 47d to part 679. NMFS would then subtract this opt-out amount from the seasonal allocation of Chinook salmon PSC to the sector or cooperative in which that vessel is a member or, for a CDQ group, to the CDQ Program. This reduction in the allocations of the 60,000 Chinook salmon PSC limit for vessels and CDQ groups that fish under the opt-out allocation is necessary to ensure that total bycatch does not exceed the 60,000 Chinook salmon PSC limit.

For example, if all vessels in an inshore cooperative (called cooperative A in this example) that collectively represents 31.145 percent of the inshore sector's allocation of pollock do not participate in an IPA and if all of the other inshore cooperatives do participate in an approved IPA, the adjustments that would be made to the number of Chinook salmon allocated to the inshore cooperatives participating in an IPA and the amount of Chinook salmon that would be allocated to the opt-out allocation are explained below:

(1) The inshore sector's allocation of the 60,000 Chinook salmon PSC limit is 20,916 in the A season and 12,474 in the B season.

(2) If cooperative A would have participated in an IPA, it would have been allocated its portion of the inshore sector's allocation as a transferable Chinook salmon allocation. This allocation would be 31.145 percent of the inshore sector's allocation; 6,514 Chinook salmon in the A season (20,916 * .31145) and 3,885 Chinook salmon in the B season (12,474 * .31145).

(3) The inshore sector's proportion of 28,496 Chinook salmon is 9,933 in the A season and 5,925 in the B season.

(4) The portion of 28,496 that is represented by cooperative A is 3,094 Chinook salmon in the A season (9,933 * .31145) and 1,845 Chinook salmon in the B season (5,925 * .31145).

(5) This amount of Chinook salmon (3,094 in the A season and 1,845 in the B season) would be added to the opt-out allocation. All of the vessels in cooperative A would fish as a group under this opt-out allocation, along with any other vessels or CDQ groups not participating in an IPA and the additional Chinook salmon allocated to the opt-out allocation associated with those other vessels or CDQ groups.

(6) Chinook salmon allocated to the opt-out allocation would not be available to the remaining inshore cooperatives that are participating in an approved IPA and fishing under their transferable allocations of the inshore sector allocation.

(7) The difference between the amount of Chinook salmon that would have been allocated to the inshore sector for cooperative A and the amount allocated to the opt-out allocation is 3,420 in the A season (6,514 − 3,094) and 2,040 in the B season (3,885 − 1,845). This amount of Chinook salmon is forfeit by cooperative A.

(8) The amount of Chinook salmon forfeit by cooperative A would be redistributed among the inshore cooperatives participating in an IPA in proportion to each cooperative's annual pollock allocation. NMFS would issue each inshore cooperative participating in an IPA a transferable PSC allocation equal to its portion of the inshore sector Chinook salmon PSC allocation plus its portion of Chinook salmon forfeit by the inshore cooperative opting out of an IPA.

Additional examples of calculations of the reductions of sector allocations and the amount added to the opt-out allocation for each AFA sector are

provided in section 2.5.6 of the EIS (*see* **ADDRESSES**).

If some members of the catcher/processor sector or the mothership sector opt out of an IPA, the proportion of 28,496 Chinook salmon associated with these vessels would be subtracted from the amount of Chinook salmon allocated to the sector under the 60,000 PSC limit and this same amount would be added to the opt-out allocation. The remaining Chinook salmon PSC allocated to the sector would be available to all members of the sector participating in an IPA. Because the catcher/processor and mothership sector receive a single allocation of Chinook salmon, no redistribution by NMFS of the amount of Chinook salmon "forfeit" by the members of these sectors opting out of an IPA would be necessary. This redistribution would be done by private contractual arrangement with the remaining members of the sector that are participating in an IPA.

If an IPA is approved, but all members of a particular sector do not participate in an IPA, then the difference between their sector allocation of the 60,000 PSC limit and the amount of Chinook salmon allocated to the opt-out allocation (their portion of 28,496) is not redistributed among members of the other sectors. NMFS would redistribute the "forfeit" Chinook salmon within the inshore and CDQ sectors so that the process for allocating Chinook salmon PSC between the sectors and the opt-out allocation is consistent among all sectors. However, when an entire sector does not participate in an IPA, all members have chosen to forfeit Chinook salmon and fish under the opt-out allocation. This forfeited Chinook salmon would not be allocated and would be a net savings of Chinook salmon bycatch under the 60,000 Chinook salmon PSC limit.

Each vessel fishing under the opt-out allocation would continue to fish for pollock under the allocation of BS pollock that applies to the vessel under current regulations. An inshore catcher vessel that is a member of an inshore cooperative would fish under the inshore cooperative's allocation of pollock. An inshore catcher vessel that is not a member of an inshore cooperative would fish under the inshore open-access fishery's pollock allocation. The catcher/processor sector, the mothership sector, and the CDQ groups would continue to fish under their seasonal allocations of pollock. Although unlikely, it is possible that some vessels in the catcher/processor sector or mothership sector, or some vessels in an inshore cooperative, would participate in an IPA and other members of the sector or inshore cooperative would not participate in an IPA. In this case, a group of vessels would be fishing together under the same allocation of pollock, but would be fishing under separate allocations of the Chinook salmon PSC limit. Those participating in an IPA would be fishing under transferable allocations of Chinook salmon PSC issued to the entity that represents them and those not participating in an IPA would be fishing under the opt-out allocation.

All vessels fishing under the opt-out allocation would be managed by NMFS as a group for purposes of Chinook salmon PSC limits, regardless of the sector, inshore cooperative, or CDQ group on whose behalf they were fishing for purposes of their pollock allocations. All Chinook salmon bycatch by these vessels fishing under the opt-out allocation would accrue against the opt-out allocation. Chinook salmon bycatch in the opt-out allocation would be non-transferable, because the salmon are not being allocated to an entity. There would be no rollover of unused Chinook salmon in the A season opt-out allocation to the B season opt-out allocation because, under the 60,000 PSC limit, this flexibility is offered only to those participating in an IPA. The Council specifically intended that more restrictive management measures would apply to the opt-out allocation to increase the incentive to participate in an IPA.

NMFS would close directed fishing for pollock by all vessels fishing under the opt-out allocation when NMFS determines that the seasonal opt-out allocation will be reached. If some vessels in a sector or inshore cooperative were fishing under the opt-out allocation and others were fishing under transferable Chinook salmon PSC allocations, and if the sector or inshore cooperative had not yet reached its seasonal pollock allocation, those vessels fishing under the transferable Chinook salmon PSC allocations could continue to fish for pollock while the vessels fishing under the opt-out allocation would be required to stop fishing for pollock because the opt-out allocation had been reached.

One of the more complicated scenarios that could occur under Amendment 91 would be if a number of inshore catcher vessels did not join an inshore cooperative, and some participated in an IPA but others did not. If an inshore catcher vessel does not join a cooperative, it fishes under an allocation of pollock to the inshore open-access fishery. That pollock allocation is based on the pollock catch history associated with each vessel not joining a cooperative. For this example, assume that two inshore catcher vessels did not join a cooperative and were fishing under seasonal allocations of pollock to the inshore open access fishery. Regardless of which Chinook salmon PSC allocation they were fishing under or the status of those PSC allocations, both vessels would be required to stop fishing for pollock when their combined catch of pollock reached the amount of pollock allocated to the inshore open-access fishery. If one of these vessels participated in an IPA but the other did not, the vessel participating in an IPA would be fishing under an amount of Chinook salmon allocated to the inshore limited access fishery based on that vessel's proportion of pollock catch history shown in Column D of proposed Table 47c to part 679. Even if pollock remained available to the two vessels fishing in the inshore open-access fishery, once the allocation of Chinook salmon to the inshore open-access fishery was reached, the operator of the vessel participating in an IPA would be required to stop fishing for pollock. The other vessel that did not participate in an IPA would be fishing under the opt-out allocation. As long as Chinook salmon remained available in the opt-out allocation and pollock remained available in the inshore open-access allocation of pollock, this vessel could continue to fish for pollock.

Predicting when a salmon PSC limit will be reached by a group of vessels is difficult for NMFS under any circumstances because of the variability and unpredictability of salmon bycatch. If only a few vessels fished under the opt-out allocation, the amount of Chinook salmon PSC in the opt-out allocation could be very small and it would be difficult for NMFS to accurately project when the opt-out allocation would be reached. If the closure date selected by NMFS resulted in more Chinook salmon caught than the A season opt-out allocation, the amount over the A season allocation would be deducted by NMFS from the B season opt-out allocation. However, if the closure date selected by NMFS in the B season resulted in more Chinook salmon caught in the year than was allocated to the opt-out allocation, NMFS could not reduce the amount of Chinook salmon PSC allocated to other entities or fisheries, because these allocations would have already been made and could not be withdrawn by NMFS due to bycatch by vessels fishing under the opt-out allocation. Based on NMFS's experience with other programs that allocate transferable amounts of groundfish, halibut, crab, or prohibited species, even if one entity or fishery

exceeds its portion of an allocation, generally the overall allocation is not exceeded because other entities do not harvest their full allocations. With all of the restrictions that would be in place under the 60,000 PSC limit, particularly the performance standard, even if the opt-out allocation were exceeded or an entity receiving a transferable allocation exceeded its allocation, it is unlikely that the total amount of Chinook salmon bycatch in the BS pollock fishery will reach even the lower limit of 47,591 in a year.

Chinook Salmon Bycatch Performance Standard for Sectors

The proposed rule includes a Chinook salmon bycatch performance standard for each sector that has at least some members participating in an IPA. In addition to participation by at least some members in an IPA, for each sector to continue to receive its allocation of the 60,000 Chinook salmon PSC limit, the total annual Chinook salmon bycatch by all members of a sector participating in an IPA could not exceed the sector's "annual threshold amount" in any three years within a consecutive seven-year period. Although Chinook salmon PSC allocations would be made to the inshore cooperatives and the CDQ groups, the performance standard would apply to the sector, not to individual inshore cooperatives or CDQ groups.

Before each fishing year, NMFS would calculate each sector's annual threshold amount. If all members of a sector participate in an IPA that year, a sector's annual threshold amount would be that sector's portion of the 47,591 PSC limit, which is the annual total of the A and B season allocations for that sector under the 47,591 PSC limit shown in Table 1 of this preamble. For example, the mothership sector's annual portion of 47,591 is 3,707 Chinook salmon (2,665 A season + 1,042 B season). If all catcher vessels delivering to motherships participated in an IPA that year, the mothership sector's annual threshold amount for that year would be 3,707 Chinook salmon. If all catcher vessels in the mothership sector participated in an IPA in each of seven consecutive years, the mothership sector would maintain its allocation of 4,674 Chinook salmon PSC under the 60,000 PSC limit as long as the Chinook salmon bycatch by all vessels in the mothership sector was less than or equal to 3,707 Chinook salmon in at least five of those seven years.

If some, but not all, members of a sector participate in an IPA, NMFS would reduce that sector's annual threshold amount by an amount equal to the sum of each of the non-participating vessel's portion of 47,591. The amount of Chinook salmon associated with each vessel in each sector is shown in Column G of proposed Tables 47a through 47c to part 679 and for each CDQ group in Column E of proposed Table 47d to part 679.

Continuing with the example of the mothership sector, and using the information from Column G of proposed Table 47b to part 679, the annual threshold amount for the mothership sector would be adjusted downward from 3,707 Chinook salmon if any catcher vessels in the sector did not participate in an IPA. For example, if all catcher vessels in the mothership sector except the F/V American Beauty participated in an IPA, the mothership sector's annual threshold amount would be 3,484 Chinook salmon. This amount is determined by subtracting 223, the number of Chinook salmon that represents the F/V American Beauty' portion of 47,591 from Column G of proposed Table 47b, from 3,707. The F/V American Beauty would be fishing under the opt-out allocation and its bycatch would not accrue against the mothership sector's annual threshold amount for that year.

At the end of each fishing year, NMFS would evaluate each sector's annual bycatch against that sector's annual threshold amount. Only the bycatch of vessels or CDQ groups participating in an IPA would accrue against a sector's annual threshold amount. If a sector's annual bycatch exceeds its annual threshold amount in any three years within seven consecutive years, NMFS would reduce that sector's Chinook salmon PSC allocation to that sector's portion of 47,591 Chinook salmon for all future years. A sector's annual threshold amount does not change when vessels from other sectors or entire sectors opt-out of an IPA or if another sector exceeds its performance standard.

If all members of a sector did not participate in an IPA, then the annual threshold amount would be zero because the full amount of the sector's portion of 47,591 would have been subtracted from the initial amount of the annual threshold amount. For example, the mothership sector's share of 47,591 is 3,707 Chinook salmon. If all catcher vessels eligible to deliver to motherships did not participate in an IPA, then the sum of the amount each vessel represented of 3,707 would be subtracted from 3,707. This would leave an annual performance threshold of zero for the mothership sector. However, only bycatch by vessels participating in an IPA accrue against the annual threshold amount, so when no members of a sector participate in an IPA, no Chinook salmon bycatch accrues against the sector's annual threshold amount and, as long as this continues throughout the seven consecutive years, the sector would not exceed its performance standard and would continue to fish under the opt-out allocation. This outcome is consistent with the intent of the Council for the performance standard because fishing under the opt-out allocation, which is a portion of 28,496 Chinook salmon, is more restrictive than fishing under the 47,591 PSC limit.

Transfers and Rollovers

Under this proposed rule, NMFS would issue transferable Chinook salmon PSC allocations under either the 60,000 or 47,591 Chinook salmon PSC limits to eligible entities representing the catcher/processor sector, the mothership sector, inshore cooperatives, and CDQ groups. Transferable allocations would provide the pollock fleet the flexibility to maximize the harvest of pollock while maintaining Chinook salmon bycatch at or below the PSC limit. Transfers are requests to NMFS from holders of Chinook salmon PSC allocations to move a specific amount of a Chinook salmon PSC from a transferor's (sender's) account to a transferee's (receiver's) account. NMFS's approval is required for any transfer.

Eligible entities may transfer Chinook salmon PSC allocations to and from any of the other entities representing sectors, cooperatives, or CDQ groups, subject to the following restrictions: (1) Entities receiving transferable allocations under the 60,000 limit would only be allowed to transfer to and from other entities receiving transferable allocations under the 60,000 limit, (2) entities receiving transferable allocations under the 47,591 limit would only be allowed to transfer to and from other entities receiving transferable allocations under the 47,591 limit, and (3) Chinook salmon may not be transferred between seasons.

Under this proposed rule, requests for transfers may be submitted either electronically or non-electronically through a form available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). Computer programs would be designed to review the transferor's catch account during a transfer request to ensure sufficient Chinook salmon is available to transfer and, if it were, to make that transfer effective immediately.

Post-delivery Transfers of Chinook Salmon Prohibited Species Catch Allocations. This proposed rule contains a post-delivery transfer provision similar to the allowances

implemented under Amendment 80 to the FMP and the Central Gulf of Alaska Rockfish Program. If an entity's transferable Chinook salmon PSC allocation account balance falls below zero in a season, the entity would be provided the opportunity to receive transfers of Chinook salmon PSC to bring the entity's account balance back up to zero or above. However, once an account balance falls below zero in each season, vessels participating on behalf of the entity would be prohibited from starting a new fishing trip for the remainder of the season. This requirement would implement the Council's recommendation that "any recipient of a post-delivery transfer during a season may not fish for the remainder of that season."

A new component would be added to the definition of a fishing trip in § 679.2 to define a fishing trip for purposes of post-delivery transfers of Chinook salmon PSC allocations as "the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel." This definition and the associated prohibitions at § 679.7(d)(8)(ii)(C)(*2*) and § 679.7(k)(8)(iii) related to overages would allow catcher vessels fishing for an entity that had exceeded its Chinook salmon PSC allocation to continue to fish for pollock until the end of the current trip even though additional Chinook salmon caught before the end of that fishing trip would increase the amount of the entity's overage. Similarly, any catcher/processor fishing when the catcher/processor sector exceeded its seasonal Chinook salmon PSC allocation could continue to fish for pollock until pollock was next offloaded from the vessel, even if the sector's overage would continue to increase as a result of a catcher/processor completing its fishing trip.

Overages of Chinook salmon PSC would be evaluated on June 25 for the A season and on December 1 for the B season. This would provide entities 15 days after the end of the A season and 30 days after the end of the B season to obtain post-delivery transfers to reduce or eliminate any overages. NMFS proposes that 15 days after the A season is an appropriate amount of time to provide for post-delivery transfers because most A season pollock fishing is completed well before the end of the season on June 10, and NMFS needs to resolve A season account balances relatively quickly so that any necessary adjustments can be made to the B season account balances before B season pollock fishing begins. NMFS proposes to allow 30 days after the end of the B season for post-delivery transfers because pollock fishing will cease for the remainder of the year on November 1, and NMFS does not need to make further adjustments to account balances within a specified period of time at the end of the year. If, after allowing for post-delivery transfers to cover an overage, an entity exceeded its Chinook salmon PSC allocation, the entity could be subject to an enforcement action for violating NMFS regulations.

Rollover of A Season Chinook Salmon Prohibited Species Catch Allocations. NMFS would add, or "rollover", any Chinook salmon PSC allocation remaining after the A season for an entity receiving a transferable allocation or for vessels fishing under non-transferable allocations, except the opt-out allocation, to the B season allocation for that entity or sector. This action would be done by NMFS automatically on June 26, after the deadline for post-delivery transfers had passed. The combination of transferable Chinook salmon PSC allocations from one entity to another entity in the A season, plus the automatic rollover of unused A season allocations effectively allows one entity to transfer Chinook salmon from its A season allocation to another entity's B season allocation, as long as the transfer was completed by June 25. This would be accomplished by one entity transferring A season Chinook salmon to another entity during the A season and that second entity not using that Chinook salmon in the A season, but allowing it to roll over to its B season allocation.

Incentive Plan Agreement

An IPA is a private contract among vessel owners or CDQ groups that establishes incentives for participants to reduce Chinook salmon bycatch. The parties to an IPA, or the people who would sign the contract, would be the owners of AFA-eligible catcher vessels, catcher/processors, or motherships, or the representatives of CDQ groups. The proposed rule would allow the representative of an AFA cooperative or a sector-level entity formed under Amendment 91 to sign an IPA on behalf of all vessel owners that are members of that inshore cooperative or sector-level entity.

If NMFS approves at least one IPA, those participating in an IPA would receive an allocation of the 60,000 Chinook salmon PSC limit. Those not participating in an IPA would be considered to be "opting-out" of an IPA and would fish under the opt-out allocation.

Incentive Plan Agreement Components. The IPA concept includes (1) the NMFS approved IPA that contains the elements of the incentive program that all parties to the IPA (vessel owners, CDQ groups, or both) agree to follow and (2) the annual report to the Council about performance under the IPA in the previous year.

The deadline for an application for approval of a proposed IPA is October 1 of the year prior to the year in which the IPA is proposed to be effective. This deadline is necessary to allow enough time for NMFS to review the proposed IPA and to issue a decision on its approval or disapproval prior to the start of the next fishing year.

An IPA would be required to contain a written description of the following:

(1) The incentive(s) that would be implemented under the IPA to ensure that the operator of each vessel governed by the IPA will avoid Chinook salmon bycatch at all times while directed fishing for pollock in the BS;

(2) The rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both;

(3) How the incentive measures in the IPA are expected to promote reductions in a vessel's bycatch rates relative to what would have occurred in absence of the incentive program;

(4) How the incentive measures in the IPA promote Chinook salmon bycatch savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon bycatch; and

(5) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.

An IPA would be required to identify the AFA vessels that are participating in the IPA. However, the IPA would not be required to list all of the vessels that a CDQ group plans to use to harvest its BS pollock allocation. A CDQ group would participate in an IPA on behalf of all vessels directed fishing for pollock for that CDQ group. If a CDQ group representative signs an IPA, all vessels directed fishing for pollock for that CDQ group would be required to participate in the IPA. Information submitted to NMFS on industry observer reports are sufficient for NMFS to identify vessels fishing for pollock CDQ on behalf of a CDQ group.

Vessel and CDQ group participation in an IPA would be voluntary. However, any vessel or CDQ group permitted to receive pollock allocations under the AFA that wants to join an IPA must be allowed to join subject to the terms that have been agreed upon by all parties to that IPA. NMFS would post a copy of any proposed IPA on its website so that the public is informed that a proposed IPA is under review by NMFS. A participant who believed that they were involuntarily excluded from the IPA could submit documentation of the violation with a challenge to NMFS's approval of the proposed IPA. NMFS would have to review this information and determine whether the assertion was valid. If it were, NMFS would disapprove the proposed IPA. Further resolution of the issue could then occur through NMFS's administrative appeal process. However, an appeal on the issue of involuntary exclusion could be difficult and time consuming to resolve, and an on-going appeal would require all participants to fish under the PSC limit that would apply if the IPA under appeal was not in effect.

Each IPA representative would be required to submit an annual report to the Council by April 1 each year after the first full year of operation of an IPA. If an IPA is approved for 2011, the Council would receive the first annual report on this IPA by April 1, 2012.

The IPA annual report would be the primary tool through which the Council would evaluate whether its goals for the IPAs are being met. The IPA annual report would be required to contain: (1) A comprehensive description of the incentive measures in effect in the previous year, (2) a description of how these incentive measures affected individual vessels, (3) an evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in the absence of the measures, and (4) a description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report, and the reasons that the amendments to the IPA were made.

