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DEPARTMENT OF HOMELAND SECURITY

2 CFR Part 3002

Federal Emergency Management Agency

44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361

[Docket ID: FEMA–2015–0012]

RIN 1601–AA71

Adoption of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; States and Tribal Mitigation Planning Regulations Change

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: On December 19, 2014, all Federal award-making agencies, including the Department of Homeland Security (DHS) and its component, the Federal Emergency Management Agency (FEMA), published a joint interim final rule implementing the Office of Management and Budget (OMB)'s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. DHS and FEMA now adopt, with one change, the interim final rule as final. The change restores language in the FEMA State and Tribal mitigation planning regulations that was inadvertently removed by the interim final rule.

DATES: *Effective Date:* November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Andrea Brandon, Director, Financial Assistance Policy and Oversight (FAPO), Office of the Chief Financial Officer (OCIO), DHS, at (202) 447–0675 or Andrea.Brandon@hq.dhs.gov. Paul Huang, Acting Division Director, Risk Analysis Division, Federal Insurance

and Mitigation Administration, DHS/FEMA, at (202) 646–3252 or Paul.Huang@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 23, 2009, the President issued Executive Order 13520 (“Reducing Improper Payments and Eliminating Waste in Federal Programs”). On February 28, 2011, the President issued a Presidential Memorandum (“Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments”). These documents directed OMB to work with Executive Branch agencies to potentially establish reforms on Federal grant policies.

In response, on October 27, 2011, OMB established the Council on Financial Assistance Reform, an interagency group of Executive Branch officials tasked with creating an accountable structure to coordinate financial assistance, streamline Federal grant-making requirements, ease administrative burdens, and strengthen Federal fund oversight to reduce risks of waste, fraud, and abuse.

On February 28, 2012, OMB published an Advanced Notice of Proposed Guidance. *See* 77 FR 11778. On February 1, 2013, OMB published a Notice of Proposed Guidance. *See* 78 FR 7282. Both documents solicited public comment on ideas for reforming the requirements that govern the management of Federal financial assistance awards. On December 26, 2013, OMB published the Uniform Guidance, which added Part 200 (“OMB Guidance”) to Title 2 (“Grants and Agreements”) of the Code of Federal Regulations. *See* 79 FR 75871. The Uniform Guidance included:

- The consolidation of eight previously-issued OMB Circulars on grants and awards;
- A uniform set of administrative requirements for grant recipients;
- A focus on grantee performance over compliance for accountability;
- An emphasis on efficient uses of information technology and shared services;
- A uniform set of cost principles that treats costs transparently and consistently;
- A limitation on allowable costs in order to make best uses of Federal resources;

- The standardization of business processes using consistent data element definitions;

- An emphasis on oversight by reviewing risks prior to awarding grants; and

- A uniform set of audit requirements that prioritizes identifying the risks of fraud, waste, and abuse.

The Uniform Guidance required Federal agencies to implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014. *See* 2 CFR 200.110.

On December 19, 2014, all Federal award-making agencies promulgated a joint interim final rule implementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. *See* 79 FR 75871. In the interim final rule, DHS adopted OMB's Guidance as DHS's own via 2 CFR part 3002, and FEMA removed 44 CFR part 13 (FEMA's grant administration regulations). Also, throughout Title 44, FEMA replaced all references to Part 13 with corresponding references to 2 CFR parts 200 and 3002, as applicable.

During the joint interim final rule's comment period, OMB received 61 comments from individuals and organizations. No comments OMB received referenced DHS or FEMA. Thus, DHS and FEMA are adopting the interim final rule as final, with one change.

II. Change to December 19, 2014 Interim Final Rule

FEMA's mitigation planning regulations are located at 44 CFR part 201, and set forth instructions on the policies and procedures for State, Tribal, and local hazard mitigation planning. Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented over the long-term to reduce risk and future losses. State, Indian Tribal, and local governments are required to develop a hazard mitigation plan as one of the conditions for establishing eligibility for certain types of Federal non-emergency disaster assistance and FEMA mitigation grants.

The December 19, 2014 joint interim final rule contained an inadvertent error

to FEMA's Standard State Mitigation Planning regulations at 44 CFR 201.4(c)(7) and to FEMA's Tribal Mitigation Planning regulations at 44 CFR 201.7(c)(6). Prior to the December 19, 2014 joint interim final rule, these sections read as published in Title 44 of the Code of Federal Regulations, revised as of October 1, 2014.

In the December 19, 2014 joint interim final rule, FEMA revised the first sentences of 44 CFR 201.4(c)(7) and 44 CFR 201.7(c)(6) with a general citation to 2 CFR parts 200 and 3002. However, FEMA unintentionally removed the second sentence of these sections and thus inadvertently removed a procedure by which States and Indian Tribal governments amend their mitigation plans when necessary to reflect changes in State, Indian Tribal, or Federal laws or regulations. In this final rule, FEMA is reinserting this provision.

While FEMA previously referenced 44 CFR 13.11(d) in both 44 CFR 201.4(c)(7) and in 44 CFR 201.7(c)(6), FEMA, as noted above, removed 44 CFR part 13 and replaced all references to Part 13 with corresponding references to 2 CFR parts 200 and 3002, as applicable. There are no corresponding pinpoint cites in 2 CFR part 200 or Part 3002 that replace the requirements found at 44 CFR 13.11(d). Thus, FEMA cannot carry this reference over to the revised regulations. FEMA regulations have included the procedure for States and Indian Tribal governments since 2002 and 2007, respectively, to amend their plans to reflect changes in State, Indian Tribal, or Federal laws, statutes and regulations, as applicable. As FEMA is simply reinserting an inadvertently removed and longstanding provision, this change does not create new program requirements. FEMA also describes these provisions in various guidance materials and is revising the references as applicable.¹

III. Regulatory Analyses

A. Executive Order 12866 Determination

Pursuant to Executive Order 12866, as amended, OMB's Office of Information and Regulatory Affairs (OIRA) has designated this final rule to be not significant.

¹ State Multi-Hazard Planning Guidance, effective through March 5, 2016, <https://www.fema.gov/media-library/assets/documents/103285>; State Mitigation Plan Review Guide, effective on March 6, 2016, <https://www.fema.gov/media-library/assets/documents/101659>; Tribal Multi-Hazard Planning Guidance, <https://www.fema.gov/media-library/assets/documents/18355>.

B. Administrative Procedure Act

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when it promulgates an interpretive rule, a general statement of policy, or a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). DHS is issuing this change to reinstate FEMA procedures inadvertently removed in the interim final rule, related to ensuring mitigation plan compliance with applicable laws and regulations. Thus, DHS finds that this part of the final rule relates to agency procedures and is exempt from notice and comment.

In addition, the APA provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for good cause, finds those procedures are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(B). DHS is reinserting two provisions concerning mitigation plan compliance with applicable laws and regulations, a requirement that was already present in 44 CFR 201.4(c)(7) and 44 CFR 201.7(c)(6). Thus, DHS finds that notice and comment is unnecessary and that this part of the final rule is exempt from notice and comment.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes no cost as the common interim rule implemented OMB final guidance issued on December 26, 2013, and did not have a significant economic impact beyond the impact of the December 2013 guidance.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory 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 or more in any one year. As the final rule would not have an impact greater than \$100,000,000 or more in any one year, it is not an unfunded Federal mandate.

E. Paperwork Reduction Act (PRA) of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch.

3506; 5 CFR Appendix A.1) (PRA), DHS and FEMA reviewed this final rule and have determined that there are no new collections of information contained therein.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," (65 FR 67249, Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. DHS and FEMA have determined that this final rule does not have any Tribal implications.

G. Executive Order 13132 Determination

DHS and FEMA have determined that this final rule does not have any federalism implications, as required by Executive Order 13132.

List of Subjects

2 CFR Part 3002

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs-agriculture, Grant programs-business and industry, Grant programs-communications, Grant

programs-education, Grant programs-energy, Grant programs-health, Grant programs-housing and community development, Grant programs-social programs, Grant administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs-agriculture, Loan programs-business and industry, Loan programs-communications, Loan programs-energy, Loan programs-health, Loan programs-housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable Energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

44 CFR Part 13

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

44 CFR Part 78

Flood insurance, Grant programs.

44 CFR Part 79

Flood insurance, Grant programs.

44 CFR Part 152

Fire prevention, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources,

Penalties, Reporting and recordkeeping requirements.

44 CFR Part 207

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 208

Disaster assistance, grant programs.

44 CFR Part 304

American Samoa, Civil defense, Grant programs-National defense, Guam, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands.

44 CFR Part 360

Civil defense, Disaster assistance, Education, Grant programs-education, Intergovernmental relations, Reporting and recordkeeping requirements.