Minimum Participation. To be approved by NMFS, the Council recommended that an IPA must meet a minimum participation requirement of vessel owners or CDQ groups that (1) "represent not less than 9 percent of the pollock quota" and (2) be composed of at least two unaffiliated AFA companies or CDQ groups. The Council intended the minimum participation requirement for the IPA to allow members of different sectors to join together to form an IPA, but not force members of different sectors to join with other sectors. They expressed this intent through the minimum participation requirement related to the "percent of pollock quota". This method is based on the percentage allocations of pollock associated with each sector in the AFA and not on the actual percent of the annual TAC that is allocated to each sector. Ten percent of the pollock TAC is allocated to the CDQ Program. After subtraction of the incidental catch allowance, the remaining amount of pollock (the "directed fishing allowance") is allocated among the catcher/processor, mothership, and inshore sectors.

In the proposed rule, the proportions for each sector (and for vessels in each sector) that NMFS would use to determine minimum participation are shown in Column H of proposed Table 47a to part 679 for the catcher/processor sector, proposed Table 47b to part 679 for the mothership sector, and proposed Table 47c to part 679 for the inshore sector. The 9 percent associated with the mothership sector for purposes of the minimum participation requirements under this proposed rule derives from multiplying 90 percent, which is 100 percent minus the 10 percent associated with the CDQ Program allocation, by the mothership sector's allocation of 10 percent of the pollock directed fishing allowance. Similarly, the 36 percent associated with the catcher/processor sector is 90 percent multiplied by catcher/processor sector's 40 percent allocation of the directed fishing allowance, and the 45 percent associated with the inshore sector is 90 percent multiplied by the inshore sector's 50 percent allocation of the directed fishing allowance. While these percentages do not represent either the percent of the pollock TAC or the percent of the pollock directed fishing allowance allocated to the non-CDQ sectors each year, they represent a method of expressing the percent of the "pollock quota" associated with each sector that can be used to specify minimum participation requirements for the IPA, which would not change as the incidental catch allowance changes.

If some, but not all, vessel owners in a sector participated in an IPA, then the minimum participation requirements would be evaluated based on the sum of the proportion of the amount of pollock available for directed fishing that is associated with each vessel.

NMFS Approval of an IPA. Approval or disapproval of an IPA by NMFS would be an administrative determination. NMFS would review a proposed IPA by comparing the actual content of a proposed IPA with the information requirements in regulations, and would decide whether the proposed IPA provides the required information. Because the requirements for an IPA are performance based (*i.e.,* they address what an IPA should accomplish), any number of different incentive plans could meet these objectives. As long as a proposed IPA contains all of the information required in NMFS regulations and it generally describes an incentive program that is designed to accomplish the goals specified in regulation, NMFS would approve the IPA. In reviewing the proposed IPAs, NMFS would not judge the expected adequacy of the incentives described. Judgments about the efficacy or outcomes of the proposed incentive plans would be subjective and the regulations would not provide a legal basis for NMFS to disapprove a proposed IPA because NMFS does not believe that the proposed measures would succeed. Minor errors or omissions in the proposed IPA could be resolved by NMFS contacting the IPA representative, in writing, and requesting revisions to the IPA. All approved IPAs would be made available for Council and public review.

If NMFS approves an IPA, the IPA representative would be notified in writing of the approval and a copy of the IPA and the list of participants would be posted on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). Once approved, an IPA would remain in effect unless it contains an expiration date, until the IPA representative notifies NMFS that the IPA is terminated, or until NMFS approves an amendment to the IPA, except that an IPA could not be terminated or expire mid-year. An existing IPA would not have to be re-submitted each year. Representatives of inshore cooperatives or the entities representing the catcher/processor or mothership sectors could sign a proposed IPA on behalf of all members of the cooperative or sector-level entity. Once party to an IPA, a vessel owner, sector-level entity, inshore cooperative, or CDQ group could not withdraw from the IPA or remove a vessel from the IPA until after the close of a fishing year.

Amendments or revisions to the terms and conditions of an IPA could be submitted to NMFS by the IPA representative at any time, except that proposed amendments to change the participants in the IPA mid-year, or to terminate or end an IPA, would not be approved. Mid-year revisions to an incentive plan are not likely because of the cost associated with getting all parties to agree to any changes and the time involved in obtaining the

signatures needed for a contract revision. However, particularly in the first few years of an IPA, the flexibility to adjust the incentive plan mid-year may be necessary, and it is preferable to allow these amendments rather than have necessary adjustments made outside of the contract where they would not be apparent to the Council, the public, or those evaluating the effectiveness of the IPAs. The proposed rule includes a requirement that any amendments to an approved IPA (and the reasons for these amendments) be described by the IPA representative in the annual report to the Council. If an amendment is submitted, NMFS would review whether the IPA, if amended, would continue to comply with all applicable requirements. The original, approved IPA would be effective until NMFS approved an amendment. If an amendment were disapproved, the existing approved IPA would remain in effect.

If NMFS determines that the regulatory requirements for the IPA were not met, it would issue an initial administrative determination (IAD) explaining the reasons that the proposed IPA did not comply with Federal regulations. Examples of reasons for disapproval are a complete lack of information that responds in any way to one or more of the IPA requirements, information that did not make sense in such an obvious way as to be clearly not responsive to the requirements, a component of an IPA that was specifically designed to exceed the performance standard, or a description of a component of the IPA that was in conflict with another regulation or law governing the BS pollock fishery.

If NMFS issued an IAD disapproving a proposed IPA, the IPA representative could either submit a revised IPA that addressed the issues identified in the IAD or file an administrative appeal. While an appeal is pending, participants in the proposed IPA may not receive transferable Chinook salmon allocations under the 60,000 PSC limit. If no other IPA were approved, all AFA participants would receive transferable allocations under the 47,591 PSC limit. If an IPA were approved for other participants in the BS pollock fishery, those participating in the IPA under appeal would fish under the opt-out allocation because, at the beginning of the fishing year, they would not be participants in an approved IPA.

Final agency action on an administrative appeal to approve a proposed IPA that occurred after January 19 of any year would be effective in the year after the administrative appeal is resolved. Once Chinook salmon PSC allocations are issued at the beginning of the year and computer programs are established to accrue Chinook bycatch from each vessel participating in the BS pollock fishery to the appropriate Chinook salmon PSC allocation, NMFS could not reissue Chinook salmon PSC allocations or reassign vessels or CDQ groups to another allocation account.

Proposed Monitoring and Enforcement Requirements

This proposed rule would place constraints on the BS pollock fishery that currently do not exist. The only regulatory measure that currently prevents the full harvest of a pollock allocation is the end of a fishing season, and no PSC limits currently prevent pollock fishermen from full harvest of their allocations. Amendment 91 would implement Chinook salmon PSC limits that, if reached, could prevent the full harvest of a pollock allocation by a sector, inshore cooperative, or CDQ group. Each entity receiving a transferable Chinook salmon PSC allocation would be prohibited from exceeding that allocation. Once a Chinook salmon PSC allocation has been reached, the only way to prevent further overages of that allocation is for all vessels fishing on behalf of the entity with the overage to stop fishing for pollock.

The EIS explains why current methods of estimating Chinook salmon bycatch in the BS pollock fishery are not adequate to support monitoring and enforcement of the Chinook salmon PSC limits and must be improved. See sections 2.5.8 and 3.1 of the EIS (see **ADDRESSES**). The following sections describe NMFS's proposed regulatory amendments to accomplish the improvements to Chinook salmon bycatch monitoring in the BS pollock fishery necessary to support the Council's objectives under Amendment 91.

With this proposed rule, NMFS would use the same method of accounting for Chinook salmon bycatch for all AFA sectors. NMFS believes that to accurately count salmon for Chinook salmon PSC allocations, the following requirements must be implemented under this proposed rule: (1) Observer coverage for all vessels and processing plants, (2) retention requirements, (3) specific areas to store and count all salmon, (4) video monitoring on at-sea processors, and (5) electronic reporting of salmon by species by haul or delivery. Prohibitions against the discard of salmon in the BS pollock fishery would be added to prohibitions for the CDQ Program (at § 679.7(d)(8)(ii)(A)) and for the AFA (§ 679.7(k)(8)(i)).

Catcher Vessels Delivering to Inshore Processors

Currently, the Chinook salmon bycatch rates from observed vessels are used to estimate Chinook salmon bycatch by the unobserved vessels delivering pollock to inshore processors. This method of accounting for Chinook salmon bycatch would not be adequate for monitoring and enforcement of transferable PSC allocations under Amendment 91.

Under this proposed rule, catcher vessels delivering pollock, including pollock CDQ, to inshore processors would be required to retain all salmon of any species caught while directed fishing for pollock in the BS, and to deliver that salmon together with its pollock catch to an inshore processor with an approved catch monitoring and control plan (CMCP). Full retention of all salmon regardless of species would be required because it is difficult to differentiate Chinook salmon from other species of salmon without direct identification. NMFS proposes that identification of and counting of salmon would occur at the shoreside processing plant or on the floating processor where conditions for identification and counting of salmon can be better monitored and controlled.

In addition, catcher vessels delivering to inshore processors would be required to carry an observer at all times while directed fishing for pollock in the BS. Currently, observer coverage for these catcher vessels is based on vessel length with one observer required at all times for vessels greater than 125 feet length overall (LOA) and an observer required for 30 percent of the fishing days for vessels between 60 feet and 125 feet LOA (see § 679.50(c)(1)(v)). An observer would be required on every catcher vessel, primarily to monitor compliance with the requirement to retain all salmon to ensure that all salmon bycatch is counted at the processing plant. These duties would not require an observer with prior experience or a "level 2" endorsement as defined at § 679.50(j)(1)(v)(D).

The observer on a catcher vessel is responsible for identifying and counting salmon, and collecting scientific data or biological samples from a delivery. These duties must be completed as soon as possible after the delivery so that information about salmon bycatch from each delivery is available to NMFS, the vessel operator, and the entity responsible for the Chinook salmon bycatch by this vessel. Therefore, this proposed rule would prohibit the

operator of a catcher vessel from starting a new fishing trip for pollock in the BS until the observer assigned to their vessel had completed their duties in the processing plant. The vessel operator could obtain a different observer if he or she needed to start a new trip before the observer from the previous delivery was finished with duties associated with the previous delivery.

Inshore Processors

Under current regulations, each inshore processor that receives AFA pollock is required to develop and operate under a NMFS-approved CMCP. The procedures established under the AFA for the CMCPs were designed to monitor the weighing of pollock at the inshore processing plants. Proper weighing of large volumes of a target species such as pollock require different conditions than does the proper sorting, identification, and counting of a more infrequently occurring bycatch species such as salmon. Salmon can be difficult to see, identify, and count amid the large volume of pollock. The factory areas of processing plants are large and complex. Preventing observers from seeing salmon that enter the factory area of the processing plant would not be difficult. In addition, observers must examine each salmon to verify the species identification. Therefore, NMFS proposes that the following additions to requirements for the inshore processors are needed to ensure that observers have access to all salmon bycatch prior to the fish being conveyed into the processing area of the plant:

(1) Processors would be prohibited from allowing salmon to pass from the area where catch is sorted and into the factory area of the processing plant;

(2) The observer work station currently described in regulations at § 679.28(g) would be required to be located within the observation area identified in the CMCP;

(3) A location must be designated within the observation area for the storage of salmon; and

(4) All salmon of any species must be stored in the observation area and within view of the observer at all times during the offload.

Because these requirements would be effective for the 2011 fishing year, inshore processors would have to modify their plants to meet these requirements and have these modifications reflected in CMCPs approved by NMFS prior to January 20, 2011.

Observers would identify the species of each salmon, count each salmon, record the number of salmon by species on their data form, and transmit that information electronically to NMFS. Data submitted by the observer would be used by NMFS to accrue Chinook salmon bycatch against an entity's allocation. The manager of the inshore processor would be provided notice by the observer when he or she will be conducting the salmon count and would be provided an opportunity to witness the count. Information from the observer's salmon count would be made available to the manager of the inshore processor for their use in submitting this information to NMFS on electronic logbooks or landings reports.

Requirements to deliver pollock to inshore processors that have approved CMCPs currently apply only to AFA catcher vessels delivering non-CDQ pollock to inshore processors. These requirements do not apply to catcher vessels directed fishing for pollock on behalf of a CDQ group. With few exceptions, pollock allocated to the CDQ Program since 1992 has been processed at sea on catcher/processors or motherships. Therefore, this requirement would not require any of the CDQ groups to stop delivering pollock CDQ to a currently-contracted processing partner. In the future, if they chose to have pollock CDQ delivered to a shoreside processing plant, the catcher vessel used to harvest the pollock CDQ would be required to comply with the retention and observer coverage requirements described above and the pollock would have to be delivered to a processor with an approved CMCP. This requirement is necessary to ensure that salmon bycatch from the pollock CDQ fisheries are properly counted and reported.

Catcher/Processors and Motherships

Current methods for estimating salmon bycatch by catcher/processors and catcher vessels delivering to motherships rely on requirements for two observers on each catcher/processor and mothership and using observers' species composition sample data to estimate the number of salmon in each haul. This method has been adequate to estimate Chinook salmon bycatch for management of the current trigger cap that applies to the BS pollock fishery as a whole.

However, in the proposed rule, NMFS proposes to use a census or a full count of Chinook salmon bycatch in each haul by a catcher/processor and delivery by a catcher vessel to a mothership or catcher/processor as a basis for monitoring and enforcing the Chinook salmon PSC allocations under Amendment 91. This would eliminate the uncertainty associated with extrapolating from species composition samples to estimates of the total number of salmon caught in each haul and support the level of precision and reliability that both the vessel owners and NMFS require to monitor and enforce Chinook salmon PSC limits.

NMFS supports the use of a census on catcher/processors and motherships, as long as conditions exist to properly monitor that all of the salmon bycatch is retained and to provide the observer with the tools needed to identify, count, and report salmon bycatch by haul or delivery by catcher vessels. Current regulations require the retention of salmon "until the number of salmon has been determined by an observer." Observers report the count of salmon for each haul in data submitted to NMFS and vessel operators separately report the count of salmon bycatch each day on their daily production reports.

To ensure accurate counts of salmon on catcher/processors and motherships, NMFS proposes the following requirements:

(1) No salmon of any species would be allowed to pass from the observer sample collection point and into the factory area of the catcher/processor or mothership;

(2) All salmon bycatch of any species must be retained until it is counted by an observer;

(3) Vessel crew must transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station so that the observer has free and unobstructed access to the salmon, and the salmon must remain within view of the observer from the observer sampling station at all times;

(4) The observer must be given the opportunity to count the salmon and take biological samples, even if this requires the vessel crew to stop sorting or processing catch until the counting and sampling is complete;

(5) The vessel owner must install a video system with a monitor in the observer sample station that provides views of all areas where salmon could be sorted from the catch and the secure location where salmon are stored; and

(6) The counts of salmon by species must be reported by the operator of a catcher/processor for each haul, using an electronic logbook that will be provided by NMFS as part of the current eLandings software.

The operator of the catcher/processor or mothership would be provided notice by the observer when he or she will be conducting the count of salmon and would be provided an opportunity to witness the count. Information from the observer's count of salmon would be made available to the vessel operator for

their use in submitting this information to NMFS on electronic logbooks or landings reports.

The video requirements would be similar to those currently in place for monitoring fish bins on non-AFA trawl catcher/processors. An owner of a catcher/processor would be required to provide and maintain cameras, a monitor, and a digital video recording system for all areas where sorting and storage of salmon, prior to being counted by an observer, could occur. The video data must be maintained and made available to NMFS upon request for 120-days after the date the video is recorded. The video systems would also be subject to approval by NMFS at the time of the observer sample station inspection. In order for the video system to be effective and ensure the observer has access to all salmon prior to entering the factory area, no salmon of any species would be allowed to pass the last point where sorting could occur.

These requirements would be effective for the 2011 fishing year so catcher/processors and motherships would have to modify their vessels to meet these requirements and have these modifications approved by NMFS prior to January 20, 2011.

On September 23, 2009, NMFS conducted a workshop on proposed monitoring requirements for catcher/processors and motherships (74 FR 43678, August 27, 2009). At that workshop, participants asked NMFS two main questions about the proposed video requirements.

First, participants asked for clarification about the ownership and confidentiality status of video data recorded to monitor salmon bycatch sorting and storage on catcher/processors and motherships. Video data collected as a requirement of regulations belong to the vessel owner and, under proposed regulations at § 679.28(j)(1)(v), must be retained onboard the vessel for at least 120 days after the date the video is recorded. Similar to logbook requirements the observer may request to view any of the recorded video data at any time, but such a request to view a recording does not require the observer to take custody of the hard drive on which the video data are recorded. Therefore, video data remains in the custody of the vessel owner or operator unless they are submitted to NMFS in response to a request from NMFS under § 679.28(j)(1)(v). When video data are in the custody of the vessel operator, they are not subject to the Freedom of Information Act (FOIA) and NMFS may not require the vessel operator to provide video data to the public in response to a FOIA request. If video data are submitted to NMFS, they would be covered by the confidentiality laws and regulations that apply to any data or information in NMFS's possession. These laws include the FOIA, the Trade Secrets Act, and the Magnuson-Stevens Act. Under section 402(b) of the Magnuson-Stevens Act, information submitted to NMFS pursuant to a requirement under the Magnuson-Stevens Act is considered confidential. Video data required to be submitted to NMFS under § 679.28(j) are covered by these confidentiality provisions of the Magnuson-Stevens Act because the regulations in 50 CFR part 679 are promulgated under the authority of the Magnuson-Stevens Act. In addition, the FOIA or the Trade Secrets Act may prevent release of certain commercial information, which may include these video data. Finally, NMFS also must comply with regulatory guidelines in 50 CFR 600.415 *et seq.,* which control collection, handling, and disclosure of confidential fisheries information.

Second, participants asked what would happen if the video equipment failed and could not be immediately repaired. Participants wanted to know if NMFS has a contingency plan that would allow the vessel operator to continue to sort and process catch from the BS pollock fishery until the video equipment is repaired. The requirement to record video of all areas in the factory where salmon are sorted from the catch and where salmon are stored until they are counted by an observer is an important component to monitoring compliance with Chinook salmon bycatch management measures under Amendment 91. Therefore, the requirements at § 679.28(j) must be met when the catcher/processor or mothership is sorting or processing catch from the BS pollock fishery. The video systems that will comply with these proposed regulations are relatively simple systems with many easily replaceable components. The vessel operator should carry additional video system components so that the systems may be repaired while at sea with minimal lost time fishing. If some component of the video system fails when this equipment is required to be operational, and if the video system cannot be repaired at sea, the vessel operator should inform the NOAA Office of Law Enforcement (OLE) about the video failure.

Operators of catcher/processors participating in the BS pollock fishery would be required to report the salmon bycatch counts by species for each haul rather than the daily total currently required. This count would be required to be submitted to NMFS using an electronic logbook so that the data are readily available to NMFS in an electronic format. Reporting the count of all salmon by species for each haul would not change or increase the amount of information that is required to be gathered by vessel operators because, to report the number of salmon by species each day, as they currently are required to do, vessel operators must obtain a count and identification of salmon in each haul and sum that information to get the daily totals.

The electronic logbooks would replace the paper logbooks currently required to be submitted by the operators of catcher/processors under § 679.5(c)(4). Current regulations require recording the following information in paper logbooks: Vessel identifying information and catch-by-haul information including haul number; date, time, and location of gear deployment and retrieval; average sea depth and average gear depth for each haul, target species of the haul, estimate weight of the haul, and information about retention of certain species. All of this information would now be submitted using the electronic logbook.

The electronic logbooks would be an additional component to "eLandings," the program through which the operators of catcher/processors currently submit their daily production reports. The requirement to maintain and submit daily logbook information electronically instead of maintaining and submitting a paper logbook is not expected to increase costs for the catcher/processors. The electronic logbook software would be developed by NMFS and provided to the vessel operator as part of the eLandings software that is updated annually by NMFS. Data entry for the electronic logbooks would be done on the same computer as already is required on the vessel to submit the electronic daily production reports. The same communications hardware and software currently used for eLandings could be used for the electronic logbooks. The vessel operators would be required to print out a copy of the electronic logbook and maintain it onboard the vessel. The additional cost of data entry of information into the electronic logbook should be offset by the reduction in cost associated with maintaining the paper logbook.

AFA catcher/processors required to use an electronic logbook for their participation in the BS pollock fisheries also would be required to use this electronic logbook for the entire year for any other fishery in which they participate. Use of the electronic

logbook all year for all fisheries is necessary to provide logbook information from a vessel to NMFS in a consistent format throughout the year for all fisheries in which that vessel participates. In 2008, 13 of the 17 catcher/processors that fished in the BS pollock fishery also participated in other fisheries, primarily yellowfin sole and Pacific cod. The days fishing in non-pollock fisheries represented 20 percent of the total fishing days for these vessels in 2008.

Electronic logbooks would not be required for the AFA motherships or catcher vessels. Motherships already are required under § 679.5(e)(6) to submit daily an electronic landings report that includes a report of the number of salmon by species in each delivery by a catcher vessel. When NMFS develops the electronic logbook component of eLandings for the AFA catcher/processors, it likely also will develop an electronic logbook for the motherships, which could be used voluntarily in place of the paper logbook. Electronic logbooks also would not be required for catcher vessels delivering to inshore processors because the counting and reporting of the number of salmon by species in each delivery would be done at the processing plant and reported in the inshore processor's electronic logbook.

Release of Information About Chinook Salmon Prohibited Species Catch Allocations and Catch

Under this proposed rule, the NMFS Alaska Region would post on its Web site (*http://alaskafisheries.noaa.gov/*) (1) The Chinook salmon PSC allocations for each entity receiving a transferable allocation, (2) each entity's Chinook salmon bycatch, and (3) the vessels fishing on behalf of that entity for that year. NMFS would update the Web site to reflect any transfers of Chinook salmon PSC allocations.

For non-transferable allocations, the NMFS Alaska Region would also post on its Web site (1) the amount of each non-transferable allocation, (2) the Chinook salmon bycatch that accrued towards that non-transferable allocation, and (3) the vessels fishing under each non-transferable allocation. NMFS would update the website to reflect any changes to the B season non-transferable allocations from rollovers or deductions for overages in the A season.

Information about Chinook salmon bycatch is based on data collected by observers and data submitted by processors. Section 402(b)(2) of the Magnuson-Stevens Act provides that any observer information is confidential and shall not be disclosed. As a result of this requirement, NMFS may not release information collected by observers from vessels or processing plants unless it is provided to the public in aggregate or summary form. However, section 210(a)(1)(B) of the AFA requires NMFS "to make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis." Public release of Chinook salmon bycatch information for each entity and vessel fishing on behalf of that entity would provide information valuable to the pollock industry and the public in assessing the efficacy of Amendment 91. It would also reduce the amount of time NMFS staff would need to spend responding to information requests about Chinook salmon bycatch in the BS pollock fishery.

Removal of Salmon Bycatch Retention Requirements in the Bering Sea Aleutian Islands Trawl Fisheries

NMFS proposes to revise the requirements at § 679.21(c), which currently require the operators of all vessels using trawl gear in the BSAI groundfish fisheries, and all processors taking deliveries from these vessels, to retain all salmon until the salmon have been counted by an observer and the observer has collected biological samples. This allows discard of salmon from a vessel with an observer onboard, after the observer has counted and sampled the salmon. It also requires retention of salmon by vessels without an observer onboard until those salmon are delivered to a processing plant, where an observer is provided the opportunity to count and sample the salmon. Once salmon are counted and sampled at the processing plant, they may either be donated to the PSD Program or they must be put back onboard a catcher vessel and discarded at sea. This proposed rule would apply these regulations only to catcher vessels and processors participating in the BS pollock fishery, because these requirements are needed to obtain an accurate count of all salmon bycatch for Chinook salmon PSC allocations.

NMFS is proposing to remove the retention requirements in § 679.21(c) from participants in other BSAI trawl fisheries and the AI pollock fishery because it is not necessary to count each salmon in these other fisheries. Estimates of salmon bycatch for the other BSAI trawl fisheries, including the AI pollock fishery, would continue to be based on data collected by observers and extrapolation of bycatch rates derived from observer data to unobserved vessels. Moreover, all vessels and processors would continue to be required to report the number of discarded salmon by species in their landings or production reports. Current methods are adequate to estimate salmon bycatch in these other BSAI fisheries because, under current regulations, the salmon caught in these other fisheries (except AI pollock) does not accrue against the Chinook or non-Chinook PSC limits. Chinook salmon bycatch in the AI pollock fishery would continue to be managed with a trigger cap that closes the AI Chinook Salmon Savings Area. Current methods of estimating Chinook salmon bycatch are adequate to manage this area closure, if it is triggered during any AI pollock fishery in the future. Because the retention requirement would be removed from § 697.21(c), this proposed rule would also remove the prohibition at § 679.7(c)(1) that prohibits the discard of any salmon taken with trawl gear in a BSAI groundfish fishery.

The proposed rule also would standardize language related to the discard of salmon. Current regulations at § 679.21(b) require that, with several exceptions, prohibited species be returned to the sea immediately, with a minimum of injury, regardless of condition. A similar regulation at § 679.21(c)(5) requires that salmon bycatch, with the exception of those donated to the PSD program, be returned to Federal waters (Federal waters are defined in § 679.2 as waters within the EEZ off Alaska). The requirements for discard of salmon bycatch in Federal waters were implemented under the final rule for Amendment 25 to the FMP (59 FR 9492; April 20, 1994). Neither the proposed nor the final rule provided an explanation about why the term "to Federal waters" was applied to the discard of salmon and NMFS cannot identify a reason to have this different language for PSC in general versus salmon bycatch. NMFS proposes to standardize the language so that salmon not required to be retained by other regulations would be required to be returned to the sea and to remove reference to requiring discard of salmon specifically in Federal waters.

Other Proposed Regulatory Amendments

Revisions to Current Salmon Bycatch Management Measures

This proposed rule would remove regulations at § 679.21(e)(1)(vi) for the 29,000 Chinook salmon PSC limit that

triggers closure of the Chinook Salmon Savings Area in the BS. It also would revise Figure 8 to part 679 to remove the Chinook Salmon Savings Areas in the BS and rename the figure "the Aleutian Islands Chinook Salmon Savings Area."

This proposed rule would revise regulations at § 679.21(g) to remove Chinook salmon in the salmon bycatch reduction ICA implemented under Amendment 84 to the FMP. The current ICA regulations apply to Chinook and non-Chinook salmon. Under Amendment 91, all of the regulations for the current ICA that apply to the bycatch of Chinook salmon would be removed from § 679.21(g). The section heading would read "Bering Sea Non-Chinook Salmon Bycatch Management." Regulations that require the ICA to include VRHS components for Chinook salmon, including the base rates, specification of Chinook Salmon Savings Area closures and notices, and assignment of vessels in cooperatives to tiers based on the cooperative's Chinook salmon bycatch, would be removed.

One correction would be made to regulations currently at § 679.21(g)(5)(i) that identifies the "parties" to the ICA as "the AFA cooperatives, CDQ groups, and third party groups". The "parties" to an ICA are the cooperatives and CDQ groups who have a representative sign the ICA and agree to abide by the provisions of the ICA. The "third party groups" are organizations representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction, but do not directly fish in a groundfish fishery. These groups were consulted in the development of the currently approved ICA and are provided information about activities conducted under the ICA, but representatives of these organizations do not sign the ICA. Therefore, they are not considered "parties" to the ICA.

The proposed rule also would remove the exemptions from the Chinook Salmon Savings Area closures for vessel operators and CDQ groups that participate in the ICA. Although NMFS regulations would no longer require that the ICA include Chinook salmon in a VRHS system, the industry could continue to include Chinook salmon in their program on a voluntary basis.

Revisions to Current AFA Annual Reporting Requirements

This proposed rule would require that the pollock industry submit three different annual reports to the Council by April 1 of each year.

(1) The AFA cooperative annual reports that have been required since 2002 (§ 679.61(f)); the proposed rule would revise this report by moving two requirements to a new non-Chinook salmon ICA annual report.

(2) The ICA Annual Report; this proposed rule would add a new report at § 679.21(g)(4) for the non-Chinook salmon ICA that includes two components that are currently required to be submitted in the AFA cooperative annual reports.

(3) The Chinook salmon IPA annual report; this proposed rule would add a new report at § 679.21(f)(12)(vii) that would contain the requirements recommended by the Council under Amendment 91 and described earlier in the preamble to this proposed rule.

Under regulations implementing the AFA (67 FR 79692; December 30, 2002), the AFA cooperatives are required to submit to the Council each year a preliminary and a final report describing their pollock fishing (see § 679.61(f)). The AFA cooperative annual reports are required to provide information about how the cooperative allocated pollock, other groundfish species, and prohibited species among the vessels in the cooperative; the catch of these species by area by each vessel in the cooperative; information about how the cooperative monitored fishing by its members; and a description of any actions taken by the cooperative to penalize vessels that exceeded the catch and PSC allocations made to the vessel by the cooperative. The preliminary AFA cooperative reports are due to the Council by December 1 of the year in which the pollock fishing occurred. The final AFA cooperative reports are due by February 1 of the following year.

Additional information requirements about salmon bycatch were added to the annual AFA cooperative reports under Amendment 84 (72 FR 61070; October 29, 2007). Under that final rule, the AFA cooperatives are required to (1) Report the number of salmon taken by species and season, (2) estimate the number of salmon avoided as demonstrated by the movement of fishing effort away from the salmon savings area, (3) include the results of the compliance audit, and (4) list each vessel's number of appearances on the weekly "dirty 20" lists for both salmon species.

Since implementation of these requirements in 2007, NMFS has realized that while some of the information required in the annual report is appropriate for the AFA cooperatives to include in their annual reports, some of the information is more appropriately reported in a separate report from the non-Chinook salmon ICA representative. These requirements are to "estimate the number of salmon avoided as demonstrated by the movement of fishing effort away from the salmon savings area", and to "include the results of the compliance audit." These data elements provide information about the performance of the non-Chinook salmon ICA as a whole. The estimated number of all salmon avoided by actions taken under the non-Chinook salmon ICA is information provided by all participants and not for individual vessels or cooperatives. Similarly, the compliance audit is an evaluation of the non-Chinook salmon ICA as a whole. Therefore, the annual report of this information is more appropriately contained in a single report to the Council by the ICA representative for all ICA participants as a whole.

Two components added to the AFA cooperative annual report requirements under Amendment 84 would continue to be required to be submitted in the cooperative annual reports; report the number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists. The requirement for information about each vessel's number of appearances on the weekly "dirty 20" list would be revised to apply this only to non-Chinook salmon because the requirement is related to performance under what would be the non-Chinook salmon ICAs in the future.

The revision to the annual reporting requirements would reduce the information collection burden on the AFA cooperatives and would not increase the information collection burden on the ICA, because, in 2009, the ICA representative prepared a single annual report about these two elements of the ICA (salmon saved and the compliance audit), and the AFA cooperatives referenced this separate report in their individual annual reports.

This proposed rule would change the deadline for the AFA cooperative annual report from February 1 to April 1. It also would establish the deadline for the receipt of the annual report by the Council for the representative of the non-Chinook salmon ICA as April 1 of the year following the year in which the fishing activity occurred. These deadlines would coincide with the April 1 deadline in this proposed rule for the new annual report that would be submitted to the Council about the Chinook salmon IPAs. Having the same deadline for all three of these reports would allow the Council to discuss any of these annual reports at one time at its April Council meeting.

Revisions to Definitions at 50 CFR 679.2

This proposed rule would revise the definitions for a "Fishing trip" and

"Observed or observed data" and remove definitions for "Bycatch rate" and "Fishing month."

Proposed revisions to the definition of "Fishing trip" in § 679.2 would allow for post-delivery transfers of Chinook salmon PSC allocations. In addition to these revisions, NMFS proposes to revise the heading of the first definition of a fishing trip to more accurately describe the circumstances in part 679 under which this definition of a fishing trip applies. Currently, the first definition of a fishing trip applies to retention requirements including maximum retainable amounts, improved retention/improved utilization, and pollock roe stripping. However, this definition of a fishing trip also applies to its use in the recordkeeping and reporting requirements in § 679.5. Under this proposed rule, the heading for the first definition of a fishing trip would be revised to add "R&R requirements under § 679.5" to reflect the full scope of the current application of this definition in part 679.

Paragraph § 679.21(f) has been reserved since regulations implementing the vessel incentive program (VIP) were repealed (73 FR 12898; March 11, 2008); however, there are three definitions in § 679.2 that refer to § 679.21(f): "Bycatch rate"; "Observed or observed data"; and "Fishing month". Although these references do not conflict with any programs at this time, these definitions would not be consistent with the proposed regulations implementing Amendment 91 at § 679.21(f).

NMFS proposes revising the definition of "Observed or observed data" in § 679.2 because the definition includes two references to the repealed VIP. First, NMFS would remove the reference to § 679.21(f). Second, NMFS would remove from the paragraph the phrase "observed data", which refers to components of the VIP and does not appear elsewhere in 50 CFR part 679. This proposed rule would revise the definition for "observed" to more accurately define the term as used in regulations to describe the observations of observers in regard to subpart E of 50 CFR part 679.

This proposed rule would also remove two definitions that were implemented in support of the VIP. The term bycatch rate is used extensively in regulation: § 679.21 (existing), § 679.21 (proposed), and § 679.25; however, the two usages of bycatch rate defined in § 679.2 were specific to the repealed VIP. Likewise, the definition for "Fishing month" would be removed because it was specific to the VIP and does not appear elsewhere in 50 CFR part 679.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Environmental Impact Statement (EIS) and Regulatory Impact Review (RIR)

A final EIS and RIR were prepared to serve as the central decision-making documents for the Secretary of Commerce to approve, disapprove, or partially approve Amendment 91, and for NMFS to implement Amendment 91 through Federal regulations. The EIS was prepared to disclose the expected impacts of this action and its alternatives on the human environment. The RIR for this action was prepared to assess the costs and benefits of available regulatory alternatives.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA for this proposed action describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (*see* **ADDRESSES**).

Number and Description of Small Entities Regulated by the Proposed Action. The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the BS. These entities include the AFA-affiliated pollock fleet and the six CDQ groups that receive allocations of BS pollock.

TABLE 4—SUMMARY OF SMALL AND LARGE ENTITIES FOR REGULATORY FLEXIBILITY ACT PURPOSES AND NUMBER OF VESSELS, INSHORE PROCESSORS, AND CDQ GROUPS

Entity class	Units	Directly regulated by action	Small	Non-small
Catcher/processors	Vessels	Yes	0	16
Motherships	Vessels	Yes	0	3
Catcher vessels	Vessels	Yes	0	90
Inshore processors	Plants (including fixed floating platforms)	Yes	0	7
CDQ groups	Non-profit organizations	Yes	6	0

The RFA requires a consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives are a type of affiliation. All of the non-CDQ entities directly regulated by the proposed action were members of AFA cooperatives in 2008 and, therefore, NMFS considers them "affiliated" large (non-small) entities for RFA purposes.

Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities. This proposed action directly regulates the six CDQ groups and NMFS considers the CDQ groups to be small entities for RFA purposes. As described in regulations implementing the RFA (13 CFR 121.103) the CDQ groups' affiliations with other large entities do not define them as large entities. Revenue derived from groundfish allocations and investments in BSAI fisheries enable these non-profit corporations to better comply with the burdens of this action, when compared

to many of the large AFA-affiliated entities. Nevertheless, the only small entities that are directly regulated by this action are the six CDQ groups.

Description of the CDQ Groups. The CDQ Program was designed to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. In aggregate, CDQ groups share a 10 percent allocation of the BSAI pollock TAC. The CDQ Program also receives allocations of other groundfish TAC that range from 10.7 percent for Amendment 80 species, to 7.5 percent for most other species; however, these allocated amounts are not affected by this action. These allocations, in turn, provide an opportunity for residents of these communities to participate in and benefit from the BSAI fisheries through their association with one of the CDQ groups. The 65 communities, with approximately 27,000 total residents, benefit from participation in the CDQ Program, but are not directly regulated by this action. The six non-profit corporations (CDQ groups), formed to manage and administer the CDQ allocations, investments, and economic development projects are the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDC), and the Yukon Delta Fisheries Development Association (YDFDA).

The pollock fishery harvest provides millions of dollars in revenue to western Alaska CDQ communities through various channels, including the direct catch and sale or leasing of quota to various harvesting partners. The vessels harvesting CDQ pollock are the same vessels conducting AFA non-CDQ pollock harvesting. In addition to pollock allocations, CDQ groups have made significant investments in the at-sea pollock fleet. In 2007, the six CDQ groups held approximately $543 million in assets and had invested more than $140 million in fishery-related projects, including, but not limited to, the pollock industry. Complete descriptions of the CDQ groups, and the impacts of this action, are located in sections 2.5 and 6.10.3 of the RIR (*see* **ADDRESSES**).

Duplicate, Overlapping, or Conflicting Federal Rules. No duplication, overlap, or conflict between this proposed action and existing federal rules has been identified.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities. The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated ways to minimize Chinook salmon bycatch in the BS pollock fishery. The EIS presents the five alternative management actions, including combinations of various alternatives and options that emerged from this vetting process: *Alternative 1:* Status quo (no action); *Alternative 2:* hard cap; *Alternative 3:* triggered closures; *Alternative 4:* hard caps with an intercooperative agreement; and *Alternative 5:* the preferred alternative of PSC limits with an incentive plan agreement and performance standard.

As the preferred alternative, Alternative 5 constitutes the "proposed action". The remaining four alternatives (in various combinations of options and suboptions) constitute the suite of significant alternatives, under the proposed action, for RFA purposes. Each is addressed below. For more detail, please refer to section 2.5 of the EIS (*see* **ADDRESSES**) where the accompanying components are presented with the corresponding impact analyses. Data on cost and operating structure within the CDQ sector are unavailable, so a wholly quantitative evaluation of the size and distribution of burdens cannot be provided. The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo alternative (Alternative 1), the Chinook Salmon Savings Areas creates separate non-CDQ and CDQ Chinook salmon PSC limits in the BS. The Chinook Salmon Savings Area triggered closures occur upon attainment of Chinook salmon PSC limits. The CDQ Program receives allocations of 7.5 percent of the Chinook salmon PSC limit (or 2,175 Chinook salmon), as prohibited species quota (PSQ) reserve. NMFS further allocates PSQ reserves among the six CDQ groups, based on a recommendation by the State of Alaska in 2005. The State of Alaska recommended that the percentage allocation of Chinook salmon PSC and non-Chinook salmon PSC among the CDQ groups be the same as the CDQ groups' percentage allocations of pollock. The percentage allocation of Chinook salmon PSC by CDQ group is as follows: APICDA (14 percent), BBEDC (21 percent), CBSFA (5 percent), CVRF (24 percent), NSEDC (22 percent), and YDFDC (14 percent). Allocations of Salmon PSQ to the CDQ groups are made to the specific entities, but are transferable among entities within the CDQ Program. In 2008 and 2009, all CDQ groups were voluntarily participating in an ICA, so they were exempt from the closure of the Chinook Salmon Savings Area.

Alternative 1 would likely impose the least burden on the CDQ groups, because it does not impose a Chinook salmon PSC limit that could prevent the full harvest of their respective pollock allocations. However, the Council found that the conservation objective that was the basis for approving Amendment 84 had not been achieved, and the Council remains concerned that the status quo management has the potential for high amounts of Chinook salmon bycatch as experienced in 2007.

The hard cap alternative (Alternative 2) would establish an upper limit to Chinook salmon bycatch in the BS pollock fishery. A range of suboption caps, from 29,323 to 87,500 Chinook salmon, were considered, based on various averages of Chinook salmon bycatch in the BS pollock trawl fishery over a range of historical year combinations from 1997 through 2006. All Chinook salmon caught by vessels participating in the directed pollock fishery would accrue toward the cap. Under this alternative, upon reaching a Chinook salmon PSC limit, all directed pollock fishing must stop, regardless of potential forgone pollock harvests.

As described in the EIS section 2.2 (*see* **ADDRESSES**), this hard cap alternative includes several different options for management of a PSC limit, including separate PSC limits for the CDQ Program and the remaining AFA sectors and hard caps divided by season, by sector, or a combination of both. In addition, the Council included an option to allow small entities (*i.e.,* CDQ groups) and non-CDQ groups to transfer Chinook PSC allocations among sectors, between the A and B seasons, or a combination of both, that would allow small entities more flexibility to harvest the full TAC in high Chinook salmon encounter years.

Regardless of the hard cap level or allocation option chosen, the establishment of an upper limit on the amount of Chinook salmon bycatch in the BS pollock fishery, this prohibition would require participants in the CDQ Program to stop directed fishing for pollock, if a hard cap was reached, because further directed fishing for pollock would likely result in exceeding the Chinook salmon cap. As section 6.10 of the analysis in the RIR demonstrates (*see* **ADDRESSES**), the lower the hard cap selected, the higher the probability of a fishery closure, and the greater the potential for forgone pollock revenues.

Although this alternative would have established an upper limit to Chinook salmon bycatch, the hard cap alternative

alone would fail to promote Chinook salmon avoidance during years of low salmon encounter rates and could result in a loss of revenues to CDQ groups, due to the closure of the fishery before the TAC has been harvested. Additionally, this alternative could create a race for Chinook salmon bycatch, similar to a race for fish in an open-access fishery, which could increase the likelihood of wasteful fishing practices, a truncated directed fishing season, forgone pollock harvest, and of not achieving optimum yield. This proposed rule includes components of Alternative 2 that would limit the burden on these smaller entities and further increases flexibility for small entities through an IPA to minimize Chinook bycatch at all levels of salmon or pollock abundance, while establishing an upper limit on Chinook salmon bycatch.

During public comment, the Council received varying perspectives from CDQ participants on the costs and benefits of the range of PSC limits under consideration. NMFS received written comments from three of the six CDQ groups. While two CDQ groups (BBEDC and YDFDA) argued for a lower cap than this proposed rule provides, it was asserted by some, (including members of CVRF communities) that a hard cap higher than 68,000 Chinook salmon would increase the possibility that they could both harvest their full pollock allocation, under AFA, and receive full royalty and profit-sharing payments from those allocations. The importance of the pollock resource, as a source of revenue for these small entities, indicates that any loss of pollock catch represents an increased economic burden on the CDQ groups (small entities). Public comment from CDQ members revealed the complexity of the issue for CDQ groups and communities. Although CDQ communities derive revenue from pollock and other BSAI fisheries, many of these CDQ stakeholders also depend on sustainable Chinook salmon runs for subsistence, cultural, and spiritual practices; therefore, this issue is not strictly a matter of finances. The Council ultimately rejected Alternative 2 in recognition that a hard cap alone would not achieve the Council's objectives for this action.

The modified area triggered closure alternative (Alternative 3) is similar to the status quo in that regulatory time and area closures would be invoked when specified Chinook salmon PSC limits are reached, although NMFS would remove the VRHS ICA exemptions to the closed areas. This alternative would incorporate new cap levels for triggered closures, sector allocations, and transfer provisions and could impose a lower burden on the CDQ groups than the preferred alternative. If triggered, NMFS would only close the seasonal areas to directed pollock fishing. This alternative would not necessarily prevent small entities from the full harvest of their pollock TAC, because fishing effort outside of the closed areas could continue until the fishing season ended.