44 CFR Part 361

Disaster assistance, Grant programs-housing and community development, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 2 CFR part 3002 and 44 CFR parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361, which was published in the **Federal Register** at 79 FR 75871 on December 19, 2014, is adopted as final with the following changes:

Title 44—Emergency Management and Assistance

PART 201—MITIGATION PLANNING

■ 1. The authority citation for Part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Section 201.4 is amended by adding a sentence to the end of paragraph (c)(7) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(c) * * *
(7) * * * The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations.

* * * * *

■ 3. Section 201.7 is amended by adding a sentence to the end of paragraph (c)(6) to read as follows:

§ 201.7 Tribal Mitigation Plans.

* * * * *

(c) * * *
(6) * * * The Indian Tribal government will amend its plan whenever necessary to reflect changes in Tribal or Federal laws and statutes.

* * * * *

Dated: September 22, 2015.

Jeh Charles Johnson,

Secretary of Homeland Security.

[FR Doc. 2015-24584 Filed 10-1-15; 8:45 am]

BILLING CODE 9111-66-P, 9110-17-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2015-0040]

Golden Nematode; Removal of Regulated Areas in Orleans, Nassau, and Suffolk Counties, New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the golden nematode regulations by removing areas in Orleans, Nassau, and Suffolk Counties in the State of New York from the list of generally infested areas. Surveys and other data have shown that certain areas in these counties are free of golden nematode, and we have determined that regulation of these areas is no longer necessary. As a result of this action, areas in Orleans, Nassau, and Suffolk Counties in the State of New York that have been listed as generally infested will be removed from the list of areas regulated for golden nematode. This action is necessary to relieve restrictions on certain areas that are no longer necessary.

DATES: This interim rule is effective October 2, 2015. We will consider all comments that we receive on or before December 1, 2015.

ADDRESSES: You may submit comments by either of the following methods:

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2015-0040>.

• **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS-2015-0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket

may be viewed at <http://www.regulations.gov/>

#!docketDetail;D=APHIS-2015-0040 or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan M. Jones, National Policy Manager, Pest Management, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 851-2128.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land that contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of the State of New York.

In 7 CFR part 301, the golden nematode quarantine regulations (§§ 301.85 through 301.85-10, referred to below as the regulations) set out procedures for determining the areas regulated for golden nematode and impose restrictions on the interstate movement of regulated articles from regulated areas.

Paragraph (a) of § 301.85-2 states that the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as regulated areas each quarantined State or each portion thereof in which golden nematode has been found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities.

Paragraph (b) of § 301.85-2 states that the Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a).

Paragraph (c) of § 301.85-2 states that, in accordance with the criteria listed in § 301.852(a), the Deputy Administrator shall terminate the designation of any area listed as a regulated area and suppressive or generally infested area when he or she determines that such designation is no longer required.

Surveys and other data have revealed that certain areas in Orleans, Nassau, and Suffolk Counties of New York are free of golden nematode. Accordingly, on September 17, 2014, APHIS issued a Federal Order¹ to terminate the quarantine designation of specified areas within these three counties, thereby removing 600,524 acres from the golden nematode regulations. As a result, it is no longer necessary to regulate these areas or restrict the interstate movement of golden nematode regulated articles from these areas.

Approximately 509 acres will remain under regulation in Nassau County, 68 acres in Orleans County, and 221,504 acres in Suffolk County. Further analysis continues in each of these counties that may lead to additional acres being eligible to be removed from regulation in the future.

Correction

In an interim rule dated January 9, 2013 (78 FR, 1713-1715, Docket No. APHIS-2012-0079), we amended the golden nematode regulations by removing areas in Livingston and Steuben Counties in New York from the list of generally infested areas. In that rule, the coordinates we used to delineate the revised areas under quarantine were formatted in such a way that they did not accurately represent the areas we wished to lift from restrictions. Therefore, we are publishing the corrected coordinates of the areas remaining under quarantine in Livingston and Steuben Counties in this rule.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary on the specified areas in Orleans, Nassau, and Suffolk Counties in New York that have been regulated for golden nematode. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will

include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS has removed 600,524 acres from the golden nematode regulations in specific areas in three New York counties: Orleans, Nassau, and Suffolk. Of the areas remaining under regulation, 221,504 acres are in Suffolk County, 509 acres are in Nassau County, and 68 acres are in Orleans County.

Golden nematode is a major pest of potato and other many other solanaceous plants. Sale of many soil-related products is negatively impacted in areas under quarantine for golden nematode. We impose sanitation requirements on movement of agricultural equipment and non-agricultural entities that use earth-moving equipment. The pest is spread by the transport of cysts in soil, in particular through the inadvertent movement of infested soil attached to agricultural products, farming equipment, and other regulated articles.

In 2014, the State of New York harvested 15,800 acres of potatoes valued at approximately \$55 million, with Suffolk County being the number one county in potato production. While there are no detailed potato data published by county, 42 entities in Suffolk County have been affected by the deregulation and of these 18 entities are potato growers. One potato farm has been affected by the deregulation in Nassau County. Deregulation of quarantine areas in Orleans County is not known to have affected any entities.

The 43 affected entities will benefit from no longer needing to satisfy compliance requirements of the quarantine. They may also find improved export opportunities. While the potato farmers as well as the rest of the affected entities may qualify as small entities, they are few in number and their share of the nation's potato industry is small. Even though New

¹ Domestic Quarantine Notice for Revision of Golden Nematode Regulated Area (DA-2014-43), September 17, 2014: http://www.aphis.usda.gov/plant_health/plant_pest_info/nematode/downloads/DA-2014-43.pdf.

York ranks 12th in volume among the States that produce potatoes, the value of its production is only 1.7 percent of the value of all U.S. production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.85–2a, under the heading “New York,” in paragraph (1), the entries for Livingston County, Nassau County, Orleans County, Steuben County, and Suffolk County are revised to read as follows:

§ 301.85–2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) *Generally infested area:*

* * * * *

Livingston County. (A) That portion of land in the area of South Lima North Muck in the town of Lima bounded as follows: Beginning at a point along the north side of South Lima Rd. marked by latitude/longitude coordinates 42.8553, –77.6738; then north along a farm road to coordinates 42.8588, –77.6712; then east along a farm road to coordinates 42.8596, –77.6678; then north along a farm road to coordinates 42.8624, –77.6683; then east along a farm road to coordinates 42.8624, –77.6648; then north along a farm road to coordinates number 42.8735, –77.6651; then west along a farm road to coordinates number 42.8735, –77.6684; then south along Little Conesus Creek to coordinates 42.8712, –77.6693; then west to include a portion of an access road and gravel clean off site to coordinates 42.8712, –77.6705; then south to coordinates 42.8711, –77.6704; then east to coordinates 42.8711, –77.6699; then north to coordinates 42.8712, –77.6698; then east to coordinates 42.8711, –77.6693; then south along Little Conesus Creek to coordinates 42.8688, –77.6702; then west along a farm road to coordinates 42.8688, –77.6713; then south along a farm road to coordinates 42.8659, –77.6733; then south along a farm road to coordinates 42.8642, –77.6740; then west along a farm road to coordinates 42.8643, –77.6761; then south along a farm road to coordinates 42.8567, –77.6802; then east to coordinates 42.8564, –77.6741; then south along Little Conesus Creek to coordinates 42.8553, –77.6745; then east to point of beginning at coordinates 42.8553, –77.6738;

(B) That portion of land in the area of South Lima South Muck in the town of Lima bounded as follows: Beginning at a point along the south side of South Lima Rd. marked by latitude/longitude coordinates 42.8552, –77.6774; then south to coordinates 42.8548, –77.6774; then east to coordinates 42.8548, –77.6767; then south to coordinates 42.8509, –77.6770; then south to coordinates 42.8447, –77.6772; then east to coordinates 42.8446, –77.6739; then north along a farm road to coordinates 42.8477, –77.6728; then east along a farm road to coordinates 42.8488, –77.6700; then north along a farm road to coordinates 42.8512, –77.6701; then west along a farm road to coordinates 42.8512, –77.6720; then north along a farm road to coordinates 42.8516, –77.6720; then west along a farm road to coordinates 42.8518, –77.6740; then north to coordinates

42.8541, –77.6740; then west to coordinates 42.8545, –77.6766; then north to coordinates 42.8552, –77.6765; then west to point of beginning at coordinates 42.8552, –77.6774;

(C) That portion of land in the area of Wiggle Muck in the town of Livonia bounded as follows: Beginning at a point along the west side of Plank Rd. (State highway 15A) marked by latitude/longitude coordinates 42.8489, –77.6136; then west to coordinates 42.8491, –77.6203; then south along a farm road to coordinates 42.8468, –77.6192; then south along a farm road to coordinates 42.8419, –77.6188; then east to coordinates 42.8422, –77.6161; then north along a farm road to coordinates 42.8487, –77.6168; then east to the west side of Plank Rd. marked by coordinates 42.8487, –77.6135; then north to point of beginning at coordinates 42.8489, –77.6136; and

(D) That portion of land in the town of Avon bounded as follows: Beginning at a point marked by latitude/longitude coordinates 42.9056, –77.6872; then east along a farm road to coordinates 42.9054, –77.6850; then east along a farm road to coordinates 42.9060, –77.6825; then north along a drainage ditch to coordinates 42.9069, –77.6823; then north along a drainage ditch to coordinates 42.9079, –77.6847; then north to coordinates 42.9103, –77.6844; then west along the south side of a farm road to coordinates 42.9103, –77.6857; then south along a farm road to point of beginning at coordinates 42.9056, –77.6872.

Nassau County. (A) That portion of land in the town of Oyster Bay and the village of Old Brookville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.8312 –73.5917; then proceeding north-northwest 152' along Hegemans Lane to coordinates 40.8317, –73.5917; continuing north-northwest 581' along Hegemans Lane to coordinates 40.8332, –73.5920; then heading north 473' along Hegemans Lane to coordinates 40.8345, –73.5921; continuing north 461' along Hegemans Lane to coordinates 40.8358, –73.5921; continuing north 182' along Hegemans Lane to coordinates 40.8363, –73.5921; continuing north 1227' along Hegemans Lane to coordinates 40.8397, –73.5920; continuing north 718' along Hegemans Lane to coordinates 40.8416, –73.5919; then heading west 188' to Chicken Valley Road at coordinates 40.8416, –73.5926; then heading southwest 70' along Chicken Valley Road to coordinates 40.8415, –73.5928; continuing southwest 297' along Chicken Valley Road to coordinates

40.8409, – 73.5936; continuing southwest 106' along Chicken Valley Road to coordinates 40.8407, – 73.5938; continuing southwest 155' along Chicken Valley Road to coordinates 40.8404, – 73.5914; continuing southwest 142' along Chicken Valley Road to coordinates 40.8400, – 73.5944; continuing southwest 125' along Chicken Valley Road to coordinates 40.8397, – 73.5946; continuing southwest 36' along Chicken Valley Road to coordinates 40.8397, – 73.5947; continuing southwest 38' along Chicken Valley Road to coordinates 40.8396, – 73.5948; continuing southwest 201' along Chicken Valley Road to coordinates 40.8392, – 73.5953; continuing southwest 98' along Chicken Valley Road to coordinates 40.8390, – 73.5955; continuing southwest 61' along Chicken Valley Road to coordinates 40.8389, – 73.5957; continuing southwest 187' along Chicken Valley Road to coordinates 40.8384, – 73.5960; continuing southwest 62' along Chicken Valley Road to coordinates 40.8383, – 73.5962; continuing southwest 142' along Chicken Valley Road to coordinates 40.8380, – 73.5965; continuing southwest 252' along Chicken Valley Road to coordinates 40.8375, – 73.5971; then heading southeast 254' along a wood line to coordinates 40.8370, – 73.5965; then heading south-southeast 269' along a wood line to coordinates 40.8363, – 73.5963; continuing south-southeast 182' along a wood line to coordinates 40.8358, – 73.5962; then heading south 303' along a wood line to coordinates 40.8350, – 73.5961; then heading south-southeast 175' along a wood line to coordinates 40.8346, – 73.5958; then heading south 329' along a farm road to coordinates 40.8337, – 73.5957; then heading southwest 76' along a farm road to coordinates 40.8335, – 73.5958; then heading west-southwest 104' along a farm road to coordinates 40.8334, – 73.5962; then heading south-southwest 278' along a farm road to coordinates 40.8327, – 73.5965; then heading southeast 1441' along the south boundary of the Young's Farm to the starting point at coordinates 40.8312, – 73.5917;

(B) That portion of land in the town of Oyster Bay and in the village of Old Brookville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.8343, – 73.5921; then heading south 399' along Hegemans Lane to coordinates 40.8332, – 73.5920; then heading 403' northeast along a tree line to coordinates 40.8335, – 73.5906; then heading 263'

north to coordinates 40.8342, – 73.5906; then heading northwest 6' along Linden Lane to coordinates 40.8342, – 73.5906; continuing northwest 98' along Linden Lane to coordinates 40.8343, – 73.5909; continuing northwest 52' along Linden Lane to coordinates 40.8344, – 73.5911; then continuing 54' northwest along Linden Lane to coordinates 40.8344, – 73.5913; then heading southwest 43' along Linden Lane to coordinates 40.8344, – 73.5915; then continuing southwest 170' to the starting point at coordinates 40.8343, – 73.5921;

(C) That portion of land in the town of Oyster Bay and the village of Old Brookville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.8365, – 73.5874; then heading south 452' to coordinates 40.8352, – 73.5873; then proceeding northeast 583' to coordinates 40.8356, – 73.5853; then heading north-northwest 400' to coordinates 40.8367, – 73.5855; then heading 529' southwest to the starting point at coordinates 40.8365, – 73.5874;

(D) That portion of land in the town of Oyster Bay in the villages of Upper Brookville and Matinecock bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.8631, – 73.5671; proceeding south 240' along Chicken Valley Road to coordinates 40.8625, – 73.5670; continuing south 293' along Chicken Valley Road to coordinates 40.8617, – 73.5670; continuing south 131' along Chicken Valley Road to coordinates 40.8613, – 73.5670; proceeding south-southwest 116' along Chicken Valley Road to coordinates 40.8610, – 73.5671; continuing south-southwest 113' along Chicken Valley Road to coordinates 40.8670, – 73.5672; proceeding southwest 116' along Chicken Valley Road to coordinates 40.8604, – 73.5674; continuing southwest 337' along Chicken Valley Road to coordinates 40.8596, – 73.5679; continuing southwest 82' along Chicken Valley Road to coordinates 40.8594, – 73.5680; then heading east-northeast 819' through a wooded area to coordinates 40.8596, – 73.5651; then heading southeast 1462' through a wooded area to coordinates 40.8558, – 73.5634; continuing southeast 1065' through a wooded area to coordinates 40.8531, – 73.5618; then heading northeast 1167' along the border with a golf course to coordinates 40.8547, – 73.5581; continuing northeast 317' along the border with the golf course to coordinates 40.8552, – 73.5573; then heading east-northeast 1278' along the border with a golf course to coordinates 40.8557, – 73.5527; then heading south 275' along the border with a golf course

to coordinates 40.8549, – 73.5526; then heading northeast 873' along the golf course boundary to coordinates 40.8564, – 73.5501; then heading northwest 1463' through a wooded area to coordinates 40.8602, – 73.5519; then heading 615' southwest along the border of a residential area to coordinates 40.8599, – 73.5541; then heading 280' northwest through a wooded area to coordinates 40.8604, – 73.5548; then heading north-northwest 188' along a residential driveway to coordinates 40.8609, – 73.5549; then heading west 337' along a residential driveway to coordinates 40.8609, – 73.5561; then heading northwest 309' along a residential driveway to coordinates 40.8617, – 73.5565; then heading north-northwest 103' along a residential driveway to coordinates 40.8620, – 73.5566; continuing north-northwest 38' along a residential driveway to coordinates 40.8621, – 73.5566; then heading north 108' along a residential driveway to coordinates 40.8624, – 73.5566; then heading northwest 135' along a residential driveway to coordinates 40.8627, – 73.5567; continuing northwest 95' along a residential driveway to coordinates 40.8630, – 73.5568; then heading east 106' to a residential driveway at coordinates 40.8630, – 73.5565; then heading northeast 172' along a residential driveway to coordinates 40.8631, – 73.5558; continuing northeast 160' along a residential driveway to coordinates 40.8633, – 73.5553; continuing northeast 20' along a residential driveway to coordinates 40.8633, – 73.5552; continuing northeast 141' along a residential driveway to coordinates 40.8636, – 73.5549; continuing northeast 106' along a residential driveway to coordinates 40.8639, – 73.5547; then heading north-northeast 20' along a residential driveway to coordinates 40.8639, – 73.5547; continuing north-northeast 107' along a residential driveway to coordinates 40.8642, – 73.5546; continuing north-northeast 111' along a residential driveway to coordinates 40.8645, – 73.5545; continuing north-northeast 207' along a residential driveway to coordinates 40.8650, – 73.5545; then heading north 53' along a residential driveway to coordinates 40.8652, – 73.5545; then heading northeast 153' along a paved driveway to coordinates 40.8655, – 73.5540; continuing northeast 173' along a paved driveway to coordinates 40.8657, – 73.5535; continuing northeast 71' along a paved driveway to coordinates 40.8658, – 73.5533; then heading north-northeast