While Alternative 3 appears to reduce the economic impacts of forgone pollock revenue on small entities, when compared to the hard cap alternative, it does not provide any incentive to minimize Chinook salmon bycatch below the trigger amount. This alternative would not achieve the Council's objective for the proposed action because it shifts the fleets fishing effort to areas that may (or, as experienced in recent seasons, may not) have a lower risk of Chinook salmon encounters, but does not promote Chinook salmon avoidance at the vessel level, establish an upper limit to Chinook salmon bycatch in the BS pollock fishery, or hold the industry accountable for minimizing Chinook salmon bycatch. Therefore, the Council found that Alternative 3 is inferior to the proposed action.

At its June 2008 meeting, the Council developed a preliminary preferred alternative (Alternative 4) that contains components of Alternatives 1 through 3. Alternative 4 would set a PSC limit for all vessels participating in the BS pollock fisheries and includes provisions for a voluntary ICA that must encourage Chinook salmon avoidance, at all levels of pollock and Chinook salmon abundance and encounter rates. This alternative would minimize the burden on small entities by setting a relatively high PSC limit (68,392 Chinook salmon), allowing participants in an ICA to share the burden of reducing Chinook bycatch, and allowing PSC allocation transfers.

PSC allocations under Alternative 4 would have limited the burden on the small entities by increasing their annual allocation of the Chinook salmon PSC limit. Under component 2 of this alternative, a sector's allocation of Chinook salmon bycatch would be calculated at 75 percent historical bycatch and 25 percent AFA pollock quota, with allowances for the CDQ sector. Estimates of historic bycatch in the CDQ sector were based on lower bycatch hauls when compared to non-CDQ sectors, due in part to agreement with the catcher/processor fleet contracted to harvest pollock on behalf of the CDQ sector. These biased historical bycatch estimates would have resulted in a lower initial allocation of Chinook salmon to CDQ groups, potentially increasing forgone revenue loss for small entities. Therefore, component 2 estimates the historic CDQ bycatch rates by blending CDQ bycatch rates with those of sectors harvesting pollock on behalf of the CDQ groups. The resulting higher PSC allocations would decrease the probability of forgone pollock revenue and the financial burden of this action on the CDQ groups. NMFS provides a further description of the sector allocation in section 2.4 of the EIS (*see* **ADDRESSES**).

During public comment on the Draft EIS, a different sector allocation was proposed to Alternative 4 component 2. The suggested allocation would further reduce the burden on the small entities by allocating Chinook salmon based on 25 percent history and 75 percent AFA pollock allocation. Such an allocation would further benefit CDQ groups by increasing the Chinook salmon PSC allocations to the CDQ groups above the amount provided under component 2 of Alternative 4. The Council considered and rejected this suggestion because such an allocation would not adequately represent the different fishing practices and patterns each sector uses to fully harvest their pollock allocations.

Despite the advantages of Alternative 4, the Council did not recommend this alternative, noting that it failed to meet the Chinook salmon conservation objective of this action, by setting too high of a PSC limit and by not establishing a performance standard to promote and ensure that the pollock fishery minimized Chinook salmon bycatch. However, the preferred alternative retained component 2 from Alternative 4, which is designed to reduce the economic burden on the CDQ groups.

No additional alternatives were identified to those analyzed in the EIS, RIR, and IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. The EIS contains a detailed discussion of alternatives considered and eliminated from further analysis (*see* **ADDRESSES**).

This proposed rule includes performance, rather than design standards, to minimize Chinook salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard would allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.,* pollock TAC, market conditions, area closures associated with other rules, gear

restrictions, climate and oceanographic change).

Recordkeeping and reporting requirements. In addition to revising some existing requirements, this rule would add recordkeeping and reporting requirements needed to implement the preferred alternative including those related to—

- Reporting Chinook salmon bycatch by vessels directed fishing for pollock in the BS;
- Applications to receive transferable Chinook salmon PSC allocations;
- Applications to transfer Chinook salmon PSC allocations to another eligible entity;
- Development and submission of proposed IPAs and amendments to approved IPAs; and
- An annual report from the participants in each IPA, documenting information and data relevant to the BS Chinook salmon bycatch management program.

The CDQ groups enter contracts with partner vessels to harvest their pollock allocations. Many of these vessels are at least partially owned by the CDQ groups. Although the accounting of Chinook salmon bycatch by partner vessels fishing under CDQ allocations would accrue against each respective CDQ group's seasonal PSC limit, most of the recordkeeping, reporting, and compliance requirements necessary to implement the preferred alternative would apply to the vessels harvesting pollock, and to the processors processing pollock delivered by catcher vessels. For example, landings and production reports that include information about Chinook salmon bycatch are required to be submitted by processors, under existing requirements at § 679.5.

The CDQ groups already receive transferable Chinook and non-Chinook salmon PSC allocations and have received such allocations under the CDQ Program since 1999. Therefore, NMFS would not require CDQ groups to apply for recognition as entities eligible to receive transferable PSC allocations of Chinook salmon. The CDQ groups are already authorized to transfer their salmon PSC allocations to and from other CDQ groups, using existing transfer applications submitted to NMFS.

New under this proposed action is the authorization for the CDQ groups to transfer Chinook salmon PSC allocations to and from AFA entities, outside of the CDQ Program, including the AFA inshore cooperatives and the entities representing the AFA catcher/processor sector and the AFA mothership sector. Because of this new feature, CDQ groups would use a new, different application to transfer Chinook PSC; all other transfers by CDQ groups would continue to be accomplished using the CDQ or PSQ Transfer Application. The existing application would be revised to provide this instruction.

Participation in an IPA to reduce Chinook salmon bycatch is voluntary, but it is necessary to receive transferable allocations of a portion of the higher Chinook salmon PSC limit of 60,000. Therefore, it is likely that the CDQ groups would participate in an IPA. They may participate in an IPA together with members of the other AFA sectors or they may develop an IPA that applies only to vessels while they are fishing on behalf of a CDQ group. In either case, submission and approval of a proposed IPA is necessary. In addition, filing of an annual report by the participants of each IPA also would be necessary. If the CDQ groups participate in an IPA together with members of other sectors, the CDQ groups would share in the costs of developing the IPA. However, the time and cost involved in developing and submitting a proposed IPA, amendments to the IPA, and the annual report would be less per CDQ group than it would be if the CDQ groups developed an IPA that just applied to the CDQ groups.

The professional skills necessary to prepare the reporting and recordkeeping requirements that would apply to the CDQ groups under this proposed rule include the ability to read, write, and understand English; the ability to use a computer and the Internet to submit electronic transfer request applications; and the authority to take actions on behalf of the CDQ group. Each of the six CDQ groups has executive and administrative staff capable of complying with the reporting and recordkeeping requirements of this proposed rule and the financial resources to contract for any additional legal or technical expertise that they require to advise them.

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law No. 108–199 (188 Stat. 452), as amended by section 518 of Public Law No. 109–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to Executive Order 13175 which establishes several requirements for NMFS, including: (1) Regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of federal regulatory practices that significantly or uniquely affect their communities; (2) to reduce the imposition of unfunded mandates on Indian tribal governments; (3) and to streamline the applications process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) A description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 91, a tribal impact summary statement that summarizes and responds to issues raised in all tribal consultations on the proposed action and describes the extent to which the concerns of tribal officials have been met will be included in the final rule for Amendment 91.

To start the consultation process for this action, NMFS mailed letters to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives") on December 28, 2007, when NMFS started the EIS scoping process. The letter provided information about the proposed action, the EIS process, and solicited consultation and coordination with Alaska Native representatives. NMFS received 12 letters providing scoping comments from representatives of tribal governments and Alaska Native Corporations, which were summarized and included in the scoping report that can be found on the NMFS Alaska Region Web site (*see* **ADDRESSES**).

Additionally, a number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 91 and at the numerous Council meetings at which Amendment 91 was discussed.

Once the Draft EIS was released on December 5, 2008, NMFS sent another letter to Alaska Native representatives to announce the release of the document and to solicit comments concerning the scope and content of the Draft EIS. The letter included a copy of the executive summary and provided information on how to obtain a printed or electronic copy of the Draft EIS. NMFS also mailed 23 copies of the Draft EIS to the Alaska Native representatives who had requested a copy or provided written comments to NMFS during scoping. NMFS received 14 letters of comment on the Draft EIS from representatives of tribal governments, tribal organizations, or Alaska Native corporations. These comments are summarized and responded to in the Comment Analysis Report (CAR) in Chapter 9 of the EIS and the comment letters are posted on the NMFS Alaska Region Web site (*see* **ADDRESSES**).

NMFS received requests for tribal consultation on Amendment 91 from representatives of the following eight Federally recognized tribes: the Nome Eskimo Community, Chinik Eskimo Community (representing the village of Golovin), the Stebbins Community Association, the Native Village of Unalakleet, the Native Village of Kwigillingok, the Native Village of Kipnuk, the Alakanuk Tribal Council, and the Emmonak Tribal Council. The Alaska tribal representatives' concerns raised during these consultations were summarized and responded to in the EIS (*see* **ADDRESSES**).

NMFS held a tribal consultation in Nome, AK, on January 22, 2009, in conjunction with a Council outreach meeting on Chinook salmon bycatch. Consulting in person with NMFS in Nome were representatives of the Nome Eskimo Community, the Chinik Eskimo Community, and the Native Village of Elim. Consulting by telephone were representatives of the Stebbins Community Association and the Native Village of Unalakleet. Council staff provided information on the Draft EIS, the alternatives, and the schedule for Council action. As part of the consultation, NMFS staff provided additional information and then listened to the concerns and issues raised by the tribal representatives. The Nome Eskimo Community submitted a letter to NMFS with its comments on the Draft EIS during the tribal consultation.

NMFS also held a tribal consultation teleconference on March 17, 2009, with the Native Village of Kwigillingok and the Bering Sea Elders Advisory Group. The Regional Administrator provided information about the upcoming final action by the Council and the Draft EIS comment period. On October 19, 2009, NMFS held a tribal consultation via teleconference with the Alakanuk Tribal Council and the Native Village of Kipnuk. The Regional Administrator provided information on the Chinook and chum salmon bycatch in the Bering Sea in 2009 and listened to the concerns and issues raised by the tribal representatives. NMFS is continuing to engage the Emmonak Tribal Council and anticipates a consultation early in 2010.

Following the releases of the final EIS and RIR on December 7, 2009, NMFS sent another letter to Alaska Native representatives to announce the release of the EIS and provide information on participating in the rulemaking process. The letter included a copy of the EIS and RIR executive summary and provided information on how to obtain a printed or electronic copy of the EIS and RIR. NMFS also mailed 28 copies of the EIS and RIR to the Alaska Native representatives who requested a copy or who had provided written comments to NMFS on the EIS.

NMFS will continue the consultation process by sending another letter to all Alaska Native representatives when the NOA for Amendment 91 and this proposed rule are published in the **Federal Register** notifying them of the opportunity to comment.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control No. NEW

Public reporting burden per response is estimated to average 40 hours for AFA Catch Monitoring and Control Plan (CMCP); 5 minutes for Inspection Request for Inshore CMCP; 8 hours for CMCP Addendum; 1 hour for Electronic Monitoring System; 2 hours for Inspection Request for Electronic Monitoring System.

OMB Control No. NEW

Public reporting burden per response is estimated to average 30 minutes for CDQ Groundfish or Non-Chinook PSQ Transfer Request; and 30 minutes for CDQ Chinook Salmon PSQ Transfer Request.

OMB Control No. 0393

Public reporting burden per response is estimated to average 8 hours for Application for Approval As An Entity to Receive Transferable Chinook Salmon PSC Allocation and 15 minutes for Application for Transfer of Chinook Salmon PSC Allocations.

OMB Control No. NEW

Public reporting burden per response is estimated to average 40 hours for Application for Proposed (Chinook) Incentive Plan Agreement (IPA), 8 hours for (Chinook) IPA annual report, 40 hours for initial (non-Chinook) Inter-Cooperative Agreement (ICA), 8 hours for (non-Chinook) ICA annual report, 12 hours annual AFA cooperative report, 5 minutes for IPA agent of service (this item will be removed because it is part of the ICA), 5 minutes for ICA agent of service (this item will be removed because it is part of the IPA).

OMB Control No. 0515

Public reporting burden per response is estimated to average 30 minutes for eLandings Catcher/Processor Trawl Gear Electronic Logbook and 31 minutes for eLandings Mothership Electronic Logbook.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (NMFS Alaska Region) at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 15, 2010.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.2,

A. Remove the definitions for "Bycatch rate", "Chinook Salmon Savings Area of the BSAI", "Fishing month", "Observed or observed data", and "Salmon bycatch reduction intercooperative agreement (ICA)";

B. In the definition for "Fishing trip" revise paragraph (1) introductory text, paragraph (1)(i) introductory text, and paragraph 1(ii), and add new paragraph (6);

C. Add new definitions for "Agent for service of process", "Chinook salmon bycatch incentive plan agreement (IPA)", "Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)", and "Observed".

The addition and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Agent for service of process means, for purposes of § 679.21(f), a person appointed by the members of an AFA inshore cooperative, a CDQ group, or an entity representing the AFA catcher/processor sector or the AFA mothership sector, who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the inshore cooperative, the entity representing the catcher/processor sector, the entity representing the mothership sector, or the entity representing the cooperative or a CDQ group and owners of all vessels directed fishing for pollock CDQ on behalf of that CDQ group.

* * * * *

Chinook salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon bycatch while directed fishing for pollock in the Bering Sea subarea.

* * * * *

Fishing trip means:

(1) *Retention requirements (MRA, IR/IU, and pollock roe stripping) and R&R requirements under § 679.5.*

(i) *Catcher/processors and motherships.* An operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until any of the following events occur:

* * * * *

(ii) *Catcher vessels.* An operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

(6) *For purposes of § 679.7(d)(9) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities,* the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

Non-Chinook salmon bycatch reduction intercooperative agreement (ICA) is a voluntary non-Chinook salmon bycatch avoidance agreement, as described at § 679.21(g) and approved by NMFS, for directed pollock fisheries in the Bering Sea subarea.

* * * * *

Observed means observed by one or more observers (see subpart E of this part).

* * * * *

3. In § 679.5,

A. Revise paragraphs (e)(10)(iii)(M), (f)(1)(iv), (f)(7) introductory text, and paragraph (f)(7)(i); and

B. Add paragraph (f)(1)(vii).

The revisions and additions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(e) * * *

(10) * * *

(iii) * * *

(M) *PSC numbers*—(*1*) *Non-AFA catcher/processors and all motherships.* Daily number of PSC animals (Pacific salmon, steelhead trout, Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes.

(*2*) *AFA and CDQ catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must enter daily the number of non-salmon PSC animals (Pacific halibut, king crabs, and Tanner crabs) by species codes and discard and disposition codes. Salmon PSC animals are entered into the electronic logbook as described in paragraphs (f)(1)(iv) and (v) of this section.

* * * * *

(f) * * *

(1) * * *

(iv) *Catcher/processor trawl gear ELB.* Except as described in paragraph (f)(1)(vii) of this section, the operator of a catcher/processor using trawl gear may use a combination of a NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish information. In the ELB, the operator may enter daily processor identification information and catch-by-haul information. In eLandings, the operator must enter daily processor identification, groundfish production data, and groundfish and prohibited species discard or disposition data.

* * * * *

(vii) *AFA and CDQ trawl catcher/processors.* The operator of an AFA catcher/processor or any catcher/processor harvesting pollock CDQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information. In the ELB, the operator must enter processor identification information, catch-by-haul information, and prohibited species discard or disposition data for all salmon species in each haul. In eLandings, the operator must enter daily processor identification, groundfish production data, and groundfish and daily prohibited species discard or disposition data for all prohibited species except salmon.

* * * * *

(7) *ELB data submission.* The operator must transmit ELB data to NMFS at the specified e-mail address in the following manner:

(i) *Catcher/processor.* Directly to NMFS as an e-mail attachment or other NMFS-approved data transmission mechanism, by midnight each day to record the previous day's hauls.

* * * * *

4. In § 679.7,

A. Remove and reserve paragraph (c)(1);

B. Remove paragraphs (d)(6) and (d)(9) through (d)(23);

C. Redesignate paragraph (d)(24) as (d)(6) and paragraph (d)(25) as (d)(9);

D. Revise paragraphs (d)(7), (d)(8);

E. Revise paragraph (k)(3)(vi); and

F. Add paragraph (k)(8).

The additions and revisions read as follows:

§ 679.7 Prohibitions

* * * * *

(c) * * *

(1) [Reserved]

* * * * *

(d) * * *

(7) *Catch Accounting*—(i) *General*—(A) For the operator of a catcher/processor using trawl gear or a mothership, to harvest or take deliveries of CDQ or PSQ species without a valid scale inspection report signed by an authorized scale inspector under § 679.28(b)(2) on board the vessel.

(B) For the operator of a vessel required to have an observer sampling station described at § 679.28(d), to harvest or take deliveries of CDQ or PSQ species without a valid observer sampling station inspection report issued by NMFS under § 679.28(d)(8) on board the vessel.

(C) For the manager of a shoreside processor or stationary floating processor, or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(c), to fail to weigh catch on a scale that meets the requirements of § 679.28(c).

(D) For the operator of a catcher/processor or a catcher vessel required to carry a level 2 observer, to combine catch from two or more CDQ groups in the same haul or set.

(E) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, to discard any groundfish CDQ species or salmon PSQ before it is delivered to a processor unless discard of the groundfish CDQ is required under other provisions or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(F) For the operator of a vessel using trawl gear, to release CDQ catch from the codend before it is brought on board the vessel and weighed on a scale approved by NMFS under § 679.28(b) or delivered to a processor. This includes, but is not limited to, "codend dumping" and "codend bleeding."

(G) For the operator of a catcher/processor using trawl gear or a mothership, to sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3).

(H) For a CDQ representative, to use methods other than those approved by NMFS to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(ii) *Fixed gear sablefish*—(A) For a CDQ group, to report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(B) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, to discard sablefish harvested with fixed gear unless retention of sablefish is not authorized under § 679.23(e)(4)(ii) or, in waters within the State of Alaska, discard is required by laws of the State of Alaska.

(8) *Prohibited species catch*—(i) *Crab*—(A) *Zone 1.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 1 after the CDQ group's red king crab PSQ or *C. bairdi* Tanner crab PSQ in Zone 1 is attained.

(B) *Zone 2.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in Zone 2 after the CDQ group's PSQ for *C. bairdi* Tanner crab in Zone 2 is attained.

(C) *COBLZ.* For the operator of an eligible vessel, to use trawl gear to harvest groundfish CDQ in the *C. opilio* Bycatch Limitation Zone after the CDQ group's PSQ for *C. opilio* Tanner crab is attained.

(ii) *Salmon*—(A) *Discard of salmon.* For any person, to discard salmon from a catcher vessel, catcher/processor, mothership, shoreside processor, or SFP or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock CDQ in the Bering Sea, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(B) *Non-Chinook salmon.* For the operator of an eligible vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in a non-Chinook salmon bycatch reduction ICA under § 679.21(g).

(C) *Chinook salmon*—(*1*) *Overages of Chinook salmon PSC allocations.* For a CDQ group, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(*2*) For the operator of a catcher vessel or catcher/processor, to start a new fishing trip for pollock CDQ in the BS in the A season or in the B season, if the CDQ group for which the vessel is fishing has exceeded its Chinook salmon PSC allocation issued under § 679.21(f) for that season.

(*3*) For the operator of a catcher/processor or mothership, to catch or process pollock CDQ in the BS without complying with the applicable requirements of § 679.28(j).

(*4*) For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock CDQ in the BS, until the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(*5*) For the operator of a catcher vessel, to deliver pollock CDQ to a shoreside processor or stationary floating processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(*6*) For the operator of a catcher vessel, to start a new fishing trip for pollock CDQ in the BS if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel.

* * * * *

(k) * * *

(3) * * *

(vi) *Catch monitoring and control plan (CMCP)*—(A) Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(B) Allow sorting of fish at any location in the processing plant other than those identified in the CMCP under § 678.28(g)(7).

(C) Allow salmon of any species to pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the processing plant in the approved CMCP.

* * * * *

(8) *Salmon bycatch*—(i) *Discard of salmon.* For any person, to discard any salmon from a catcher vessel, catcher/processor, mothership, or inshore processor or transfer or process any salmon under the PSD Program at

§ 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by an observer and the collection of scientific data or biological samples from the salmon has been completed.

(ii) *Catcher/processors and motherships.* For the operator of a catcher/processor or a mothership, to begin sorting catch from a haul from a directed fishery for pollock in the BS, until the observer has completed counting the salmon and collecting scientific data or biological samples from the previous haul.

(iii) *Catcher vessels delivering to inshore processors.* For the operator of a catcher vessel, to start a new fishing trip for pollock in the BS if the observer assigned to the catcher vessel for the next fishing trip has not completed counting the salmon and collecting scientific data or biological samples from the previous delivery by that vessel.

(iv) *Overages of Chinook salmon PSC allocations*—(A) For an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector, to exceed a Chinook salmon PSC allocation issued under § 679.21(f) as of June 25 for the A season allocation and as of December 1 for the B season allocation.

(B) For a catcher vessel or catcher/processor, to start a fishing trip for pollock in the BS in the A season or in the B season if the vessel is fishing under a transferable Chinook salmon PSC allocation issued to an inshore cooperative, the entity representing the AFA catcher/processor sector, or the entity representing the AFA mothership sector under § 679.21(f) and the inshore cooperative or entity has exceeded its Chinook salmon PSC allocation for that season.