47' along a paved driveway to coordinates 40.8659, -73.5532; continuing north-northeast 70' along a paved driveway to coordinates 40.8661, -73.5531; continuing north-northeast 79' along a paved driveway to coordinates 40.8663, -73.5530; then heading north-northeast 109' along a paved driveway to coordinates 40.8666, -73.5530; then heading north 129' along a paved driveway to coordinates 40.8669, -73.5529; continuing north 122' along a paved driveway to coordinates 40.8673, -73.5529; then heading north-northeast 182' along a paved driveway to coordinates 40.8678, -73.5527; then heading north 23' along a paved driveway to coordinates 40.8678, -73.5527; then heading north-northwest 36' along a paved driveway to Planting Fields Road at coordinates 40.8679, -73.5528; then heading southwest 6' along Planting Fields Road to coordinates 40.8679, -73.5528; continuing southwest 48' along Planting Fields Road to coordinates 40.8679, -73.5530; then heading west 339' along Planting Fields Road to coordinates 40.8679, -73.5542; then heading west-southwest 93' along Planting Fields Road to coordinates 40.8679, -73.5545; then heading southwest 69' along Planting Fields Road to coordinates 40.8678, -73.5548; continuing southwest 79' along Planting Fields Road to coordinates 40.8677, -73.5550; continuing southwest 133' along Planting Fields Road to coordinates 40.8675, -73.5554; continuing southwest 60' along Planting Fields Road to coordinates 40.8674, -73.5556; continuing southwest 71' along Planting Fields Road to coordinates 40.8674, -73.5558; heading west-southwest 225' along Planting Fields Road to coordinates 40.8672, -73.5566; continuing west-southwest 89' along Planting Fields Road to coordinates 40.8672, -73.5570; continuing west-southwest 132' along Planting Fields Road to coordinates 40.8671, -73.5574; then heading southwest 91' along Planting Fields Road to coordinates 40.8670, -73.5577; continuing southwest 59' along Planting Fields Road to coordinates 40.8669, -73.5579; continuing southwest 240' along Planting Fields Road to coordinates 40.8665, -73.5586; continuing southwest 219' along Planting Fields Road to coordinates 40.8661, -73.5592; continuing southwest 89' along Planting Fields Road to coordinates 40.8660, -73.5594; continuing southwest 132' along Planting Fields Road to coordinates 40.8658, -73.5598; continuing southwest 93' along Planting Fields Road to coordinates 40.8657,

-73.5602; continuing southwest 97' along Planting Fields Road to coordinates 40.8655, -73.5605; continuing southwest 90' along Planting Fields Road to coordinates 40.8654, -73.5608; continuing southwest 131' along Planting Fields Road to coordinates 40.8653, -73.5612; continuing southwest 80' along Planting Fields Road to coordinates 40.8652, -73.5614; continuing southwest 257' along Planting Fields Road to coordinates 40.8649, -73.5623; continuing southwest 133' along Planting Fields Road to coordinates 40.8647, -73.5627; continuing southwest 59' along Planting Fields Road to coordinates 40.8646, -73.5629; continuing southwest 85' along Planting Fields Road to coordinates 40.8645, -73.5632; then heading west-southwest 177' along Planting Fields Road to coordinates 40.8644, -73.5638; continuing west-southwest 213' along Planting Fields Road to coordinates 40.8643, -73.5646; then heading southwest 89' along Planting Fields Road to coordinates 40.8642, -73.5649; continuing southwest 58' along Planting Fields Road to coordinates 40.8642, -73.5651; continuing southwest 133' along Planting Fields Road to coordinates 40.8639, -73.5654; continuing southwest 325' along Planting Fields Road to coordinates 40.8635, -73.5664; continuing southwest 116' along Planting Fields Road to coordinates 40.8633, -73.5668; continuing southwest 100' along Planting Fields Road to the intersection with Chicken Valley Road at starting point coordinates 40.8631, -73.5671; and

(E) That portion of land in the town of Oyster Bay and in the hamlet of Old Bethpage bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.7703, -73.4460; then proceeding southwest 1997' through a wood line to Winding Road at coordinates 40.7655, -73.4493; then heading southeast 102' along Winding Road to coordinates 40.7653, -73.4490; continuing southeast 57' along Winding Road to coordinates 40.7652, -73.4488; then heading south-southeast 52' along Winding Road to coordinates 40.7650, -73.4488; continuing south-southeast 99' along Winding Road to coordinates 40.7648, -73.4487; then heading south 654' along Winding Road to coordinates 40.7630, -73.4485; then heading southeast 24' along a ramp to coordinates 40.7629, -73.4485; then heading northeast 2134' through a wood line to coordinates 40.7644, -73.4411; then heading north-northwest 1197' along the Nassau County-Suffolk County

Border to coordinates 40.7677, -73.4417; then heading southwest 250' through a wood line to coordinates 40.7676, -73.4426; then heading 132' north-northwest along Restoration Road to coordinates 40.7679, -73.4426; then heading northeast 311' along Restoration Road to coordinates 40.7687, -73.4422; then heading northwest 96' along Restoration Road to coordinates 40.7689, -73.44245; continuing northwest 262' along Restoration Road to coordinates 40.7695, -73.4430; continuing northwest 173' along Restoration Road to coordinates 40.7699, -73.4433; continuing northwest 33' along Restoration Road to coordinates 40.7699, -73.4434; then heading southwest 275' along Restoration Road to coordinates 40.76942, -73.4440; continuing southwest 194' along Restoration Road to coordinates 40.76900, -73.4445; then heading north-northwest 334' along a gravel path to coordinates 40.7698, -73.4448; then heading northwest 364' along a gravel path to the starting point at coordinates 40.7703, -73.4460.

Orleans County. (A) That portion of land in the town of Barre bounded as follows: Beginning at a point on the north side of Spoil Bank Road marked by latitude-longitude coordinates 43.1327, -78.1234; then east along a farm road running parallel to Spoil Bank Road to coordinates 43.1327, -78.1191; then north along a willow hedge row to coordinates 43.1354, -78.1191; then west along a drainage ditch to coordinates 43.1353, -78.1227; then northwest along a drainage ditch to coordinates 43.1354, -78.1230; then northwest to coordinates 43.1355, -78.1232; then west to coordinates 43.1355, -78.1233; then southwest to coordinates 43.1354, -78.1234; then south along a drainage ditch to the point of beginning at coordinates 43.1327, -78.1234;

(B) That portion of land in the town of Barre bounded as follows: Beginning at a point marked by latitude-longitude coordinates 43.1548, -078.1199; then east along a farm road to coordinates 43.1548, -078.1166; then south to coordinates 43.1524, -078.1167; then west to coordinates 43.1524, -078.1199; then north along a willow hedgerow to the point beginning at coordinates 43.1548, -078.1199; and

(C) That portion of land in the town of Barre bounded as follows: Beginning at a point marked by latitude-longitude coordinates 43.1551, -78.1240; then west to coordinates 43.1551, -78.1244; then southwest to coordinates 43.1550, -78.1245; then southwest to coordinates 43.1550, -78.1245; then south to coordinates 43.1549, -78.1245;

then west along a drainage ditch to coordinates 43.1548, -78.1264, then north to coordinates 43.1596, -78.1266; then east along a farm road to coordinates 43.1597, -78.1243; then south along a willow hedge to the point of beginning at coordinates 43.1551, -78.1240.

* * * * *

Steuben County. (A) The towns of Prattsburgh and Wheeler.

(B) The area known as "Arkport Muck North" located in the town of Dansville bounded as follows: Beginning at a point along the west bank of the Marsh Ditch that intersects a farm road marked by latitude/longitude coordinates 42.4230, -77.7121; then north along the Marsh Ditch to coordinates 42.4314, -77.7158; then west along a farm road to coordinates 42.4307, -77.7204; then south along the edge of a forest to coordinates 42.4284, -77.7194; then west along a farm road to coordinates 42.4282, -77.7201; then south along a farm road to coordinates 42.4255, -77.7189; then east along a tree line to coordinates 42.4254, -77.7180; then south along a tree line to coordinates 42.4230, -77.7157; then east to point of beginning at coordinates 42.4230, -77.7121;

(C) The area known as "Arkport Muck South" located in the town of Dansville bounded as follows: Beginning at a point along the west side of New York Route 36 marked by latitude/longitude coordinates 42.4034, -77.6986; then north along the west side of New York Route 36 to coordinates 42.4145, -77.6999; then west along a farm road to coordinates 42.4145, -77.7029; then north along a farm road to coordinates 42.4160, -77.7036; then west along a farm road to coordinates 42.4162, -77.7083; then north along the west bank of the Marsh Ditch to coordinates 42.4186, -77.7097; then west along a farm road to coordinates 42.4181, -77.7121; then north along a farm road to coordinates 42.4214, -77.7140; then west along a farm road to coordinates 42.4211, -77.7198; then south along the east side of the Conrail right-of-way (Erie Lackawanna Railroad) to coordinates 42.4050, -77.7107; then east along a farm road to coordinates 42.4049, -77.7038; then south along a farm road to coordinates 42.4034, -77.7030; then east to point of beginning at coordinates 42.4034, -77.6986;

(D) That portion of land in the town of Cohocton (formerly known as the "Werthwhile Farm") on the north side of County Road 5 (known as Brown Hill Road), and 0.2 mile west of the junction

of County Road 5 with County Road 58 (known as Wager Road); and

(E) That portion of land in the town of Fremont that is bounded as follows: Beginning at a point on Babcock Road that intersects a farm road marked by latitude/longitude coordinates 42.4368, -77.5751; then west along the farm road to coordinates 42.4367, -77.5780; then south to coordinates 42.4360, -77.5780; then west to coordinates 42.4359, -77.5807; then south to coordinates 42.4335, -77.5806; then east to coordinates 42.4333, -77.5778; then south to coordinates 42.4318, -77.5777; then east to coordinates 42.4323, -77.5771; then north to coordinates 42.4330, -77.5763; then east to coordinates 42.4330, -77.5761; then north to coordinates 42.4349, -77.5756; then east to coordinates 42.4349, -77.5749; then north to the point of beginning at coordinates 42.4368, -77.5751.

Suffolk County. (A) Towns of Riverhead, East Hampton, Southampton, Southold, and Shelter Island in their entirety in Suffolk County;

(B) That portion of land in the town of Huntington and the hamlet of Melville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.7767, -72.4202; then proceeding southwest 788' along Broad Hollow Rd. to coordinates 40.7746, -72.4210; then heading east 2354' along Huntington Quadrangle Rd. to coordinates 40.7748, -72.4125; then heading south 2095' parallel to Maxess Rd. to coordinates 40.7691, -72.4121; then heading southeast 250' along Bayliss Rd. to coordinates 40.7689, -72.4113; then heading 2734' north to coordinates 40.7764, -72.4114; then heading east 1820' to coordinates 40.7767, -72.4049; then heading north 233' along Pinelawn Rd. to coordinates 40.7773, -72.4048; then heading west 4267' to the starting point at coordinates 40.7767, -72.4202;

(C) That portion of land in the town of Huntington and the hamlet of Melville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.7954, -72.4080; then proceeding south 1645' along the west boundary of White Post Farms to coordinates 40.7909, -72.4073; then proceeding east 1110' along the south boundary of White Post Farms and a housing development to coordinates 40.7910, -72.4033; then heading north 2033' parallel to Bedell Place to coordinates 40.7965, -72.4041; then heading southwest 1170' along Old Country Road to the starting point at coordinates 40.7954, -72.4080;

(D) That portion of land in the town of Huntington and the hamlet of Dix Hills bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.7904, -72.3410; then proceeding southeast 306' along Deer Park Road to coordinates 40.7896, -72.3407; continuing southeast 272' along Deer Park Road to coordinates 40.7888, -72.3404; continuing southeast 530' along Deer Park Road to coordinates 40.7874, -72.3399; then proceeding northeast 1002' along the south boundary of the DeLalio Sod Company to coordinates 40.7883, -72.3364; then proceeding northwest 541' along the east boundary of the DeLalio Sod Company and the Garden Depot to coordinates 40.7897, -72.3371; continuing northwest 554' along the east boundary of field 15-C-21 to coordinates 40.7911, -72.3377; then proceeding southwest 952' along the north boundary of field 15-C-21 to the starting point at coordinates 40.7904, -72.3410; and

(E) That portion of land in the town of Brookhaven and the hamlet of Manorville bounded as follows: Beginning at a point marked by latitude-longitude coordinates 40.8542, -72.8240; then proceeding northeast 442' along South Street to coordinates 40.8545, -72.8225; continuing northeast 1086' along South Street to coordinates 40.8550, -72.8186; then proceeding east 413' to coordinates 40.8551, -72.8171 at the intersection of South Street and Wading River Rd.; then proceeding northwest 714' along Wading River Road to coordinates 40.8568, -72.8183; then continuing northwest 695' along Wading River Road to coordinates 40.8586, -72.8194; continuing northwest 497' along Wading River Road to coordinates 40.8598, -72.8202; continuing northwest 221' along Wading River Road to coordinates 40.8603, -72.8205; continuing northwest 203' along Wading River Road to coordinates 40.8608, -72.8209; continuing 194' along Wading River Road to coordinates 40.8613, -72.8212; continuing 212' along Wading River Road to coordinates 40.8618, -72.8215; proceeding northwest 30' to coordinates 40.8618, -72.8216; then heading 45' west to coordinates 40.8618, -72.8218; then heading 183' southwest along the south ramp of the Long Island Expressway to coordinates 40.8617, -72.8224; then heading west 179' parallel with the south ramp of the Long Island Expressway to coordinates 40.8617, -72.8231; then continuing west 182' to coordinates 40.8617, -72.8237; continuing west 299' parallel with the south ramp of the Long Island

Expressway to coordinates 40.8618, –72.8248; then proceeding 201' southeast to coordinates 40.8617, –72.8255; continuing southwest 88' to coordinates 40.8615, –72.8257; then south 83' along a wood line to coordinates 40.8613, –72.8257; continuing south 116' along a wood line to coordinates 40.8610, –72.8257; continuing southeast 96' along a wood line to coordinates 40.8607, –72.8256; then heading 92' southwest along the wood line to coordinates 40.8605, –72.8257; then heading 47' south along the wood line to coordinates 40.8603, –72.8257; then heading southeast 194' along the wood line to coordinates 40.8599, –72.8261; continuing 87' southwest along the wood line to coordinates 40.8597, –72.8262; continuing 200' southwest along the wood line to coordinates 40.8592, –72.8265; then heading southeast 112' along the wood line to coordinates 40.8589, –72.8264; then heading east 232' along the wood line to coordinates 40.8589, –72.8256; then heading south 828' along the wood line to coordinates 40.8566, –72.8253; then heading east 246' along the northern boundary of a horse farm to coordinates 40.8567, –72.8244; then heading south 940' along the boundary of a horse farm to the starting point at coordinates 40.8542, –72.8240.

* * * * *

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–25099 Filed 10–1–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2014–0099]

RIN 0579–AE06

Importation of Tomato Plantlets in Approved Growing Media From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of plants for planting to authorize the importation of tomato plantlets from Mexico in approved growing media, subject to a systems approach. The systems approach consists of measures

currently specified for tomato plants for planting not imported in growing media, as well as measures specific to all plants for planting imported into the United States in approved growing media. Additionally, the plantlets must be imported into greenhouses in the continental United States and the importers of the plantlets from Mexico or the owners of the greenhouses in the continental United States must enter into compliance agreements regarding the conditions under which the plants from Mexico must enter and be maintained within the greenhouses. This rule allows for the importation into the continental United States of tomato plantlets from Mexico in approved growing media, while providing protection against the introduction of plant pests. The rule also allows the imported greenhouse plantlets to produce tomato fruit for commercial sale within the United States.

DATES: Effective November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colon, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2302.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in “Subpart—Plants for Planting,” §§ 319.37 through 319.37–14 (referred to below as the regulations), prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

The regulations differentiate between prohibited articles and restricted articles. Prohibited articles are plants for planting whose importation into the United States is not authorized due to the risk the articles present for introducing or disseminating plant pests. Restricted articles are articles authorized for importation into the United States, provided that the articles are subject to measures to address such risk.

Section 319.37–5 of the regulations lists restricted articles that may be imported into the United States only if they are accompanied by a phytosanitary certificate that contains an additional declaration either that the restricted articles are free of specified quarantine pests or that the restricted articles have been produced in accordance with certain mitigation requirements. Within the section, paragraph (r) contains requirements for

the importation of restricted articles (except seeds) of *Pelargonium* or *Solanum* spp. into the United States. *Solanum* spp. restricted articles include tomato (*Solanum lycopersicum*) plantlets, in addition to other species and cultivars within the genus.

Paragraph (r)(1) of § 319.37–5 authorizes the importation into the United States of *Pelargonium* or *Solanum* spp. restricted articles from Canada under the provisions of a greenhouse-grown restricted plant program. Paragraph (r)(3) contains conditions for the importation into the United States of *Pelargonium* or *Solanum* spp. restricted articles that do not meet the conditions in paragraph (r)(1), and are from a country in which *Ralstonia solanacearum* race 3 biovar 2 is known to occur.

Conditions for the importation into the United States of restricted articles in growing media are specifically found in § 319.37–8. Within that section, the introductory text of paragraph (e) lists taxa of restricted articles that may be imported into the United States in approved growing media, subject to the mandatory provisions of a systems approach. In § 319.37–8, paragraph (e)(1) lists the approved growing media, and paragraph (e)(2) contains the provisions of the systems approach. Within paragraph (e)(2), paragraphs (i) through (viii) contain provisions that are generally applicable to all the taxa listed in the introductory text of paragraph (e), and paragraphs (ix) through (xi) contain additional taxon-specific conditions.