* * * * *

5. In § 679.21,

A. Remove and reserve paragraph (a);

B. Add paragraphs (b)(6) and (f); and

C. Revise paragraphs (b)(2)(ii), (b)(3), (c), (e)(1)(vi), (e)(3)(i)(A)(*3*)(*i*), (e)(7)(viii), (e)(7)(ix), and (g).

The revisions and additions read as follows:

§ 679.21 Prohibited Species Bycatch Management

(a) [Reserved]

(b) * * *

(2) * * *

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except for salmon prohibited species catch in the BS pollock fisheries under paragraph (c) of this section and § 679.26, return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition.

(3) *Rebuttable presumption.* Except as provided under paragraph (c) of this section and § 679.26, there will be a rebuttable presumption that any prohibited species retained on board a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(6) *Addresses.* Unless otherwise specified, submit information required under this section to NMFS as follows: by mail to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802; by courier to the Office of the Regional Administrator, 709 West 9th St., Juneau, AK 99801; or by fax to 907–586–7465. Forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(c) *Salmon taken in the BS pollock fisheries.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(1) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26, if the salmon were taken incidental to a directed fishery for pollock in the BS, until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(2) *Salmon retention and storage*—(i) Operators of catcher/processors or motherships must:

(A) Sort and transport all salmon bycatch from each haul to an approved storage location adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (*see* § 679.28(d)(2)(i) and (d)(7)). The salmon storage location must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(B) If, at any point during sorting of the haul or delivery for salmon, the salmon are too numerous to be contained in the salmon storage location, all sorting must cease and the observer must be given the opportunity to count the salmon in the storage location and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage location, in the presence of the observer.

(C) Before sorting of the next haul may begin, the observer must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul.

(D) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station.

(ii) Operators of vessels delivering to shoreside processors or stationary floating processors must:

(A) Store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations.

(B) Deliver all salmon to the processor receiving the vessel's BS pollock catch.

(C) Before the vessel can begin a new fishing trip, the observer assigned to that vessel for the next fishing trip must be given the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous delivery.

(iii) Shoreside processors or stationary floating processors must:

(A) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(B) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the CMCP.

(C) Sort and transport all salmon of any species to the observation area by plant personnel and the salmon must remain in that observation area and within the view of the observer at all times during the offload.

(D) If, at any point during the offload, salmon are too numerous to be contained in the observation area, the offload and all sorting must cease and the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(E) At the completion of the offload, the observer must be given the opportunity to count the salmon in the observation area and collect scientific data or biological samples.

(3) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (c)(1) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for

ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (c)(2) of this section.

(4) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

* * * * *

(e) * * *

(1) * * *

(vi) *BS Chinook salmon.* See paragraph (f) of this section.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*3*) * * *

(*i*) *Chinook salmon.* See paragraph (f) of this section for BS Chinook salmon or paragraph (e)(1)(viii) of this section for AI Chinook salmon.

* * * * *

(7) * * *

(viii) *AI Chinook salmon.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon, by vessels using trawl gear while directed fishing for pollock in the AI, will reach the annual limit of 700 Chinook salmon, as identified in paragraph (e)(1)(viii) of this section, NMFS, by notification in the **Federal Register** will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(A) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(B) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

(ix) *Exemptions.* Trawl vessels participating in directed fishing for pollock and operating under a non-Chinook salmon bycatch reduction ICA approved by NMFS under paragraph (g) of this section are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. *See* also § 679.22(a)(10) and Figure 9 to part 679.

* * * * *

(f) *BS Chinook Salmon Bycatch Management*—(1) *Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the BS pollock fishery.

(2) *BS Chinook salmon prohibited species catch (PSC) limit.* Each year, NMFS will allocate to AFA sectors, listed in paragraph (f)(3)(ii) of this section, a portion of either the 47,591 Chinook salmon PSC limit or the 60,000 Chinook salmon PSC limit.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit if:

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit if:

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the BS Chinook salmon PSC limits*—(i) *Seasonal apportionment.* NMFS will apportion the BS Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2)(i) and (ii).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable BS Chinook salmon PSC limit to the following four AFA sectors:

AFA sector:	Eligible participants are:
(A) Catcher/processor (C/P)	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and § 679.4(l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and § 679.4(l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the BS Chinook salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) C/P	32.9	13,818	17.9	3,222	28.4	17,040
(*2*) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(*3*) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(*4*) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) C/P	32.9	10,960	17.9	2,556	28.4	13,516
(*2*) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(*3*) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(*4*) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(iv) *Allocations to the AFA catcher/processor and mothership sectors*—(A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii)(A) or (B) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii)(A)(*3*) or (B)(*3*) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii)(A)(*4*) or (B)(*4*) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation in Column B of Table 47d to this part. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	by any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	by any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section	by any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region website (*http://alaskafisheries.noaa.gov/*):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation; and

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section.

(4) *Reduction in allocations of the 60,000 Chinook salmon PSC limit*—(i) *Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the 60,000 Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. The amount of Chinook salmon subtracted from each sector's allocation for those not participating in an approved IPA is calculated as follows:

For each sector:	Reduce the A season allocation by the sum of the amount of Chinock salmon associated with each vessel or CDQ group not participating in an IPA:		Reduce the B season allocation by the sum of the amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:		
(A) Catcher/processor	From Column E in Table 47a to this part	+	From Column F in Table 47a to this part	=	The annual amount of Chinook salmon subtracted from each sector's Chinook salmon PSC allocation listed at paragraph (f)(3)(iii)(A) of this section.
(B) Mothership	From column E in Table 47b to this part		From Column F in Table 47b to this part		
(C) Inshore	From column E in Table 47c to this part		From Column F in Table 47c to this part		
(D) CDQ Program	From Column C in Table 47d to this part		From Column D in Table 43d to this part		

(ii) *Adjustments to the inshore sector and inshore cooperative allocations*—(A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will only reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount in paragraph (f)(4)(i)(C) of this section for the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount in paragraph (f)(4)(i)(D) of this section for the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount in paragraph (f)(4)(i) of this section for the non-participating sector will not be reallocated among the sectors that do have members participating in an approved IPA. This portion of the 60,000 PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(2)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(2)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the **Federal Register** closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will *not* be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years.

(i) *Annual threshold amount.* Prior to each fishing year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). At the end of each fishing year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(B) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA. NMFS will subtract the following numbers of Chinook salmon from each sector's annual threshold amount for vessels or CDQ groups not participating in an approved IPA:

For each sector:	The amount of Chinook salmon associated with each vessel or CDQ group not participating in an IPA:
(A) Catcher/processor	From Column G of Table 47a to this part;
(B) Mothership	From Column G of Table 47b to this part;
(C) Inshore	From Column G of Table 47c to this part;
(D) CDQ Program	From Column E of Table 47d to this part.

(iii) If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard and that NMFS will allocate to that sector the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(B) of this section in all subsequent years. All members of the affected sector will fish under this lower allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA permitted vessel listed in Tables 47a through 47c to this part is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, the portion and number of Chinook salmon associated with that vessel in Tables 47a through 47c to this part will be assigned to the replacement vessel or distributed among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action until Tables 47a through 47c to this part can be revised as necessary.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations*—(i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all of the applicable requirements of this part.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (*see* definition at § 679.2) for an inshore cooperative is the cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the catcher/processor sector.* NMFS will issue transferable Chinook salmon PSC allocations to an entity representing the AFA catcher/processor sector if some or all of the owners of AFA permitted vessels in this sector form a single entity to represent all catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. No more than one entity will be authorized by NMFS to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processor sector.

(D) *Entity representing the mothership sector.* NMFS will issue transferable Chinook salmon PSC allocations to an entity representing the AFA mothership sector if some or all of the owners of AFA permitted catcher vessels in this sector form a single entity to represent all catcher vessels in this sector eligible to fish under transferable Chinook salmon PSC allocations. No more than one entity will be authorized by NMFS to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the mothership sector.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in. The application form is available on the NMFS Alaska Region website (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(*1*) Information that documents that all parties to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(*2*) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the parties to the contract.

(*3*) *Certification of applicant.* Signatures, printed names, and date of signature for the owners of each AFA permitted vessel identified in the application.

(C) *Contract duration.* Once submitted, the contract attached to the application is valid until amended or terminated by the parties to the contract. Additions or deletions to the vessels represented by the entity may be done one time per year for subsequent years by submitting an amended contract and revised vessel information by the deadline, unless additions or deletions are as a result of a replacement vessel under paragraph (f)(7) of this section. An amendment to the contract related to a replacement vessel may be made at any time upon submission of an amended application and a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Deadline.* An initial or amended application and contract must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the fishing year for which the Chinook salmon PSC allocations are effective.

(iii) *Responsibility.*—(A) *Entity*—(*1*) Each inshore cooperative and it members are jointly and severally liable for any violation of applicable regulations in this part by a member of the cooperative.

(*2*) The entity representing the catcher/processor sector and its members are jointly and severally liable for any violation of applicable regulations in this part by a member of the sector.

(*3*) The entity representing the mothership sector and its members are jointly and severally liable for any violation of applicable regulations in this part by a member of the sector.

(*4*) The owners of all vessels that are members of an inshore cooperative or members of the entity that represents the catcher/processor sector or the mothership sector may authorize the entity representative to sign a proposed IPA submitted to NMFS under paragraph (f)(12) of this section on their behalf. This authorization must be included in the contract submitted to NMFS under paragraph (f)(8)(ii)(B) of this section for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(B) *Entity Representative.* The entity's representative must—

(*1*) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(*2*) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(*3*) Ensure that an agent for service of process is designated by the entity; and

(*4*) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii)(B) of this section.

(C) *Agent for service of process.* The entity's agent for service of process must—

(*1*) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(*2*) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(D) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will receive non-transferable allocations of Chinook salmon PSC that will be managed by NMFS under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC*—(i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(C) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(8)(ii)(C)(*2*) and (k)(8)(v), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS for the remainder of that season once that overage has occurred.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application.* NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(*1*) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(*2*) *Electronic submittal.* The transferor's designated entity representative must log into NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(*1*) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(*2*) *Electronic submittal.* The transferee's designated representative must log into the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline.* NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season and after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations*—(i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations.* NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Chinook salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Participation by the owners of AFA permitted vessels or CDQ groups that combined represent at least 9 percent of the amount of BS pollock attributed to the sector, inshore cooperative, CDQ group, or individual vessel is required for purposes of this paragraph (f)(12)(i). The percentage of pollock attributed to each sector, vessel, or CDQ group is as follows:

For each sector:	The percent attributed to each sector:	Percent used to calculate IPA minimum participation is the value in:
(*1*) Catcher/processor	36	Column H in Table 47a to this part.
(*2*) Mothership	9	Column H in Table 47b to this part.
(*3*) Inshore	45	Column H in Table 47c to this part.
(*4*) CDQ Program	10	Column F in Table 47d to this part.

(B) *Minimum number of unaffiliated AFA entities.* The parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA permitted vessels and are not affiliated as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA is voluntary.* No vessel owner or CDQ group may be required to join an IPA. Upon receipt of written notification that a person wants to join an IPA, the IPA representative must allow that vessel owner or CDQ group to join subject to the terms and conditions that have been agreed upon by all other parties to the proposed IPA.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit an application for approval of a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and the proposed IPA, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section.

(B) *Proposed IPA.* The proposed IPA must contain the following information:

(*1*) *Name of the IPA.* The same IPA name submitted on the application form.

(*2*) *Representative.* The name, telephone number, and e-mail address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(12)(vii) of this section.

(*3*) *Description of the incentive plan.* The IPA must contain a written description of the following:

(*i*) The incentive(s) that will be implemented under the IPA to ensure that the operator of each vessel participating in the IPA will avoid Chinook salmon at all times while directed fishing for pollock;

(*ii*) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both;

(*iii*) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon bycatch rates relative to what would have occurred in absence of the incentive program;

(*iv*) How the incentive measures in the IPA promote Chinook salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon; and

(*v*) How the IPA ensures that the operator of each vessel governed by the IPA will manage his or her Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(*4*) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(*5*) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA.* An initial or amended application must be received by NMFS no later than 1700 hours A.l.t. on October 1 of the year prior to the fishing year for which the Chinook salmon PSC allocations are proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(*1*) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(*2*) Is submitted in compliance with the requirements of paragraph (f)(12)(ii) and (iv) of this section; and

(*3*) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.* Amendments to an approved IPA may be submitted to NMFS and will be reviewed under the requirements of this paragraph (f)(12).

(*1*) An amendment to an approved IPA with no change in the participants in the IPA may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the IPA representative.

(*2*) Amendments to the list of participants in an IPA, with or without changes to an approved IPA, must be received by NMFS no later than 1700 hours A.l.t. on November 1 of the year prior to the year in which the participants will join or leave the IPA, unless amendments to the list of participants are the result of a replacement vessel under paragraph (f)(7) of this section. The IPA representative must submit an application for approval of a proposed IPA (amended) that includes all of the information required in paragraph (f)(12)(iii) of this section. In addition, for an amendment related to a replacement vessel, the application for approval of an amendment must also include a copy of the AFA permit issued under § 679.4 for the replacement vessel.

(D) *Disapproval*—(*1*) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons;

(*i*) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(*ii*) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(*2*) *Initial Administrative Determination (IAD).* If, in NMFS's review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The applicant will be provided 30 days to address, in writing, the deficiencies identified by NMFS. An applicant will be limited to one 30-day period to address any deficiencies identified by NMFS. Additional information or a revised IPA received after the 30-day period specified by NMFS has expired will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(*3*) *Administrative Appeals.* An applicant who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the applicant fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(*4*) While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA would fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(B) of this section.

(vi) *Public release of an IPA.* NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(vii) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(A) *Submission deadline.* The annual report must be postmarked or received by the Council no later than April 1 of each year following the year in which the IPA is first effective.

(B) *Information requirements.* The annual report must contain the following information:

(*1*) A comprehensive description of the incentive measures in effect in the previous year;

(*2*) A description of how these incentive measures affected individual vessels;

(*3*) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures; and

(*4*) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(g) *BS Non-Chinook Salmon Bycatch Management*—(1) *Requirements for the non-Chinook salmon bycatch reduction intercooperative agreement (ICA)*—(i) *Application.* The ICA representative identified in paragraph (g)(2)(i)(B) of this section must submit a signed copy of the proposed non-Chinook salmon bycatch reduction ICA, or any proposed amendments to the ICA, to NMFS at the address in paragraph (b)(6) of this section.

(ii) *Deadline.* For any ICA participant to be exempt from closure of the Chum Salmon Savings Area as described at paragraph (e)(7)(ix) of this section and at § 679.22(a)(10), the ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The proposed non-Chinook salmon bycatch reduction ICA or any amendments to an approved ICA must be postmarked or received by NMFS by December 1 of the year before the year in which the ICA is proposed to be effective. Exemptions from closure of the Chum Salmon Savings Area will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended ICA.

(2) *Information requirements.* The ICA must include the following provisions:

(i) *Participants*—(A) The names of the AFA cooperatives and CDQ groups participating in the ICA. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA.

(B) The name, business mailing address, business telephone number, business fax number, and business e-mail address of the ICA representative.

(C) The ICA also must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.

(D) The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on non-Chinook salmon and have an interest in non-Chinook salmon bycatch reduction but do not directly fish in a groundfish fishery.

(ii) The names, Federal fisheries permit numbers, and USCG documentation numbers of vessels subject to the ICA.

(iii) Provisions that dictate non-Chinook salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) *Initial base rate.* The initial B season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(B) *Inseason adjustments to the non-Chinook base rate calculation.* Beginning July 1 of each fishing year and on each Thursday during the B season, the B season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the B season non-Chinook bycatch rate for the current year. The recalculated base

rate shall be used to determine bycatch avoidance areas.

(C) *ICA Chum Salmon Savings Area notices.* On each Thursday and Monday after June 10 of each year for the duration of the pollock "B" season, the entity identified under paragraph (g)(2)(i)(C) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated "ICA Chum Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice must be effective from 6:00 p.m. A.l.t. the following Friday through 6:00 p.m. A.l.t. the following Tuesday. The Monday notice must be effective from 6:00 p.m. A.l.t. the following Tuesday through 6:00 p.m. A.l.t. the following Friday. For any ICA Salmon Savings Area notice, the maximum total area closed must be at least 3,000 square miles for ICA Chum Savings Area closures.

(D) *Fishing restrictions for vessels assigned to tiers.* For vessels in a cooperative assigned to Tier 3, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, for seven days. For vessels in a cooperative assigned to Tier 2, the ICA Chum Salmon Savings Area closures announced on Thursdays must be closed through 6 p.m. Alaska local time on the following Tuesday. Vessels in a cooperative assigned to Tier 1 may operate in any area designated as an ICA Chum Salmon Savings Area.

(E) *Cooperative tier assignments.* Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of non-Chinook salmon taken by its members. Base rate calculations shall include non-Chinook salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with non-Chinook salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with non-Chinook salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with non-Chinook salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3. Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers based on non-Chinook salmon bycatch.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another party for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of $10,000 for the first offense, $15,000 for the second offense, and $20,000 for each offense thereafter.

(v) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA the information used to determine the failure to comply occurred and must include such notice(s) in the compliance report.

(vi) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing under paragraph (g)(2)(i)(C) of this section determines that an apparent violation of an ICA Chum Salmon Savings Area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180 days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

(3) *NMFS review of the proposed ICA and amendments.* NMFS will approve the initial or an amended ICA if it meets all the requirements specified in paragraph (g) of this section. If NMFS disapproves a proposed ICA, the ICA representative may resubmit a revised ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *ICA Annual Report.* The ICA representative must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The ICA annual report must be postmarked or received by the Council by April 1 of each year following the year in which the ICA is first effective.

(ii) *Information requirements.* The ICA annual report must contain the following information:

(A) An estimate of the number of non-Chinook salmon avoided as demonstrated by the movement of fishing effort away from Chum Salmon Savings Areas, and

(B) The results of the compliance audit required at § 679.21(g)(2)(v).

6. In § 679.22, revise paragraph (a)(10) and (h) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under a non-Chinook salmon bycatch reduction ICA approved under § 679.21(g) are exempt from closures in the Chum Salmon Savings Area.

* * * * *

(h) *CDQ fisheries closures.* See § 679.7(d)(8) for time and area closures that apply to the CDQ fisheries once the non-Chinook salmon PSQ and the crab PSQs have been reached.

* * * * *

7. In § 679.26,

Revise paragraph (c)(1) to read as follows:

§ 679.26 Prohibited Species Donation Program.

* * * * *

(c) * * *

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the BS pollock fishery and PSD program must comply with applicable regulations at §§ 679.7(d) and (k), 679.21(c), and 679.28, including allowing the collection of data and biological sampling by an observer prior to processing any fish under the PSD program.

* * * * *

8. In § 679.28,

A. Redesignate paragraphs (d)(7) and (d)(8) as paragraphs (d)(8) and (d)(9), respectively;

B. Add paragraphs (d)(7), (g)(7)(vii)(F), and (g)(7)(x)(F);

C. Revise newly redesignated paragraph (d)(9)(i)(H) and paragraphs (g)(2)(i), (g)(7)(vii)(C), (g)(7)(ix)(A), and (g)(7)(x)(D) and (E);

D. Add paragraph (j); and

E. Redesignate paragraphs (i)(1)(iii), (iv), and (v) as paragraphs (i)(1)(ii), (iii), and (iv), respectively.

The revisions and additions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) *Catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* Catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from vessels directed fishing for pollock in the BS also must meet the following requirements:

(i) A container to store salmon must be located adjacent to the observer sampling station;

(ii) All salmon stored in the container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The container to store salmon must be at least 1.5 cubic meters.

* * * * *

(9) * * *

(i) * * *

(H) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station including the observer sampling scale. For catcher/processors directed fishing for pollock in the BS or motherships taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ, the diagram also must include the location of the last point of sorting in the factory and the location of the salmon storage container required under paragraph (d)(7) of this section.

* * * * *

(g) * * *

(2) * * *

(i) AFA and CDQ pollock,

* * * * *

(7) * * *

(vii) * * *

(C) * * *

(*1*) With the exception of paragraph (g)(7)(vii)(C)(*2*) of this section, the observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(*2*) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observer work station must be located within the observation area.

* * * * *

(F) For shoreside processors or stationary floating processors taking deliveries from vessels directed fishing for pollock in the BS, including vessels directed fishing for pollock CDQ in the BS, the observation area also must include an area designated to store salmon.

* * * * *

(ix) * * *

(A) Orienting new observers to the plant and providing a copy of the approved CMCP;

* * * * *

(x) * * *

(D) The location of each scale used to weigh catch;

(E) Each location where catch is sorted including the last location where sorting could occur; and

(F) Location of salmon storage container.

* * * * *

(j) *Electronic monitoring on catcher/processors and motherships in the BS pollock fishery, including pollock CDQ.* The owner or operator of a catcher/processor or a mothership must provide and maintain an electronic monitoring system that includes cameras, a monitor, and a digital video recording system for all areas where sorting of salmon of any species takes place and the location of the salmon storage container described at paragraph (d)(7) of this section. These electronic monitoring system requirements must be met when the catcher/processor is directed fishing for pollock in the BS, including pollock CDQ, and when the mothership is taking deliveries from catcher vessels directed fishing for pollock in the BS, including pollock CDQ.

(1) *What requirements must a vessel owner or operator comply with for an electronic monitoring system?* (i) The system must have sufficient data storage capacity to store all video data from an entire trip. Each frame of stored video data must record a time/date stamp in Alaska local time (A.l.t.). At a minimum, all periods of time when fish are flowing past the sorting area or salmon are in the storage container must be recorded and stored.

(ii) The system must include at least one external USB (1.1 or 2.0) port or other removable storage device approved by NMFS.

(iii) The system must use commercially available software.

(iv) Color cameras must have at a minimum 470 TV lines of resolution, auto-iris capabilities, and output color video to the recording device with the ability to revert to black and white video output when light levels become too low for color recognition.

(v) The video data must be maintained and made available to NMFS staff, or any individual authorized by NMFS, upon request. These data must be retained onboard the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the vessel operator that the video data may be retained for less than this 120-day period.

(vi) The system must provide sufficient resolution and field of view to observe all areas where salmon could be sorted from the catch, all crew actions in these areas, and discern individual fish in the salmon storage container.

(vii) The system must record at a speed of no less than 5 frames per second at all times when fish are being sorted or when salmon are stored in the salmon storage location.

(viii) A 16-bit or better color monitor, for viewing activities within the tank in real time, must be provided within the observer sampling station. The monitor must—

(A) Have the capacity to display all cameras simultaneously;

(B) Be operating at all times when fish are flowing past the sorting area and salmon are in the storage container; and

(C) Be securely mounted at or near eye level.

(ix) The observer must be able to view any earlier footage from any point in the trip and be assisted by crew knowledgeable in the operation of the system.

(x) A vessel owner or operator must arrange for NMFS to inspect the electronic monitoring system and maintain a current NMFS-issued electronic monitoring system inspection report onboard the vessel at all times the vessel is required to provide an approved electronic monitoring system.

(2) *How does a vessel owner arrange for NMFS to conduct an electronic monitoring system inspection?* The owner or operator must submit an Inspection Request for an Electronic Monitoring System to NMFS by fax (206–526–4066) or e-mail (*station.inspections@noaa.gov).* The request form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address or phone number in paragraph (b)(6) of this section. NMFS will coordinate with the vessel owner to schedule the inspection no

later than 10 working days after NMFS receives a complete request form.

(3) *What additional information is required for an electronic monitoring system inspection?* (i) A diagram drawn to scale showing all locations where salmon will be sorted, the location of the salmon storage container, the location of each camera and its coverage area, and the location of any additional video equipment must be submitted with the request form.

(ii) Any additional information requested by the Regional Administrator.

(4) *How does a vessel owner make a change to the electronic monitoring system?* Any change to the electronic monitoring system that would affect the system's functionality must be submitted to, and approved by, the Regional Administrator in writing before that change is made.

(5) *Where will NMFS conduct electronic monitoring system inspections?* Inspections will be conducted on vessels tied to docks at Dutch Harbor, Alaska; Kodiak, Alaska; and in the Puget Sound area of Washington State.

(6) *What is an electronic monitoring system inspection report?* After an inspection, NMFS will issue an electronic monitoring system inspection report to the vessel owner, if the electronic monitoring system meets the requirements of paragraph (j)(1) of this section. The electronic monitoring system report is valid for 12 months from the date it is issued by NMFS. The electronic monitoring system inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

9. In § 679.50,

A. Revise paragraph (c)(1) introductory text, paragraph (c)(4)(iv), and (c)(5) heading; and

B. Add a new paragraph (c)(5)(i)(D).

The addition and revisions read as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

(c) * * *

(1) Unless otherwise specified in paragraphs (c)(4) through (7) of this section, observer coverage is required as follows:

* * * * *

(4) * * *

(iv) *Catcher vessel using trawl gear*—(A) *Groundfish CDQ fishing.* A catcher vessel equal to or greater than 60 ft (18.3 m) LOA using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel or a catcher vessel directed fishing for pollock CDQ in the BS, must have at least one level 2 observer as described at paragraph (j)(1)(v)(D) of this section aboard the vessel at all times while it is groundfish CDQ fishing.

(B) *BS pollock CDQ fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock CDQ in the BS.

* * * * *

(5) *AFA and AI directed pollock fishery.*

(i) * * *

(D) *AFA catcher vessels in the BS pollock fishery.* A catcher vessel using trawl gear, except a catcher vessel that delivers only unsorted codends to a processor or another vessel, must have at least one observer aboard the vessel at all times while it is directed fishing for pollock in the BS.

* * * * *

10. In § 679.61, revise paragraphs (f)(1), (f)(2) introductory text, and (f)(2)(vi) to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(f) * * *

(1) *What are the submission deadlines*? The fishery cooperative must submit the final report by April 1 of the following year. Annual reports must be postmarked or received by the submission deadline.

(2) *What information must be included*? The annual report must contain, at a minimum:

* * * * *

(vi) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon.

* * * * *

§§ 679.2, 679.5, 679.7, 679.20, 679.21, 679.26, 679.27, 679.28, and 679.32 [Amended]

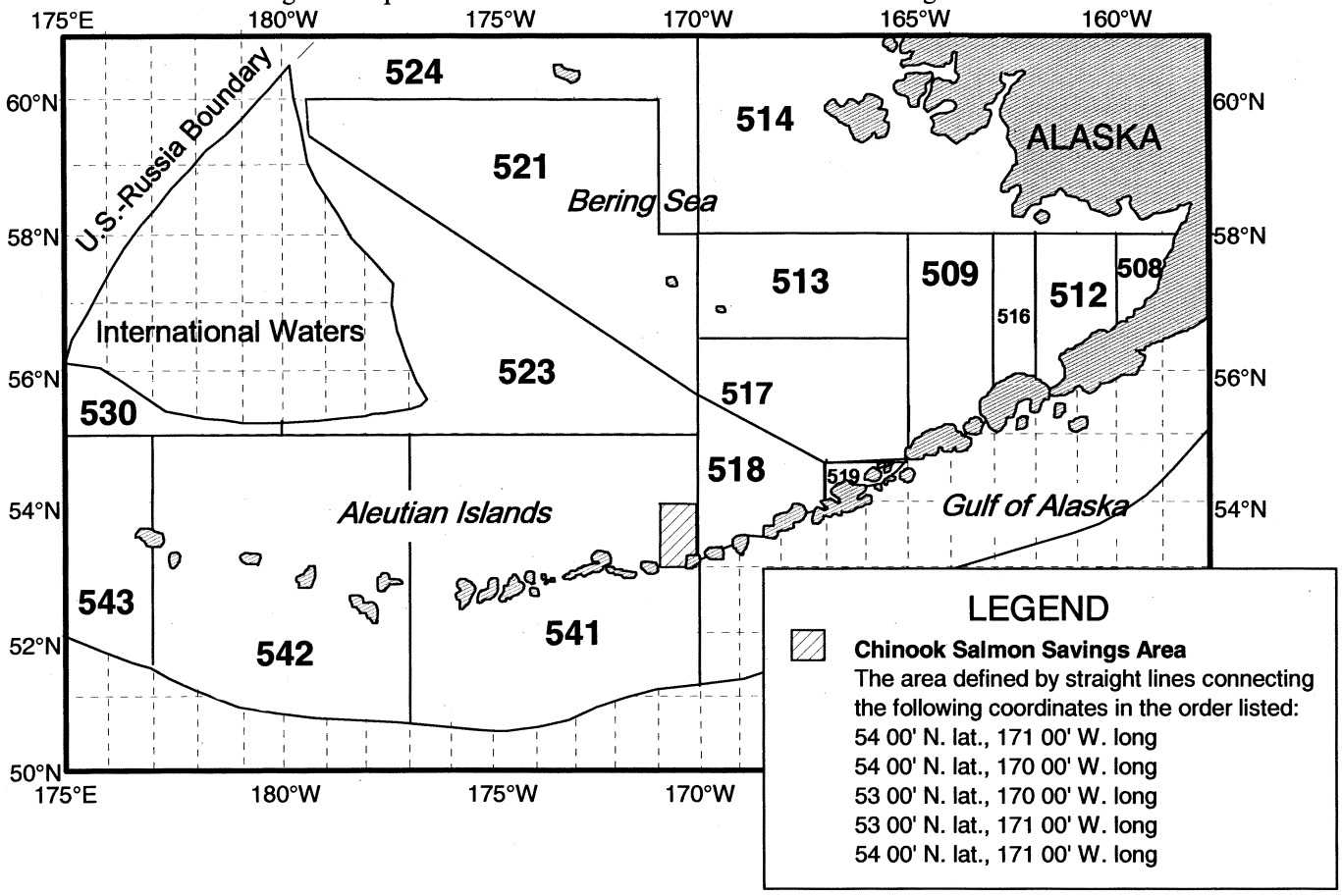
11. At each of the locations shown in the "Location" column of the following table, remove the phrase indicated in the "Remove" column and add in its place the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.2 Definition "AFA trawl catcher/processor".	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.2 Definition for "Amendment 80 vessel" paragraph (2)(i).	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.5(c)(3)(v)(F) and (c)(4)(v)(G)	certified observer(s)	observer(s)	2
§ 679.5(c)(6)(v)(E)	certified observer(s)	observer(s)	1
§ 679.7(d)(18)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.20(a)(5)(i)(A)(*3*)(*i*)	§ 679.62(e)	§ 679.62(a)	1
§ 679.20(a)(7)(iii)(B)	AFA trawl catcher/processor	AFA catcher/processor	1
§ 679.21(e)(3)(v)	AFA trawl catcher/processor	AFA catcher/processor	2
§ 679.26(c)(1)	§ 679.7(c)(1)	§ 679.7(c)(2)	1
§ 679.27(j)(5)(iii)	§ 679.28(d)(7)(i)	§ 679.28(d)(8)(i)	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(A)	paragraph (d)(8)(ii)(A) of this section	1
§ 679.28(d)(2)(ii)	§ 679.28(d)(7)(ii)(B)	paragraph (d)(8)(ii)(B) of this section	1
§ 679.32(b)	§ 679.7(d)(7) through (10)	§ 679.7(d)(8)	1
§ 679.32(d)(2)(ii)(B)(*1*)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.32(d)(4)(ii)	§ 679.28(d)(8)	§ 679.28(d)(9)	1
§ 679.93(c)(9)	§ 679.28(i)	§ 679.28(i)(1)	1

12. The title, map, and legend for Figure 8 to part 679 are revised to read as follows:

BILLING CODE 3510–22–P

Figure 8 to part 679. Aleutian Islands Chinook Salmon Savings Area



14. Tables 47a through 47d to part 679 are added to read as follows:

TABLE—47A TO PART 679

[Percent of the AFA catcher/processor sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher/processor under § 679.21(f).]

Vessel name	USCG vessel documentation No.	AFA permit No.	Percent of C/P sector pollock	Number of Chinook salmon for the opt-out allocation (8,093)		Number of Chinook salmon for the annual performance threshold amount (13,516)	Percent used to calculate IPA minimum participation
			Percent	A season	B season	Annual	Percent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
American Dynasty	951307	3681	4.93	324	76	667	1.78
American Triumph	646737	4055	7.25	475	111	979	2.61
Northern Eagle	506694	3261	6.07	398	93	820	2.19
Northern Hawk	643771	4063	8.45	554	129	1,142	3.04
Northern Jaeger	521069	3896	7.38	485	113	998	2.66
Ocean Rover	552100	3442	6.39	420	98	864	2.30
Alaska Ocean	637856	3794	7.30	479	112	985	2.63
Island Enterprise	610290	3870	5.60	367	86	756	2.01

TABLE—47A TO PART 679—Continued

[Percent of the AFA catcher/processor sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher/processor under § 679.21(f).]

Vessel name	USCG vessel documentation No.	AFA permit No.	Percent of C/P sector pollock	Number of Chinook salmon for the opt-out allocation (8,093)		Number of Chinook salmon for the annual performance threshold amount (13,516)	Percent used to calculate IPA minimum participation
			Percent	A season	B season	Annual	Percent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Kodiak Enterprise	579450	3671	5.90	387	90	798	2.13
Seattle Enterprise	904767	3245	5.48	359	84	740	1.97
Arctic Storm	903511	2943	4.58	301	70	619	1.65
Arctic Fjord	940866	3396	4.46	293	68	603	1.60
Northern Glacier	663457	661	3.12	205	48	422	1.12
Pacific Glacier	933627	3357	5.06	332	77	684	1.82
Highland Light	577044	3348	5.14	337	79	694	1.85
Starbound	944658	3414	3.94	259	60	533	1.42
Ocean Peace	677399	2134	0.50	33	8	68	0.18
Katie Ann	518441	1996	0.00	0	0	0	0.00
U.S. Enterprise	921112	3004	0.00	0	0	0	0.00
American Enterprise	594803	2760	0.00	0	0	0	0.00
Endurance	592206	3360	0.00	0	0	0	0.00
American Challenger	633219	4120	0.78	51	12	106	0.28
Forum Star	925863	4245	0.61	40	9	82	0.22
Muir Milach	611524	480	1.13	74	17	153	0.41
Neahkahnie	599534	424	1.66	109	25	225	0.60
Ocean Harvester	549892	5130	1.08	71	16	145	0.39
Sea Storm	628959	420	2.05	134	31	276	0.74
Tracy Anne	904859	2823	1.16	76	18	157	0.42
Total			100.00	6,563	1,530	13,516	36.00

TABLE 47B—TO PART 679

[Percent of the AFA mothership sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each mothership under § 679.21(f).]

Vessel name	USCG vessel documentation No.	AFA permit No.	Percent of MS sector pollock	Number of Chinook salmon for the opt-out allocation (2,220)		Number of Chinook salmon for the annual threshold amount (3,707)	Percent used to calculate IPA minimum participation
			Percent	A season	B season	Annual	Percent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
American Beauty	613847	1688	6.000	96	37	223	0.54
Pacific Challenger	518937	657	9.671	154	60	359	0.87
Nordic Fury	542651	1094	6.177	99	39	229	0.55
Pacific Fury	561934	421	5.889	94	37	218	0.53
Margaret Lyn	615563	723	5.643	90	35	209	0.51
Misty Dawn	926647	5946	3.569	57	22	132	0.32
Vanguard	617802	519	5.350	85	33	199	0.48
California Horizon	590758	412	3.786	61	24	140	0.34
Oceanic	602279	1667	7.038	112	44	261	0.63
Mar-Gun	525608	524	6.251	100	39	231	0.56
Mark 1	509552	1242	6.251	100	39	231	0.56
Aleutian Challenger	603820	1687	4.926	79	31	182	0.44
Ocean Leader	561518	1229	6.000	96	37	223	0.54
Papado II	536161	2087	2.953	47	18	110	0.27
Morning Star	618797	7270	3.601	57	23	134	0.32
Traveler	929356	3404	4.272	68	27	158	0.38
Vesteraalen	611642	517	6.201	99	39	230	0.56
Alyeska	560237	395	2.272	36	14	84	0.20
Western Dawn	524423	134	4.150	66	26	154	0.37
Total			100.000	1,596	624	3,707	9.00

TABLE—47C TO PART 679

[Percent of the AFA inshore sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher vessel under § 679.21(f).]

Vessel name	USCG vessel documentation No.	AFA permit No.	Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)		Number of Chinook salmon for the annual threshold amount (26,485)	Percent used to calculate IPA minimum participation
			Percent	A season	B season	Annual	Percent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
AJ	599164	3405	0.70	69	41	185	0.31
Alaska Rose	610984	515	1.68	167	100	446	0.76
Alaskan Command	599383	3391	0.37	37	22	99	0.17
Aldebaran	664363	901	1.47	146	87	388	0.66
Alsea	626517	2811	1.66	165	99	441	0.75
Alyeska	560237	395	1.22	121	72	323	0.55
American Beauty	613847	1688	0.04	4	2	11	0.02
American Eagle	558605	434	1.07	106	63	283	0.48
Anita J	560532	1913	0.50	50	30	132	0.22
Arctic Explorer	936302	3388	1.62	161	96	430	0.73
Arctic Wind	608216	5137	1.10	110	65	292	0.50
Arcturus	655328	533	1.54	153	91	409	0.70
Argosy	611365	2810	1.63	162	97	433	0.73
Auriga	639547	2889	3.10	308	184	820	1.39
Aurora	636919	2888	3.10	308	184	821	1.39
Bering Rose	624325	516	1.72	171	102	457	0.78
Blue Fox	979437	4611	0.31	31	19	83	0.14
Bristol Explorer	647985	3007	1.54	153	91	408	0.69
Caitlin Ann	960836	3800	0.94	93	55	248	0.42
Cape Kiwanda	618158	1235	0.23	23	13	61	0.10
Chelsea K	976753	4620	4.65	462	275	1231	2.09
Collier Brothers	593809	2791	0.15	15	9	41	0.07
Columbia	615729	1228	1.44	143	85	382	0.65
Commodore	914214	2657	1.26	125	75	334	0.57
Defender	554030	3257	3.48	346	206	923	1.57
Destination	571879	3988	2.15	214	128	570	0.97
Dominator	602309	411	1.75	174	104	463	0.79
Dona Martita	651751	2047	2.10	209	125	557	0.95
Elizabeth F	526037	823	0.38	38	23	102	0.17
Excalibur II	636602	410	0.52	52	31	137	0.23
Exodus Explorer	598666	1249	0.30	30	18	80	0.13
Fierce Allegiance	588849	4133	0.94	93	56	249	0.42
Flying Cloud	598380	1318	1.64	163	97	434	0.74
Gold Rush	521106	1868	0.41	40	24	107	0.18
Golden Dawn	604315	1292	1.75	174	104	464	0.79
Golden Pisces	599585	586	0.27	27	16	72	0.12
Great Pacific	608458	511	1.24	123	73	327	0.56
Gun-Mar	640130	425	2.22	221	132	588	1.00
Half Moon Bay	615796	249	0.59	58	35	155	0.26
Hazel Lorraine	592211	523	0.38	38	23	102	0.17
Hickory Wind	594154	993	0.31	30	18	81	0.14
Intrepid Explorer	988598	4993	1.15	114	68	303	0.52
Leslie Lee	584873	1234	0.55	54	32	145	0.25
Lisa Melinda	584360	4506	0.22	22	13	58	0.10
Majesty	962718	3996	1.00	99	59	263	0.45
Marcy J	517024	2142	0.18	18	11	48	0.08
Margaret Lyn	615563	723	0.03	3	2	9	0.02
Mar-Gun	525608	524	0.10	10	6	27	0.05
Mark I	509552	1242	0.05	4	3	12	0.02
Messiah	610150	6081	0.23	23	14	61	0.10
Miss Berdie	913277	3679	0.61	61	36	161	0.27
Morning Star	610393	208	1.70	169	101	450	0.76
Ms Amy	920936	2904	0.49	48	29	129	0.22
Nordic Explorer	678234	3009	1.10	110	65	292	0.50
Nordic Fury	542651	1094	0.02	2	1	5	0.01
Nordic Star	584684	428	1.01	100	60	268	0.45
Northern Patriot	637744	2769	2.41	240	143	639	1.09
Northwest Explorer	609384	3002	0.24	24	14	64	0.11
Ocean Explorer	678236	3011	1.37	137	81	364	0.62
Morning Star	652395	1640	0.53	53	31	140	0.24
Ocean Hope 3	652397	1623	0.42	41	25	110	0.19
Ocean Leader	561518	1229	0.05	5	3	14	0.02

TABLE—47C TO PART 679—Continued

[Percent of the AFA inshore sector's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each catcher vessel under § 679.21(f).]

Vessel name	USCG vessel documentation No.	AFA permit No.	Percent of sector pollock	Number of Chinook salmon for the opt-out allocation (15,858)		Number of Chinook salmon for the annual threshold amount (26,485)	Percent used to calculate IPA minimum participation
			Percent	A season	B season	Annual	Percent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Oceanic	602279	1667	0.13	13	8	35	0.06
Pacific Challenger	518937	657	0.17	17	10	44	0.08
Pacific Explorer	678237	3010	1.29	128	76	342	0.58
Pacific Fury	561934	421	0.01	1	1	3	0.01
Pacific Knight	561771	2783	2.18	217	129	578	0.98
Pacific Monarch	557467	2785	1.60	159	95	423	0.72
Pacific Prince	697280	4194	2.41	239	143	638	1.08
Pacific Ram	589115	4305	0.20	20	12	54	0.09
Pacific Viking	555058	422	1.09	108	65	289	0.49
Pegasus	565120	1265	0.69	69	41	184	0.31
Peggy Jo	502779	979	0.33	33	20	88	0.15
Perseverance	536873	2837	0.30	29	17	78	0.13
Poseidon	610436	1164	1.24	123	73	329	0.56
Predator	547390	1275	0.20	20	12	52	0.09
Progress	565349	512	1.01	100	60	268	0.46
Providian	1062183	6308	0.38	38	23	101	0.17
Raven	629499	1236	0.71	71	42	188	0.32
Royal American	624371	543	0.97	96	57	257	0.44
Royal Atlantic	559271	236	1.31	130	78	347	0.59
Sea Wolf	609823	1652	1.52	151	90	402	0.68
Seadawn	548685	2059	1.41	140	84	374	0.63
Seeker	924585	2849	0.37	37	22	98	0.17
Sovereignty	651752	2770	2.35	234	139	623	1.06
Star Fish	561651	1167	1.51	150	90	400	0.68
Starlite	597065	1998	1.23	122	73	324	0.55
Starward	617807	417	1.26	125	75	334	0.57
Storm Petrel	620769	1641	1.23	123	73	327	0.56
Sunset Bay	598484	251	0.56	56	33	148	0.25
Topaz	575428	405	0.08	8	5	22	0.04
Traveler	929356	3404	0.04	4	2	11	0.02
Vanguard	617802	519	0.06	6	3	15	0.03
Viking	565017	1222	1.66	165	98	439	0.75
Viking Explorer	605228	1116	1.19	118	70	315	0.53
Walter N	257365	825	0.40	40	24	107	0.18
Western Dawn	524423	134	0.40	39	23	105	0.18
Westward I	615165	1650	1.55	154	92	412	0.70
Total	.....	.....	100.00	9,933	5,925	26,485	45.00

TABLE—47D TO PART 679

[Percent of the CDQ Program's pollock allocation, numbers of Chinook salmon used to calculate the opt-out allocation and annual threshold amount, and percent used to calculate IPA minimum participation assigned to each CDQ group under § 679.21(f).]