In response to a request from the national plant protection organization (NPPO) of Mexico, in a proposed rule¹ published in the **Federal Register** (80 FR 11946–11950, Docket No. APHIS–2014–0099) on March 5, 2015, we proposed to amend the regulations to authorize the importation into the continental United States of tomato (*Solanum lycopersicum*) plantlets from Mexico in growing media, subject to a systems approach. Because we considered *R. solanacearum* race 3 biovar 2 to exist in Mexico, the proposed systems approach included the measures specified in paragraph (r)(3) of § 319.37–5. Because the plantlets would be imported in growing media, the systems approach also included the general conditions in § 318.37–8 for all taxa of plants for planting imported into the United States in growing media. Finally, we also proposed that the plantlets would have

¹ To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2014-0099>.

to be imported into greenhouses in the continental United States and the importers of the plantlets from Mexico or the owners of the greenhouses in the continental United States would have to enter into compliance agreements regarding the conditions under which the plants from Mexico must enter and be maintained within the greenhouses.

We solicited comments concerning our proposal for 60 days ending May 4, 2015. We received 19 comments by that date. They were from an NPPO, two State departments of agriculture, an organization representing State departments of agriculture, U.S. tomato producers, importers of tomato plantlets, professors who specialize in U.S. tomato production, a U.S. Senator, local and municipal governments, and a private citizen.

Most of the commenters urged us to finalize the proposed rule, as written. Several commenters were generally supportive of the rule, but requested clarifications regarding the provisions of the rule, or modification to those provisions. Finally, several commenters did not support the rule. We discuss the comments that we received below, by topic.

Comments Regarding the Presence of Ralstonia Solanacearum Race 3 Biovar 2 in Mexico

In the request that we received from the NPPO of Mexico to authorize the importation of tomato plantlets into the continental United States in approved growing media, the NPPO specified that the plantlets would be produced from certified seed, would be produced in greenhouses constructed and maintained to be pest-exclusionary, would be shipped in growing media maintained under similar conditions, and would be safeguarded during movement to the continental United States to prevent plant pests from being introduced to the plantlets.

To evaluate this request, we prepared a pest risk assessment (PRA) that analyzed the potential pest risks associated with the importation of tomato plantlets from Mexico produced under such conditions. The PRA concluded that a number of quarantine pests of tomato plantlets exist in Mexico, including *R. solanacearum* race 3 biovar 2, but that, if the plantlets are produced in accordance with the conditions specified by the NPPO, they would present a negligible risk of quarantine pests being introduced into the continental United States through their importation in approved media.

Based on the findings of the PRA, a risk management document (RMD) that also accompanied the proposed rule

recommended that, among other requirements, the plantlets should be authorized importation subject to paragraph (r)(3) of § 319.37–5 because of the presence of *R. solanacearum* race 3 biovar 2 in Mexico.

A commenter disputed the presence of *R. solanacearum* race 3 biovar 2 in Mexico. The commenter stated that, of the ten references² that APHIS cited in the PRA regarding the presence of *R. solanacearum* race 3 biovar 2 in Mexico, five only stated that *R. solanacearum* race 3 is present in Mexico, and did not identify the biovar; three isolated *R. solanacearum* from samples obtained from Mexico, but did not state that the samples became infected in Mexico or delineate where in Mexico the samples originated; and the remaining two suggested that plantlets affected with *R. solanacearum* race 3 biovar 2 have been detected in Mexico, but did not rule out that the plantlets were germinated from infected, imported seed. The commenter also stated that most of the references

² These were:

CABI, 1999. *Ralstonia solanacearum* race 3 [Distribution Map] (Map 785). April, 1999. Referred to in this document as “CABI 1999.”

CABI, 2012. *Crop Protection Compendium*. Commonwealth Agricultural Bureau International. <http://www.cabi.org/cpc/>. Archived at PERAL. Referred to in this document as “CABI 2012.”

EPPO, 1997. Data Sheets on Quarantine Pests: *Ralstonia solanacearum*. European and Mediterranean Plant Pest Organization (EPPO) A2 List No. 58. Last accessed March 10, 2010. Referred to in this document as “EPPO 1997.”

EPPO, 2006. Distribution Maps of Quarantine Pests for Europe: *Ralstonia solanacearum* race 3.

EPPO. Found at <http://pqr.eppo.org/datas/PSDMS3/PSDMS3.pdf>. Referred to in this document as “EPPO 2006.”

Hernández-Romano, J., et al., 2012. First report of *Ralstonia solanacearum* causing tomato bacterial wilt in Mexico. New Disease Reports (November 2012). Referred to in this document as “Hernández-Romano et al.”

Meng, F., et al., 2008. Interactions with hosts at cool temperature, not cold tolerance, explain the unique epidemiology of *Ralstonia solanacearum* Race 3 biovar 2. Poster presented at the 2008 American Phytopathological Society Meeting, Minneapolis, MN. July 26 and 28, 2008. Referred to in this document as “Meng et al.”

Milling, A., et al., 2009. Interactions with Hosts at Cool Temperatures, Not Cold Tolerance, Explain the Unique Epidemiology of *Ralstonia solanacearum* Race 3 Biovar 2. *Phytopathology* 99 (10):1127–1134. Referred to in this document as “Milling et al.”

Perea, S.J.M., et al., 2011. Identificación de razas y biovars de *Ralstonia solanacearum* aisladas de plantas de tomate. *Revista Mexicana de Fitopatología* (29):98–108. Referred to in this document as “Perea et al.”

Sanchez-Perez, A., et al., 2008. Diversity and distribution of *Ralstonia solanacearum* strains in Guatemala and rare occurrence of tomato fruit infection. *Plant Pathology* 57:320–331. Referred to in this document as “Sanchez-Perez et al.”

Xu, J., et al., 2009. Genetic diversity of *Ralstonia solanacearum* strains from China. *European Journal of Plant Pathology* 125:641–653. Referred to in this document as “Xu et al.”

cited could be classified as “unreliable” pursuant to the International Plant Protection Convention’s International Standards for Phytosanitary Measures (ISPM) No. 8, and that ISPM No. 8 prohibits importing countries from assessing the pest status of a foreign region based on unreliable records.

For these reasons, the commenter concluded that APHIS should state that the presence of *R. solanacearum* race 3 biovar 2 in Mexico is unknown because of unreliable pest detection records, and remove the *R. solanacearum* race 3 biovar 2-specific provisions from the systems approach.

Similarly, another commenter pointed out that *R. solanacearum* race 3 biovar 2 has been detected in the United States on two occasions, yet there are no *R. solanacearum* race 3 biovar 2-specific restrictions on the interstate movement of tomato plantlets within the United States. The commenter asked us to explain or address this discrepancy.

Unlike other phytopathogenic bacteria, race classifications for *R. solanacearum* are not based on gene-for-gene interactions across host species, but rather on pathogenicity in different types of host plants. Biovars of *R. solanacearum*, in contrast, do cross species. There is, accordingly, generally no correlation between races and biovars of *R. solanacearum*, and, in general, one cannot presume a specific biovar of *R. solanacearum* has been detected in a host plant based on knowledge of the race isolated.

However, this is not true of race 3 and biovar 2 of *R. solanacearum*. There exists a distinct and close correlation between this race and biovar of the disease, such that, in the international taxonomic community, references to race 3 of *R. solanacearum* are presumed to refer to biovar 2, and references to biovar 2 of *R. solanacearum* are presumed to refer to race 3. The five references in the PRA that referred to the presence of *R. solanacearum* race 3 in Mexico (CABI 1999, CABI 2012, EPPO 1997, EPPO 2012, and Hernández-Romano et al.) used this common taxonomic practice, and thus do refer to *R. solanacearum* race 3 biovar 2.

Of the three articles that the PRA referenced in which *R. solanacearum* was isolated from samples obtained from Mexico (Meng et al., Milling et al., and Sanchez-Perez et al.), one (Meng et al.) explicitly states that the isolate of *R. solanacearum* race 3 biovar 2 used in the study is from Mexico. The other two state that the isolates were obtained from a collection that is housed at the University of Wisconsin, and is identified as being of Mexican origin. While none of the references identify

the exact location in Mexico where the isolates originated, that location is not germane to determining whether or not *R. solanacearum* race 3 biovar 2 is present in Mexico.

Of the remaining two articles, we agree that one (Xu *et al.*) does not conclude that *R. solanacearum* race 3 biovar 2 is present in Mexico, and will no longer use it as a reference in future discussions of the presence of *R. solanacearum* race 3 biovar 2 in Mexico.

We disagree, however, that the other article (Perea *et al.*) could merely provide evidence that infected imported seed was used to germinate tomato plantlets within Mexico. Seed transmission of *R. solanacearum* race 3 biovar 2 is extremely rare; soil, water, and plant debris are far more common pathways for the disease. Additionally, the infected plantlets identified by Perea *et al.* exhibited no signs of infection during the early stages of production, when they were potted and housed in greenhouses; the plantlets only appeared symptomatic well after they were planted in an outdoor field. When potted plants are infected with *R. solanacearum* race 3 biovar 2, however, they tend to appear symptomatic within 30 days. This suggests that the seed from which the plantlets were germinated was not infected with *R. solanacearum* race 3 biovar 2. Rather the evidence provided in Perea *et al.* strongly suggests that the plantlets became infected in an outdoor field through contact with infected soil, water, or debris.

We agree with the commenter that the references are of varying reliability, but disagree with the commenter's interpretation of ISPM No. 8. ISPM No. 8 does not distinguish between reliable and unreliable records, but rather provides criteria by which an importing country should assess the relative reliability of a record in comparison to other records. The ISPM acknowledges that determining whether a particular plant pest exists in a foreign region is, however, ultimately a subjective "expert judgment" made by the importing country.

After reviewing the records available to us in light of the commenter's concerns, we have determined that there is significant evidence that *R. solanacearum* race 3 biovar 2 exists in the natural environment within Mexico. This differs from the United States, where outbreaks of *R. solanacearum* race 3 biovar 2 have been limited to greenhouses and arisen from the importation of infected plants.

Accordingly, we consider it appropriate to maintain *R. solanacearum* race 3 biovar 2-specific

provisions as part of our systems approach for the importation of tomato plantlets in growing media from Mexico, and have made no changes to the provisions of the proposed rule in response to this comment.

In a similar vein, a commenter asked us why the proposed rule had contained *R. solanacearum* race 3 biovar 2-specific provisions, given that the PRA found that it "highly unlikely" that tomato plantlets from Mexico would become infected with the disease.

The PRA found such transmission to be highly unlikely, provided that the plantlets are produced under the provisions of the systems approach. The PRA did not evaluate the likelihood that plantlets produced under different conditions would become infected with *R. solanacearum* race 3 biovar 2. Because we consider that disease to exist in the natural environment within Mexico, the risk would be considerably higher, and thus the need for the required provisions.

Comments Regarding Organic Certification

Several tomato producers within the United States supported the proposed rule, and stated that they would like to import tomato plantlets in growing media from Mexico if the rule is finalized. However, the commenters stated that they are certified organic by the United States Department of Agriculture (USDA), and expressed concern that several of the mitigation measures specified in the risk management document (RMD) that accompanied the proposed rule appeared to require fumigation with methyl bromide and the use of disinfectants that are not approved by USDA for organic production. The commenters noted, however, that the proposed rule itself did not appear to require either fumigation or the use of such disinfectants. The commenters inquired whether there was a discrepancy between the RMD and the proposed rule, and, if so, which provisions they would be expected to adhere to.

Paragraph (r)(3)(viii) of § 319.37–5 requires *Solanum* spp. plants for planting from countries in which *R. solanacearum* race 3 biovar 2 is known to occur to be grown in growing media that is free of *R. solanacearum* race 3 biovar 2. In order for growing media to be considered free of *R. solanacearum* race 3 biovar 2, guidance that we have developed for producers states that the growing media should either be fumigated with methyl bromide at 3 grams per liter of media for 72 hours at 21° Celsius or above, or steam sterilized

so that the media reaches a temperature of 80° Celsius for at least 2 hours. The RMD referred to both of these options, and either option would fulfill the requirements of the regulations.

Paragraph (r)(3)(vi) of § 319.37–5 requires all equipment that comes in contact with articles of *Solanum* spp. within a production site to be adequately sanitized so that *R. solanacearum* race 3 biovar 2 cannot be transmitted between plants or enter from outside the production site via equipment, while paragraph (r)(3)(vii) of § 319.37–5 requires production site personnel to adequately sanitize their clothing before entering the production site to prevent the entry of *R. solanacearum* race 3 biovar 2 into the production site.

APHIS has determined that several disinfectants may be used to meet these sanitation requirements. One of them, hydrogen peroxide, is approved by USDA for organic production.

General Comments on the Proposed Rule

One commenter suggested that we should authorize the importation of tomato seeds from Mexico, rather than tomato plantlets in growing media.

The regulations already authorize the importation of tomato seeds from Mexico. The market access request from the NPPO of Mexico was for tomato plantlets in growing media.

One commenter suggested that we consider authorizing the importation of tomato plantlets from Mexico under "Good Seed and Plant Production Practices" (GSPPPs), an international accreditation standard for pest-free production of plants for planting.

Generally applicable standards such as the GSPPPs may not always address taxon-specific plant pest risks. Additionally, the regulations are currently written in a manner which does not facilitate the use of such generally applicable standards. However, if finalized, a proposed rule³ published in the **Federal Register** on April 25, 2013 (78 FR 24634–24663; Docket No. APHIS–2008–0011) would restructure the regulations to facilitate the potential use of GSPPPs.

Two commenters stated that certain areas of the continental United States are more hospitable to the establishment of quarantine pests of tomatoes than others, and the rule should be amended to prohibit the importation of tomato plantlets in growing media from Mexico into those areas.

³ To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2008-0011>.

If the provisions of the proposed rule are adhered to, the plantlets will present a negligible risk of introducing quarantine pests into any area of the continental United States. Therefore, the relative likelihood of establishment of these pests in a particular part of the continental United States is not germane, and we are making no changes to the provisions of the systems approach based on these comments.

Comments Regarding Specific Provisions of the Systems Approach

We proposed that the production site where the plantlets were produced would have to test for *R. solanacearum* race 3 biovar 2 and maintain records regarding such testing for at least two growing seasons.

A commenter stated that indoor production facilities have growing cycles, rather than growing seasons, and inquired whether maintaining the records for two growing cycles would suffice to meet this requirement.

Operationally, we rely on the definition of “growing season” provided in ISPM No. 5, “Glossary of Phytosanitary Terms.”⁴ This definition considers a growing season to be the period or periods of the year when plants actively grow in an area, place of production, or production site.

The commenter did not specify what they meant by “growing cycle.” However, if the commenter meant the time period during which a particular set of tomato plantlets are in active growth within the producer’s facility, from establishment to harvest, then the term “growing season” is equivalent to the term “growing cycle.”

We proposed that the greenhouses in which the plantlets are produced in Mexico would have to be surrounded by a 1-meter sloped buffer.

One commenter asked whether the buffer had to be around the perimeter of each of the greenhouses, or whether the greenhouses could collectively be surrounded by the buffer.

Either type of buffer suffices to meet this requirement.

We proposed that the plantlets would have to be handled and packed in a manner which precludes the introduction of *R. solanacearum* race 3 biovar 2 to the articles.

One commenter asked whether these procedures would prevent insect pests from being introduced onto the plantlets during movement to the United States.

Safeguarding procedures which prevent the introduction of *R.*

solanacearum race 3 biovar 2 onto host plants are also sufficient to prevent the introduction of insect pests.

Finally, we proposed that the plantlets would have to be imported directly into a pest-exclusionary greenhouse in the continental United States.

One commenter asked whether the plantlets could be offloaded into a pest-exclusionary docking station at the same production site in the United States that contains the pest-exclusionary greenhouses, then resealed and moved to the greenhouses at a further stage of production.

Provided that the docking station has been evaluated by APHIS and provides an equivalent level of pest exclusion as do the greenhouses themselves, they may.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The rule will allow the importation of tomato plantlets in approved growing media from Mexico into the continental United States. Currently, tomato plantlets in growing media are not admissible into the United States except from Canada. The imported plantlets will be allowed to be imported only to APHIS-approved facilities under compliance agreements, and will be used only for fruit production.

Data are not available on the production or trade of tomato plantlets. However, U.S. greenhouse (more generally termed *protected-culture*) tomato production and import levels provide evidence of the expanding derived demand for tomato plantlets. In 2011, protected-culture tomatoes made up 40 percent of the U.S. tomato supply, up from less than 10 percent in 2004; they now dominate retail tomato sales. The value of protected-culture tomato imports by the United States grew by two-thirds between 2009 and 2013, in

response to expanding consumer demand, from \$795 million to \$1.33 billion.

Reportedly, there are few nurseries in the United States that produce tomato plantlets and their volume of production is relatively small. The final rule will enable U.S. producers of protected-culture tomatoes to draw upon Mexican plantlet suppliers in addition to imports from Canada, and is expected to have a positive economic impact on the protected-culture tomato industry.

Protected-culture tomato producers are classified in the North American Industry Classification System within Other Vegetable (except Potato) and Melon Farming (NAICS 111219), for which the Small Business Administration small-entity standard is annual receipts of not more than \$750,000. The average market value of agricultural products sold by operations in this industry in 2012 was about \$314,000. While we are unable to determine the number of businesses that will be affected by the final rule, we can assume that at least some of them are small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation into the continental United States of tomato plantlets in growing media from Mexico, subject to a required systems approach, will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA

⁴ To view this ISPM, go to https://www.aphis.usda.gov/import_export/plants/plant_exports/downloads/pimglossary.pdf.