Column A	Column B	Column C	Column D	Column E	Column F
	Percent of CDQ Program pollock	Number of Chinook salmon for the opt-out allocation (2,325)		Number of Chinook salmon for the annual threshold amount (3,883)	Percent used to calculate IPA minimum partici- pation
CDQ group	Percent	A season	B season	Annual	Percent
APICDA	14.00	260	66	544	1.40
BBEDC	21.00	389	99	816	2.10
CBSFA	5.00	93	23	194	0.50
CVRF	24.00	445	113	931	2.40
NSEDC	22.00	408	103	854	2.20
YDFDA	14.00	260	66	544	1.40
TOTAL	100.00	1,855	470	3,883	10.00

[FR Doc. 2010–6082 Filed 3–22–10; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Tuesday,
March 23, 2010

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Federal Acquisition Circular 2005–40: Introduction, Small Entity Compliance Guide, Federal Awardee Performance and Integrity, Information System; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–40; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–40. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective date, see separate document, which follows.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–40 and the specific FAR case number. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–40

Subject	FAR case	Analyst
Federal Awardee Performance and Integrity Information System (FAPIIS) ...	2008–027	Gary.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to FAR Case 2008–027.

FAC 2005–40 amends the FAR as specified below:

Federal Awardee Performance and Integrity Information System (FAPIIS) (FAR case 2008–027)

This final rule adopts, with changes, the proposed rule published in the **Federal Register** on September 3, 2009 (74 FR 45579); and amends the FAR to implement section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 872 requires the establishment of a data system, Federal Awardee Performance and Integrity Information System (FAPIIS), containing specific information on the integrity and performance of covered Federal agency contractors and grantees. FAPIIS is available for use in award decisions at *www.ppirs.gov*. Government input to FAPIIS is accomplished at *www.cpars.csd.disa.mil*.

FAPIIS is intended to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors competing for Federal contracts and to protect taxpayers from doing business with contractors that are not responsible sources. This final rule impacts Government contracting officers and contractors. The Government contracting officers will be required to—

• Check the FAPIIS website, available at *www.ppirs.gov*, before awarding a contract over the simplified acquisition threshold, consider all the information in FAPIIS and PPIRS when making a responsibility determination, and notify the agency official responsible for initiating debarment or suspension action if the information appears appropriate for the official's consideration; and

• Enter a non-responsibility determination into FAPIIS.

The contractor will be required to:

1. Confirm, at the time of offer submission, information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made, and report this information into FAPIIS; and

2. Update the information in FAPIIS on a semi-annual basis, throughout the life of the contract, by entering the required information into FAPIIS via the Central Contractor Registration database, available at *http://www.ccr.gov*.

Dated: March 18, 2010.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-40 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-40 is effective April 22, 2010.

Dated: March 17, 2010.

Linda W. Neilson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulation System).

Dated: March 16, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: March 15, 2010.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–6330 Filed 3–22–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 9, 12, 42, and 52

[FAC 2005–40; FAR Case 2008–027; Docket 2009–030, Sequence 1]

RIN 9000–AL38

Federal Acquisition Regulation; FAR Case 2008–027, Federal Awardee Performance and Integrity Information System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the Federal Awardee Performance and Integrity Information System (FAPIIS), as required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. FAPIIS is designed to improve the Government's ability to evaluate the business ethics and expected performance quality of prospective contractors and protect the Government from awarding contracts to contractors that are not responsible sources.

DATES: *Effective Date*: April 22, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Millisa Gary, Procurement Analyst, at (202) 501–0699. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–40, FAR case 2008–027.

SUPPLEMENTARY INFORMATION:

A. Background and Overview of Final Rule

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 45579, September, 3, 2009. This final rule adopts the proposed rule with a number of clarifying and technical changes.

This rule amends the Federal Acquisition Regulation (FAR) to implement the Federal Awardee Performance and Integrity Information System (FAPIIS). FAPIIS is designed to significantly enhance the Government's ability to evaluate the business ethics and quality of prospective contractors competing for Federal contracts and to protect taxpayers from doing business with contractors that are not responsible sources.

This rulemaking and the associated launch of FAPIIS are part of an ongoing initiative by the Administration to increase consideration of contractor integrity and the quality of a contractor's performance in awarding Federal contracts. These actions also address requirements set forth in section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. 110–417, for a system containing specific information on the integrity and performance of covered Federal agency contractors. (Consistent with the requirements of section 872, the Office of Management and Budget recently issued proposed guidance on the use of FAPIIS for grants. See 75 FR 7316, February 18, 2010).

Access to readily available Governmentwide information that a contracting officer would routinely consider when making a responsibility determination historically has been limited to debarment and suspension actions, which are maintained in the Excluded Parties List System (EPLS). Since this past summer, agencies have been required to submit electronic records of contractor performance into a single Governmentwide repository, the Past Performance Information Retrieval System (PPIRS), so that the information may be reviewed and considered by contracting officers across the Government. See 74 FR 31557, July 1, 2009. Improved inter-agency access to these assessments will motivate better performance and reduce the likelihood that taxpayer resources will go to contractors with poor track records in meeting the Government's requirements in an efficient and effective manner.

FAPIIS is intended to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors. In addition to providing one-stop access to EPLS and PPIRS, FAPIIS will also include contracting officers' non-responsibility determinations (*i.e.*, agency assessments that prospective contractors do not meet requisite responsibility standards to perform for the Government), contract terminations for default or cause, agency defective pricing determinations, administrative agreements entered into by suspension and debarment officials to resolve a suspension or debarment, and contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions. The system will collect this information, on an ongoing basis, from existing systems within the Government (*i.e.*, EPLS and PPIRS), contracting officers (for determinations of non-responsibility and contract terminations), suspension and debarment officials (for information on administrative agreements), and contractors (for information related to criminal, civil, and administrative proceedings).

Pursuant to this final rule:

- Contracting officers will be required to (i) review the information in FAPIIS in connection with contracts over the simplified acquisition threshold for the purpose of making a responsibility determination, (ii) document the contract file to explain how the information in FAPIIS was considered in any responsibility determination—as well as the action that was taken as a result of the information, and (iii) notify, prior to proceeding with award, the agency official responsible for initiating debarment or suspension, if information is identified in FAPIIS that appears appropriate for that official's consideration.
- Contracting officers must give offerors the opportunity to provide additional information that demonstrates their responsibility before the contracting officer makes a non-responsibility determination based on relevant information from FAPIIS if such information regards the following: criminal, civil, or administrative proceedings in connection with the award of a Government contract, terminations for default or cause, or determinations of non-responsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics, or comparable information relating to a grant.
- Vendors submitting a proposal on a Federal contract over $500,000 and having more than $10 million in active contracts and grants as of the time of proposal submission, must report in FAPIIS information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made. Under the resultant contract, the information must be updated in FAPIIS by the contractor on a semi-annual basis, through the life of the contract. The FAPIIS system will provide contractors with notification whenever the Government posts new information to the contractor's record. The contractor will have an opportunity to post comments regarding information that has been posted by the Government, including non-responsibility determinations, and such comments will be retained as long as the associated

information is retained (for a total period of six years) and remain part of the record unless the contractor revises them.

Although FAPIIS is designed to be a "one-stop" resource, the rule does not alter contracting officers' obligation, as set forth in FAR 9.105–1, to possess or obtain information sufficient to determine that a prospective contractor meets the applicable standards for establishing responsibility. The Councils will continue to look for additional appropriate sources of information, including relevant Government databases, to support contracting officers in evaluating the integrity of prospective contractors, as well as ways in which to further facilitate the analysis and validation of information collected.

The Councils intend to collect State-level information in connection with the award or performance of a contract or grant with a State government, as anticipated in section 872(c)(7). However, collection of this information has been deferred until a subsequent phase of FAPIIS. The Councils had concerns that the challenges of collecting State government information, such as establishing a reporting format that is consistent across State governments, could not be resolved without delaying this rulemaking. In addition to working out an appropriate plan for collecting State information, the Councils will explore the feasibility of collecting local government information. Further, the Councils and OMB are carefully considering the issuance of a proposed rule to further enhance the utility of FAPIIS by both (1) lowering the threshold for covered actions that trigger FAPIIS reporting from $500,000 to the simplified acquisition threshold, and (2) expanding the current scope of reporting to include other violations of laws, as opposed to violations only in the context of Federal contracts and grants. The public would be provided an opportunity to comment before any proposed changes are finalized.

B. Response to Comments Received on the Notice of Proposed Rulemaking

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 45579, September 3, 2009, with a public comment period ending October 5, 2009. On October 5, 2009, the comment period was extended to November 5, 2009 (74 FR 51112). The Councils received public comments from 16 respondents on the proposed rule. Copies of the comments received by the Councils in response to the **Federal Register** notice are available for review at *http://www.regulations.gov*. Comments largely focused on (1) the scope and quality of information to be collected in FAPIIS, (2) use of the database, (3) access to the database, (4) application of the rule to acquisitions for commercial items and commercial-off-the-shelf (COTS) items, and (5) the potential need for obtaining additional public comment. Based on the comments and additional deliberations, the Councils have made a number of refinements and technical changes to the rule. A summary description of the comments and the Councils' responses and changes adopted in the final rule are set forth below.

1. Information in FAPIIS

Many commenters raised issues related to the planned content of FAPIIS. A number of commenters focused on scope questions. Some of these commenters stated that the information collected in FAPIIS should be broadened beyond that stated in the proposed rule while others raised certain concerns with the scope of the proposed rule. Several commenters addressed data quality issues and made recommendations to ensure the accuracy and timeliness of FAPIIS data.

a. *Comments related to broadening the content in FAPIIS*. Examples of recommended expansions included lowering the threshold of covered contracts from $500,000 to all contracts that exceed the simplified acquisition threshold (presently $100,000), and augmenting the type of information collected to include: (i) violations of laws in the performance of any contract, as opposed to just Federal contracts; (ii) violations of labor and employment laws, regardless of whether the reimbursement, restitution, or damages meet the $100,000 threshold identified in section 872(c)(1); (iii) complaints and administrative settlements, including settlements without admission of fault, in order to ascertain information about contractors' performance patterns; (iv) information on debarments and suspensions carried out at the State level; (v) information on all proceedings entered into at any level of government, regardless of outcome; (vi) audit reports from cognizant Federal audit offices, such as the Government Accountability Office or the Defense Contract Audit Agency; and (vii) all information covered in the Online Representations and Certifications Application (ORCA). In addition, one respondent recommended that the archival period for information in FAPIIS be extended so that contracting officers have at their disposal as comprehensive a picture as possible.

Response: The Councils seek to ensure that FAPIIS provides contracting officers with efficient and effective access to the information they need to evaluate the business ethics and quality of prospective contractors competing for Federal contracts. To achieve this goal, the Councils have taken a phased approach to the implementation of FAPIIS, focusing first on the information specifically identified by Congress in section 872(c) of the FY 2009 NDAA. This approach has allowed the Councils to collaborate closely with the FAPIIS Program Manager, who is responsible for the architecture and technological requirements of the system. This approach also is providing an opportunity for agencies to become acclimated with the system and train their contracting officers. Going forward, this approach will allow the Councils to carefully consider policy and procedural issues as new sources of information are identified pursuant to section 872(b) and (c)(6).

For the next phase of FAPIIS, the Councils and OMB are carefully considering a proposed rule that would build on several suggestions made by the public and augment reporting by: (1) lowering the threshold for covered actions that trigger FAPIIS reporting from $500,000 to the simplified acquisition threshold and (2) expanding the current scope of reporting to include other violations of laws, as opposed to violations only in the context of Federal contracts. This information can further enhance the utility of FAPIIS and give contracting officers a fuller picture of a contractor's history of compliance.

However, a number of the other above-described suggestions for expansion raised concerns for the Councils. For example:

- Requiring the collection of information on all proceedings, regardless of outcome, could potentially create instances where negative judgments on contractors' responsibility are made regardless of the outcome of the referenced proceedings. If information regarding yet-to-be-concluded proceedings were allowed, negative perceptions could unfairly influence contracting officers to find a contractor non-responsible, even in situations that later end with the contractor being exonerated. The Councils are strongly committed to helping contracting officials avoid these types of situations.
- Incorporating all the information from ORCA is inappropriate. Much of the information in this system is not designed to support contracting officers in making responsibility determinations.

• Extending the archival period (for retaining information beyond five years) is also inappropriate as this period was created for auditing purposes, not for use by contracting officers in making responsibility determinations.

b. *Comments related to refining the proposed content in FAPIIS.* Examples of concerns voiced with the proposed collection of information included that (i) the collecting of information on administration agreements entered into to resolve a suspension or debarment increases the likelihood of a de facto debarment; and (ii) the definition of "covered person" to include principals is overbroad.

Response: The Councils appreciate the need to ensure that information included in FAPIIS will contribute to the stated purpose of the database and that appropriate training is provided to help contracting officers in their use of this information. The Councils did not agree, however, that significant revisions were warranted based on the requested refinements. In particular, the collection of information on administrative agreements entered into to resolve a suspension or debarment is required by section 872, so it must be included in the system. Regarding the concern raised with the definition of "covered person," the existing requirement at FAR 52.209–5 includes certification regarding both the offeror and the principals. Additionally, since the FAPIIS requirement for information does not relate to all offenses by the principals, but only to those that relate to the performance of a Federal contract or grant, this information should be available to the offeror.

As further clarification, the Councils have removed an inconsistency within the definition of "principal" between the stated meaning (person within the business entity) and one of the examples (head of a subsidiary). A subsidiary is not generally within the business entity, but is a separate and distinct legal entity. Therefore, the Councils have removed "head of a subsidiary" from the list of examples in the definitions of "principal" throughout the FAR, because it can imply a meaning broader than the stated definition. Deletion of this example should not result in any change of meaning, since this is just an example, and the definition clearly states that principals are persons within the business entity.

c. *Comments addressing the accuracy and timeliness of FAPIIS data.* Several commenters cited to recent Government audits that have revealed inaccurate, untimely or missing data associated with several existing databases that contracting officials are required to consult. Reliance on these databases has lead to recurring awards to suspended or debarred individuals and companies, or companies with questionable ethics. The commenters recommend better training of the acquisition workforce as a means to ensure entry of better data into FAPIIS. Another commenter requested enforceable guidelines for submission of accurate and timely data by contracting officers and suspension and debarment officials (SDOs), as well as contractors, with sanctions associated with non-compliance with FAPIIS reporting requirements. This commenter recommended that a single entity should have accountability and authority to ensure that the information submitted to the database is timely, accurate, and complete, and that the database is used effectively.

Response: Pursuant to section 872(d), the Administrator of GSA shall develop policies to require the timely and accurate input of information into the database. To this end, the Councils will work with the FAPIIS Program Manager, the Federal Acquisition Institute (FAI), and the Defense Acquisition University (DAU) to develop guidance for contracting officials and SDOs on proper input, accuracy, and timeliness of data into FAPIIS. In addition, the Councils have added a requirement to the rule similar to that at FAR 4.604 for data entry into the Federal Procurement Data System, stating that the contracting officers and SDOs are responsible for the timely submission and sufficiency of the data. There is no single entity that can be held accountable because the information in FAPIIS comes from various sources. However, each system to which FAPIIS connects has its own guidelines for timeliness and accountability and separate initiatives are being pursued to strengthen these systems. For example, OFPP's memorandum of July 29, 2009, *Improving the Use of Contractor Performance Information*, available at *http://www.whitehouse.gov/omb/assets/procurement/improving__use__of__contractor__perf__info.pdf*, requires the submission of report cards to the Past Performance Information Retrieval System (PPIRS). PPIRS has a standard format for supplying all the report card information collected from the Federal agencies to authorized Government users for use in source selection decisions, and the Government is working to improve compliance by Federal agencies in reporting this data and the quality of the information entered into PPIRS. In improving the compliance and quality of the data, over time, the accuracy of the data should improve. In the meantime, the Councils have added a requirement for timeliness and accountability for the Government personnel who will be entering data directly into the database. With respect to contractors, there are a range of penalties available to the Government for non-compliance with the requirements of a contract, such as determination of non-responsibility, termination for default, or suspension or debarment.

d. *Other comments related to information in FAPIIS.* One commenter sought clarification regarding whether FAPIIS will always display information on active debarments and suspensions and whether FAPIIS will provide access to information on expired debarments and suspensions. Another commenter recommended that the $10,000,000 threshold of open contracts triggering the requirement to submit information to FAPIIS be clarified to include all priced options and modifications.

Response: Regarding debarment and suspension, FAPIIS will provide access to data on active suspensions and debarments, even if the suspension or debarment was imposed more than five years ago. FAPIIS will also provide access to data on expired suspensions and debarments for five years after the expiration date. To access records after this period, agencies would need to utilize the Excluded Parties List System's archives. With respect to the $10 million threshold, the Councils concur that additional clarification is needed to capture the value of modifications when calculating the total value of all current, active contracts and grants. The language in the final rule has been refined to clarify that offerors must consider the total value of the contracts and grants including all priced options and modifications.

2. Use of FAPIIS

A number of commenters raised issues related to how information in FAPIIS will be used—especially in connection with responsibility determinations. Comments largely addressed the need for additional guidance and training and making sure contracting officers understand what information is relevant to their analysis. One comment also raised concern regarding the SDO notification process.

a. *Comments addressing the need for additional guidance and training.* Several commenters recommended that contracting officers be provided with guidance and training on (1) how to use the information in FAPIIS relative to past performance evaluations and non-responsibility determinations, and (2) the type and level of information to be

reported to agency SDOs. Some commenters specifically recommended that the FAR provide more specific parameters on how to evaluate and utilize the information in FAPIIS and when a referral to the SDO would be appropriate.

Response: The Councils appreciate the importance of helping contracting officials obtain the skill and aptitude necessary to discern the relevance and weight to be given the information reviewed. The Councils believe that training, rather than more specific standards in the regulations, is a better way to achieve this goal. The Councils will work with FAI and DAU to develop guidance and training for contracting officials on the proper use of the information contained in FAPIIS, and the type of information that would warrant submission to agency SDOs.

b. *Comments addressing cautions given to contracting officers on the relevance of information in FAPIIS*. Commenters raised concerns regarding the language proposed for FAR 9.104–6(b), which instructs contracting officers to "consider all the information in FAPIIS" but adds a caveat that "some of the information in FAPIIS may not be relevant to a determination of present responsibility" because "FAPIIS may contain information covering a five year period." The provision gives as an example of information that may not be relevant to a determination of present responsibility, a prior administrative action such as a debarment or suspension that has expired or otherwise been resolved. One commenter stated that the caution was confusing because it instructed award officials to consider information but then advised them that it may not be relevant. Another commenter was concerned that the caution imposed an unnecessary restriction on contracting officers' review of responsibility information. A third commenter supported the caution but recommended that it be expanded to also cover past performance.

Response: Section 872 requires retention of the data on suspension and debarment for five years and it requires consideration of all the data in the database. The Councils recognize that some of the data in the database may not be relevant when determining present responsibility and are committed to avoiding situations of unjustified determinations of non-responsibility. Without the language, contracting officers may think they are required to utilize outdated information that has no bearing on a contractor's present responsibility. The statement does not, as one commenter suggested, limit a contracting officer from considering any information that can be appropriately considered and that is relevant. In light of the comments, the Councils have clarified the explanation for the caution by stating that FAPIIS may contain information on any of the offeror's previous contracts and therefore may contain information relating to contractors for products or services that are completely different from those being acquired. The Councils have also added cross references to FAR 15.305(a)(2) as a reminder of relevance requirements in the consideration of past performance.

c. *Comment addressing the need to separate discussion of responsibility determinations and past performance evaluations*. One commenter noted that the proposed rule inappropriately mixes the discussion and handling of past performance evaluations and responsibility determinations.

Response: The Councils concur and have separated these two concepts. In the final rule, FAR section 9.104–6 focuses just on responsibility determinations. For past performance evaluations, the contracting officer is referred to FAR section 15.305(a)(2), which addresses how to evaluate the relevance of data and clearly states that this evaluation is separate from the responsibility determination required under subpart 9.1. The final rule also incorporates use of FAPIIS into the procedures addressing agency evaluations of contractor performance in FAR 42.1503 since there may be information in FAPIIS, such as terminations for default or cause and defective pricing assessments, that is not in PPIRS but still may be appropriately used, along with the information in PPIRS to evaluate an offeror's performance.

d. *Comment pertaining to the requirement for notifying SDOs*. One commenter was concerned that the requirement to notify the SDO may cause needless delay and recommended strengthening the authority of the contracting officer to make a decision that no additional information is necessary. The commenter also expressed concern about due process.

Response: The proposed language, which has been retained without change in the final rule, requires contracting officers to notify, prior to proceeding with award, the agency official responsible for initiating debarment or suspension action in accordance with agency procedures. This notification process closely tracks that already established in FAR 9.104–5 for situations where an offeror provides an affirmative response on its responsibility certification and therefore should not create undue additional delay. In addition, no changes have been made to procedures currently used to ensure an opportunity for the offeror to provide its input where responsibility is in question. The final rule follows the current practice for providing offerors with an opportunity to explain their responsibility if the contracting officer obtains relevant information from FAPIIS that could lead to a non-responsibility determination. Similarly, the rule makes no changes to the due process obligations associated with suspension or debarment actions.

3. Access to FAPIIS

Many commenters recommended that the rule authorize public access to FAPIIS, while other commenters voiced concerns over the security controls in place to protect awardee information.

a. *Comments related to public access*. Commenters favoring public access to FAPIIS stated that taxpayers have a right to know about the responsibility of contractors and that such access is "essential to efficient and effective implementation and oversight of Federal contracting." One commenter noted that by providing this access, the public could help oversee compliance in those instances where information is not fully disclosed, since contracting officers will not have time to check the facts self-reported by contractors. Other suggestions included providing access to inspectors general and Federal law enforcement agencies, and State governments. Comments were split on whether FAPIIS information should be available to the public under the Freedom of Information Act (FOIA) requests.

Response: Section 872(e)(1) provides that the Administrator of GSA shall ensure that the information in the database is available to appropriate acquisition officials of Federal agencies, to such other Government officials as the Administrator determines appropriate, and, upon request, to the Chairman and Ranking Members of the committees of Congress having jurisdiction. Therefore, the Councils do not believe that Congress intended for this database to be accessible by the public. However, Inspectors General and Federal law enforcement agencies could request access under the provision for access to "other Government officials as the Administrator determines appropriate." Whether FAPIIS data is releasable or exempt from disclosure under FOIA would be determined on a case-by-case basis. Public requests for system information will be handled under FOIA.

b. Comments related to security controls. Several commenters voiced concerns over the security controls in place to protect awardee information in FAPIIS. Under the final rule, like the proposed rule, contracting officials, offerors (pre-award) and contractors (post-award) will be required to input data into FAPIIS. The commenters are concerned that this sensitive information could affect the contractor in question if the sensitive information was made public.

Response: The Councils acknowledge the sensitivity of the information collected to future procurement opportunities for contractors. The information collected and viewable through FAPIIS will be considered source selection sensitive and require Government personnel to be given access through their agency focal points on a need-to-know basis for source selection decisions. (The FAPIIS database includes the same access controls as PPIRS.) Information on criminal, civil, and administrative proceedings submitted directly from vendors will be provided solely to the FAPIIS database. In addition, vendors will only be allowed to access information submitted to FAPIIS for their own entity based on their DUNS number and Marketing Partner Identification Number that they assign themselves as is done currently with access to PPIRS. Restrictions on access are set forth in a new contract clause which was added by the final rule and states: "With the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor's record in the system. Public requests for system information will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600."

4. Other issues

a. *Comments regarding the application of the rule to commercial items and commercial-off-the-shelf items.* One commenter favored application of the rule to the acquisition of commercial items and COTS items. Another opposed such application, stating that firms providing such items are least likely to have the systems in place to collect and update the requisite information and will be wary and reluctant to provide the information—but still acknowledged that such contractors may already be covered by the reporting requirements because of awards for other than COTS or commercial items.

Response: The Councils disagree with the arguments set forth to oppose application of the rule to commercial item and COTS acquisitions. An exemption for commercial item and COTS acquisitions would exclude a significant portion of Federal contractors, thereby undermining an overarching public policy to achieve greater integrity and performance quality in contracting that this law is intended to further. There also does not appear to be any unique burden that would undermine access to the commercial marketplace. The requirement for contractors to submit information into FAPIIS applies to those contractors with active Federal contracts and grants totaling more than $10 million at the time of proposal submission, and contractors with this level of activity generally should be equipped to collect and update the information in the system. The commenter even acknowledged that there is a reasonable likelihood a contractor offering a commercial item or COTS item may already be covered by the reporting requirement by virtue of past awards for other than commercial items and COTS.

Prior to making this rule applicable to commercial item acquisitions, and pursuant to section 34 of the Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. 430, the FAR Council must make a written determination that it would not be in the best interest of the Federal Government to exempt this law from contracts for the procurement of commercial items. Similarly, prior to making this statutory requirement applicable to COTS acquisitions, and pursuant to section 35 of the OFPP Act, 41 U.S.C. 431, the Administrator of OFPP must make a written determination that it would not be in the best interest of the United States to exempt this law from contracts for COTS items. The preamble to the proposed rule stated the intention of the FAR Council and the Administrator to make the requisite best interest determinations for applying this rule to commercial items and COTS items respectively. The required determinations have been made and, consistent with these determinations, the final rule has been promulgated to cover acquisitions of commercial items and COTS.

b. *Comments addressing the business rules for FAPIIS.* One respondent requested that the business rules discussed in the preamble to the proposed rule be incorporated into the regulation. (The preamble outlined principles to ensure timely availability of information and proper use of the information while also protecting against improper disclosure to the public.)

Response: The Councils have incorporated the business rules that impact the contractor into a new clause addressing updates of information regarding responsibility matters: (1) The Contractor will receive notification when the Government posts new information to the Contractor's record. (2) Only Government personnel and authorized users conducting business on behalf of the Government can view system information, with the exception that a Contractor can view its own information. Public requests for information will be handled under the Freedom of Information Act procedures including, where appropriate, procedures promulgated under E.O. 12600. (3) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The contractor comments will be retained as long as the associated information is retained, *i.e.*, for a total period of six years. Contractor comments will remain a part of the record unless the Contractor revises them.

c. *Comments regarding potential redundancy of FAPIIS to pre-existing systems.* Several respondents indicated concern that FAPIIS is duplicative of the current past performance systems (*e.g.*, Past Performance Information Retrieval System (PPIRS), Contractor Performance Assessment Reporting System (CPARS), and the Excluded Parties List System (EPLS)); and that the Government should provide a one-stop shop for performance data.

Response: FAPIIS will provide a one-stop shop by providing a central nexus of access to the information stored in various existing systems. FAPIIS has been developed as a module within PPIRS and provides links to the other existing sources of relevant information. The information that will be entered directly into FAPIIS is not duplicated in any of these other sources. The information entered by contracting officers (*e.g.*, terminations for default) will be entered into FAPIIS via CPARS. Information required of the vendor regarding criminal/civil/administrative proceedings through which a requisite determination of fault was made will be entered via the Central Contractor Registration (CCR) system. Vendor past performance information will still be entered into PPIRS, and information regarding suspension or debarment will still be entered into EPLS. FAPIIS will then bring all of this information together for the authorized user's access and review.

d. *Comments addressing standardization of past performance data*. Several respondents made comments regarding the standardization of past performance data in general—*i.e.*, that a standardized collection format should be developed and applied across the agencies and an unrestricted unique identifier for contractors be used. They are concerned about the accuracy of overall past performance data throughout the Federal procurement enterprise on which FAPIIS will be partially relying.

Response: The Councils acknowledge the concern regarding standardization of the collection of all past performance data in general. As mentioned above, the Federal Government is making strides to improve the collection of past performance information required by FAR subpart 42.15. This includes the memorandum issued by the Office of Federal Procurement Policy (OFPP) on July 29, 2009, which required the submission of report cards to the Past Performance Information Retrieval System (PPIRS). PPIRS has a standard format for report card information, and provides that information to all authorized Government users for use in source selection decisions. We are working to improve compliance with the requirement to submit data to this system and to improve the quality of the data submitted. As these efforts proceed, the accuracy of the data should improve.

e. *Comments raising technical issues*. A number of commenters offered technical corrections to the proposed rule.

Response: The Councils have made the following changes to the proposed rule:

• In response to a concern that language in FAR 9.104–6(d) should be modified to ensure consistency with the application of the standards to small business, the Councils deleted the coverage at FAR 9.104–3(d)(1)(ii) as duplicative of the language at FAR 9.105–2(b)(2).

• The cross-reference at FAR 9.105–2(a)(1)(i) has been deleted and the cross-reference at FAR 9.105–2(b)(1) has been added. These paragraphs were rearranged to correctly differentiate between the determination in paragraph (a) and documentation in paragraph (b).

• In response to a concern that the word "may" in FAR 9.105–2(a)(2) suggested that a contracting officer need not necessarily accept the SBA's decision to issue a Certificate of Competency, this word has been changed to "shall" to reflect the conclusive nature of the issuance of such a certificate.

• The language in FAR 9.406–3 and FAR 9.407–3 have been changed for consistency with the existing definitions at FAR 9.403 by changing "debarment official" and "suspension official" to "debarring official" and "suspending official," respectively.

• In response to a concern that the rule asked offerors to account for the accuracy of information submitted by Government officials and others, FAR 52.209–7(c) has been revised to read ". . . by submission of this offer, that the information it has entered in the Federal Awardee. . ." in order to limit the certification to information the contractor itself provided.

• The introductory text of FAR 52.209–7(c)(1) has been reworded to clarify that the provision only applies if the offeror was the subject of a proceeding. Before this change, it was unclear whether, for example, an offeror involved in litigation wherein a different party was found liable would have to report that under this clause.

• The phrase "maximum extent practicable and consistent with all applicable laws and regulations. . ." has been deleted from FAR clause 52.209–7(c)(1)(iv).

• Paragraph (d) of FAR provision 52.209–7 required an ongoing responsibility to update information on a semi-annual basis in FAPIIS. In response to several respondents who pointed out that this is a post-award requirement, this paragraph has been removed from the solicitation provision and incorporated into a new FAR clause, 52.209–8.

• In response to a concern that the phrase "administrative proceeding" could be interpreted to include formal and informal actions such as audit reports, the Councils have clarified the rule to indicate that "administrative proceeding" does not include audit reports.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule will only impact an offeror that has failed to meet Government performance requirements or standards for integrity and business ethics. The FAR already contains standards for present responsibility of offerors. This information system provides a tool to help contracting officers to comply with existing requirements. Further, the final rule only imposes an information collection requirement on small businesses that have total Government grants and contracts exceeding $10 million, which excludes most small businesses. No comments were received on the impact on small business.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. Accordingly, the Regulatory Secretariat has received approval of the new information collection requirement concerning Federal Awardee Performance and Integrity Information System from the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.* OMB Control number 9000–0174, Information Regarding Responsibility Matters.

Annual Reporting Burden:

The final rule requires that for each solicitation of $500,000 or more, the offeror responds as to whether it has, or has not, current contracts and grants that total greater than $10,000,000. Only if the offeror responds affirmatively is there any further information collection requirement. Given that the amount of current Federal contracts and grants is basic knowledge for any firm, the estimated number of hours for this initial response is 0.1 hours. Using data from the Federal Procurement Data System—Next Generation (FPDS-NG), it is estimated that there will be approximately 12,000 - 14,000 contracts over $500,000 each year. Estimating between five and six responses to each solicitation, there will be 80,000 responses annually to the question regarding contracts/grants exceeding $10 million.

Contractors awarded more than one contract will still only have to input the data two times per year. It is estimated that 5,000 contractors will answer the first question affirmatively and then will have to enter data into the website. We have used an average burden estimate of 0.5 hours to enter the company's data into the website and to do the semi-annual updates. This time estimate does not include the time necessary to maintain the company's information internally. Most large businesses and some small businesses probably have established systems to track compliance. At this time, all or most Government contractors have entered relevant company data in the Central Contractor

Registration (CCR) in accordance with another information collection requirement. Therefore, the estimate includes an average of 100 hours per year for recordkeeping for each of the 5,000 respondents that will be required to provide additional information, for a total of 500,000 annual recordkeeping hours. The total annual reporting burden is estimated as follows:

Public reporting burden for this collection of information is estimated to average 0.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 8,000.

Responses per respondent: Approximately 11.

Total annual responses: 90,000.

Preparation hours per response: Approximately 0.15 hours.

Response burden hours: 13,000.

Recordkeeping hours: 500,000.

Total burden hours: 513,000.

Comment: The Councils received several comments on the estimates for the Information Collection requirements associated with the new rule. One respondent considered that the estimate of .15 hours per contractor was very low, considering its experience with computer system access between the Federal Government and its institution. In particular, one respondent thought that the estimates would have to be increased because it did not cover the semi-annual updates to the data-base.

Response: The estimate of .15 hours per response was a weighted average between the respondents that did not have to enter any data except a negative response with regard to having total contracts and grants greater than $10 million (.1 hours), and those that would need to provide further data to FAPIIS (.5 hours).

The estimates that were published with the proposed rule did cover the semi-annual updates. The supporting statement that was submitted to OMB specifically stated that two responses per respondent per year were calculated for those respondents with contracts and grants greater than $10 million, because of the requirement for semi-annual updates.

List of Subjects in 48 CFR Parts 2, 9, 12, 42, and 52

Government procurement.

Dated: March 18, 2010.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 9, 12, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 9, 12, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in the definition "Principal" by removing "subsidiary, division, or" and adding "division or" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.101 by revising the section heading and adding, in alphabetical order, the definition "Administrative proceeding" to read as follows:

9.101 Definitions.

Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and state level but only in connections with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

* * * * *

■ 4. Amend section 9.104–3 by revising paragraph (d)(1) to read as follows:

9.104–3 Application of standards.

* * * * *

(d)(1) *Small business concerns.* Upon making a determination of nonresponsibility with regard to a small business concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see subpart 19.6).

* * * * *

■ 5. Redesignate section 9.104–6 as 9.104–7, add new section 9.104–6, and revise newly redesignated section 9.104–7 to read as follows:

9.104–6 Federal Awardee Performance and Integrity Information System.

(a) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at *www.ppirs.gov*, then select FAPIIS).

(b) The contracting officer shall consider all the information in FAPIIS and other past performance information (see subpart 42.15) when making a responsibility determination. For source selection evaluations of past performance, see 15.305(a)(2). Contracting officers shall use sound judgment in determining the weight and relevance of the information contained in FAPIIS and how it relates to the present acquisition. Since FAPIIS may contain information on any of the offeror's previous contracts and information covering a five-year period, some of that information may not be relevant to a determination of present responsibility, *e.g.*, a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

(c) If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer shall, unless the contractor has already been debarred or suspended—

(1) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award,in accordance with agency procedures (see 9.406–3(a) and 9.407–3(a)), the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

(d) The contracting officer shall document the contract file for each contract in excess of the simplified acquisition threshold to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that

was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to document that information in FAPIIS in accordance with 9.105–2 (b)(2).

9.104–7 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.209–5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 52.209–7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed $500,000.

(c) The contracting officer shall insert the clause at 52.209–8, Updates of Information Regarding Responsibility Matters—

(1) In solicitations where the resultant contract value is expected to exceed $500,000; and

(2) In contracts in which the offeror checked "has" in paragraph (b) of the provision 52.209–7.

■ 6. Amend section 9.105–1 by revising the introductory text of paragraph (c), removing paragraph (c)(1), and redesignating paragraphs (c)(2) through (c)(6) as paragraphs (c)(1) through (c)(5). The revised text reads as follows:

9.105–1 Obtaining information.

* * * * *

(c) In making the determination of responsibility, the contracting officer shall consider information in FAPIIS (see 9.104–6), including information that is linked to FAPIIS such as from the Excluded Parties List System (EPLS) and the Past Performance Information Retrieval System (PPIRS), and any other relevant past performance information (see 9.104–1(c) and subpart 42.15). In addition, the contracting officer should use the following sources of information to support such determinations:

* * * * *

■ 7. Amend section 9.105–2 by revising paragraphs (a)(2) and (b) to read as follows:

9.105–2 Determinations and documentation.

(a) * * *

(2) If the contracting officer determines that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the contracting officer shall accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

(b) *Support documentation.* (1) Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, the use of FAPIIS information (see 9.104–6), and any applicable Certificate of Competency, must be included in the contract file.

(2)(i) The contracting officer shall document the determination of nonresponsibility in FAPIIS (available at *www.cpars.csd.disa.mil*, then select FAPIIS) if—

(A) The contract is valued at more than the simplified acquisition threshold;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The contracting officer is responsible for the timely submission, within 3 working days, and sufficiency of the documentation regarding the nonresponsibility determination.

9.404 [Amended]

■ 8. Amend section 9.404 by removing from paragraph (c)(3) "5 working" and adding "3 working" in its place.

■ 9. Amend section 9.406–3 by adding paragraph (f) to read as follows:

9.406–3 Procedures.

* * * * *

(f)(1) If the contractor enters into an administrative agreement with the Government in order to resolve a debarment proceeding, the debarring official shall access the website (available at *www.cpars.csd.disa.mil*, then select FAPIIS) and enter the requested information.

(2) The debarring official is responsible for the timely submission, within 3 working days, and accuracy of the documentation regarding the administrative agreement.

■ 10. Amend section 9.407–3 by adding paragraph (e) to read as follows:

9.407–3 Procedures.

* * * * *

(e)(1) If the contractor enters into an administrative agreement with the Government in order to resolve a suspension proceeding, the suspending official shall access the website (available at *www.cpars.csd.disa.mil*, then select FAPIIS) and enter the requested information.

(2) The suspending official is responsible for the timely submission, within 3 working days, and accuracy of the documentation regarding the administrative agreement.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 11. Amend section 12.301 in paragraph (d) by adding paragraphs (d)(3) and (d)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(3) Insert the provision at 52.209–7, Information Regarding Responsibility Matters, as prescribed in 9.104–7(b).

(4) Insert the clause at 52.209–8, Updates of Information Regarding Responsibility Matters, as prescribed in 9.104–7(c).

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1503 [Amended]

■ 12. Amend section 42.1503 in paragraph (e) by removing "order." and adding "order, and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS) *e.g.*, terminations for default or cause." in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–13 [Amended]

■ 13. Amend section 52.203–13 by removing from the clause heading "(Dec 2008)" and adding "(Apr 2010)" in its place; and removing from the definition "Principal" the words "subsidiary, division, or" and adding "division or" in its place.

52.209–5 [Amended]

■ 14. Amend section 52.209–5 by—

■ a. Removing from the introductory paragraph "9.104–6" and adding "9.104–7(a)" in its place;

■ b. Removing from the clause heading "(Dec 2008)" and adding "(Apr 2010)" in its place;

■ c. Removing from paragraph (a)(1)(i)(B) "state" and adding "State" in its place, wherever it occurs (twice), and removing "property;" and adding "property (if offeror checks "have", the offeror shall also see 52.209–7, if included in this solicitation);" in its place; and

■ d. Removing from paragraph (a)(2) "subsidiary, division, or" and adding "division or" in its place.
■ 15. Add sections 52.209–7 and 52.209–8 to read as follows:

52.209–7 Information Regarding Responsibility Matters.

As prescribed at 9.104–7(b), insert the following provision:

INFORMATION REGARDING RESPONSIBILITY MATTERS (Apr 2010)

(a) *Definitions.* As used in this provision—

Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

Federal contracts and grants with total value greater than $10,000,000 means—

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

(b) The offeror [ ] has [ ] does not have current active Federal contracts and grants with total value greater than $10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of $5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall enter the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the Central Contractor Registration database at *http://www.ccr.gov* (see 52.204–7).

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(End of provision)

52.209–8 Updates of Information Regarding Responsibility Matters.

As prescribed at 9.104–7(c), insert the following clause:

UPDATES OF INFORMATION REGARDING RESPONSIBILITY MATTERS (Apr 2010)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by entering the required information in the Central Contractor Registration database at *http://www.ccr.gov* (see 52.204–7).

(b)(1) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(2) The Contractor will have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) With the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor's record in the system. Public requests for system information will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

52.212–5 [Amended]

■ 16. Amend section 52.212–5 by—
■ a. Removing from the clause heading "(Feb 2010)" and adding "(Apr 2010)" in its place;
■ b. Removing from paragraphs (b)(2) and (e)(1)(i) "(Dec 2008)" and adding "(Apr 2010)" in its place;
■ c. Removing from Alternate II "(Dec 2009)" and adding "(Apr 2010)" in its place; and
■ d. Removing from Alternate II paragraph (e)(1)(ii)(A) "(Dec 2008)" and adding "(Apr 2010)" in its place.

52.213–4 [Amended]

■ 17. Amend section 52.213–4 by removing from the clause heading and paragraph (a)(2)(vi) "(Dec 2009)" and adding "(Apr 2010)" in its place.

52.244–6 [Amended]

■ 18. Amend section 52.244–6 by removing from the clause heading "(Dec 2009)" and adding "(Apr 2010)" in its place; and removing from paragraph (c)(1)(i) "(Dec 2008)" and adding "(Apr 2010)" in its place.

[FR Doc. 2010–6329 Filed 3–22–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–40; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the

Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of the summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–40 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–40 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–40 and the specific FAR case number. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–40

Subject	FAR case	Analyst
Federal Awardee Performance and Integrity Information System (FAPIIS) ...	2008–027	Gary.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to FAR Case 2008–027.

FAC 2005–40 amends the FAR as specified below:

Federal Awardee Performance and Integrity Information System (FAPIIS) (FAR case 2008–027)

This final rule adopts, with changes, the proposed rule published in the **Federal Register** on September 3, 2009 (74 FR 45579); and amends the FAR to implement section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. Section 872 requires the establishment of a data system, Federal Awardee Performance and Integrity Information System (FAPIIS), containing specific information on the integrity and performance of covered Federal agency contractors and grantees. FAPIIS is available for use in award decisions at *www.ppirs.gov*. Government input to FAPIIS is accomplished at *www.cpars.csd.disa.mil*.

FAPIIS is intended to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors competing for Federal contracts and to protect taxpayers from doing business with contractors that are not responsible sources. This final rule impacts Government contracting officers and contractors. The Government contracting officers will be required to—

• Check the FAPIIS website, available at *www.ppirs.gov*, before awarding a contract over the simplified acquisition threshold, consider all the information in FAPIIS and PPIRS when making a responsibility determination, and notify the agency official responsible for initiating debarment or suspension action if the information appears appropriate for the official's consideration; and

• Enter a non-responsibility determination into FAPIIS.

The contractor will be required to:

1. Confirm, at the time of offer submission, information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made, and report this information into FAPIIS; and

2. Update the information in FAPIIS on a semi-annual basis, throughout the life of the contract, by entering the required information into FAPIIS via the Central Contractor Registration database, available at *http://www.ccr.gov*.

Dated: March 18, 2010.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–6331 Filed 3–22–10; 8:45 am]

BILLING CODE 6820–EP–S

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