(7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site. Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799-7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0431, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.37-1 is amended by adding, in alphabetical order, a definition for *compliance agreement* to read as follows:

§ 319.37-1 Definitions.

* * * * *

Compliance agreement. A written agreement between APHIS and a person (individual or corporate) engaged in the production, processing, handling, or moving of restricted articles imported pursuant to this subpart, in which the person agrees to comply with the subpart and the terms and conditions specified within the agreement itself.

* * * * *

■ 3. Section 319.37-8 is amended as follows:

■ a. In paragraph (e), introductory text, by removing the period after the entry for "*Schlumberga* spp. from the Netherlands and Denmark" and adding, in alphabetical order, an entry for "*Solanum lycopersicum* from Mexico."

■ b. By adding paragraph (e)(2)(xii).

■ c. By revising the OMB citation at the end of the section.

The addition and revision read as follows:

§ 319.37-8 Growing media.

* * * * *

(e) * * *

(2) * * *

(xii) Plantlets of *Solanum*

lycopersicum from Mexico must also meet the following conditions:

(A) The plantlets must be produced in accordance with § 319.37-5(r)(3);

(B) The plantlets can only be imported into the continental United States, and may not be imported into Hawaii or the territories of the United States; and

(C) The plantlets must be imported from Mexico directly into a greenhouse in the continental United States, the owner or owners of which have entered into a compliance agreement with APHIS. The required compliance agreement will specify the conditions under which the plants must enter and be maintained within the greenhouse, and will prohibit the plantlets from being moved from the greenhouse following importation, other than for the appropriate disposal of dead plantlets.

(D) If all of the above requirements are correctly complied with, then the tomato fruit produced from the imported greenhouse plantlets may be shipped from the greenhouses for commercial sale within the United States.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0266 and 0579-0431)

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25100 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. APHIS-2009-0047]

Fee Increases for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are changing the hourly rates charged for Sundays, holidays, or other overtime work performed by employees of the Animal and Plant Health Inspection Service (APHIS) for any person, firm, or corporation having ownership, custody, or control of regulated commodities or articles subject to agricultural inspection, laboratory testing, certification, or quarantine under the regulations. We are increasing these overtime rates for each of the fiscal years 2016 through 2018 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance will allow users of APHIS' services to incorporate the rates into their budget planning. We are also clarifying the regulations to indicate that agricultural inspections performed by the Department of Homeland Security (DHS) may be billed in accordance with DHS overtime regulations for services performed outside of regular business hours, as DHS rates may differ from those charged by APHIS.

DATES: Effective November 2, 2015.

FOR FURTHER INFORMATION CONTACT: For information concerning Plant Protection and Quarantine program operations, contact Ms. Diane L. Schuble, AQI User Fee Coordinator, Office of the Executive Director-Policy Management, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737-1231; (301) 851-2338.

For information concerning Veterinary Services program operations, contact Ms. Carol Tuszynski, Director, Planning, Finance, and Strategy Staff, Program Support Services, VS, APHIS,

4700 River Road Unit 58, Riverdale, MD 20737–1231; (301) 851–3463.

For information concerning APHIS overtime fee development, contact Ms. Adelaide Feukam, Auditor, Review and Analysis, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851–2601.

For information concerning DHS overtime fees, contact Mrs. Kara Welty, Chief, Debt Management Branch, Indianapolis, CBP, DHS, 6650 Telecom Drive Suite 100, Indianapolis, IN 46278–2010; (317) 614–4614.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, which are explained below, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

Based on changes to the costs associated with providing agricultural inspection, laboratory testing, certification, and quarantine services, we determined that adjustments to the overtime rates in 7 CFR part 354 and 9 CFR part 97 were necessary in order for APHIS to recover the full cost of providing these services. Therefore, we proposed to set hourly overtime rates for inspection, laboratory testing, certification, and quarantine services provided outside of an employee's normal tour of duty for fiscal years (FYs) 2014 through 2018. Our proposal was published in the **Federal Register** on April 25, 2014 (79 FR 22887–22895, Docket No. APHIS–2009–0047).¹ The proposed overtime rates were based on our costs of providing the services, including direct labor costs, area delivery costs, billing and collection costs, program direction and support costs, agency/management support costs, central/departamental changes, and a reserve component, plus adjustments for inflation and

anticipated annual increases in the salaries of employees who provide the services.

We also proposed to include language in 7 CFR 354.1, 9 CFR 97.1, and 9 CFR 130.50 to clarify and inform the public that any agricultural inspection performed by an employee of the Department of Homeland Security (DHS) Bureau of Customs and Border Protection (CBP) on a Sunday, holiday, or anytime outside of the employee's normal tour of duty may be billed in accordance with the regulations in 5 CFR part 551, 7 CFR 354.1, 9 CFR 97.1, 9 CFR 130.50, or 19 CFR 24.16. Such billing is necessary because the costs associated with the DHS agricultural inspections and incurred by DHS may differ from those incurred by APHIS. Therefore, varying overtime charges may apply in such circumstances in order for DHS to properly recover their costs and adequately fund their program operations.

We solicited comments concerning our proposal for 60 days ending June 24, 2014. We received 43 comments by that date. They were from producers, importers, industry groups, and private individuals. Two were supportive of the proposed action. The remainder are discussed below by topic.

Comments on Rate Calculation Methodology

As previously stated, we proposed to establish the hourly overtime rates for FY 2014 through FY 2018. We note that, as FYs 2014 and 2015 have ended, the overtime rates covered by this final rule are now only for FYs 2016 through 2018. The FY 2016 rates will become effective 30 days after the date of publication of this final rule; the FY 2017 and FY 2018 rates would become effective on the first day of each of the fiscal years, and the FY 2018 rates would remain in effect until new rates were established.

One commenter stated that our aim of seeking set rates for anticipated costs over a 5 year period is too speculative and far too difficult to predict with accuracy. The commenter suggested that APHIS use a 5 year projection as a planning tool only and constrain specific overtime cost increases to a shorter timeframe.

We disagree with the commenter's assessment. Based on our experience with past overtime fee increases, information regarding such increases that covers a longer timeframe allows users of APHIS' services to incorporate the rates into their budget planning. In addition, we arrive at our projected figures using those gross domestic product (GDP) figures provided by the

Office of Management and Budget (OMB) in the Presidential budget, which is the Government standard for such fees and is not subject to rate instability. Moreover, as explained above, the actual timeframe of this rule will be based on a shorter 3 year period since it will only apply to FYs 2016 through 2018.

The commenter went on to assert that our calculations should address not only the cost of providing overtime service, but also specify what steps are being taken to reduce costs to the Agency and thereby also reduce customer costs.

While the main cost driver of reimbursable overtime is the cost of salaries and benefits, APHIS has taken steps in recent years to achieve efficiencies as part of United States Department of Agriculture's (USDA) Blueprint for Stronger Service.² For example, APHIS centralized certain services such as information technology, customer service support, telecommunications, and vehicle inventory while also enacting additional controls on purchases. APHIS continues to look for opportunities to reduce operating costs where possible while maintaining the level of services needed to carry out our mission of safeguarding U.S. agriculture.

We calculated our overtime rates to cover the full cost of providing inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the normal tour of duty of the employee providing these services. The cost of providing these services includes direct and indirect costs. The direct costs are an employee's salary and specific benefits, which are APHIS' payment of the hospital insurance tax and its contribution to the Federal Insurance Contribution Act (FICA), and the Agency's costs for work performed at night. The indirect costs are area delivery costs, billing and collection costs, program direction and support costs, central/departamental charges, and unfunded leave costs.

A number of commenters observed that, in the calculation of overtime rates, only the variable cost of providing the additional service outside of regular business hours should be included in the assessment of the overall cost. Specifically, the commenters stated that there is no justification for the inclusion of most of the components identified in

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2009-0047>.

² Information on this initiative is available on the Internet at http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=blueprint_for_stronger_service.html.

area delivery, imputed costs, agency level program delivery, agency level administrative support, and central/departmental charges.

We followed Federal guidance related to fee setting and managerial cost accounting in determining program costs. Specifically, we followed OMB Circular A-25: User Charges, which provides guidance on setting fees in the Federal Government, and SFAS No. 4, which includes, among other things, a definition of full cost. OMB Circular A-25, which may be viewed at <http://www.whitehouse.gov/omb/circulars/default>, establishes the requirement that fees be set at full cost to the Government, and provides a definition and examples for full cost. OMB Circular A-25 very specifically defines full cost to include the costs referenced by the commenters.

Another commenter asked to review APHIS's full revenue-costs statements as well as the full economic impact assessment. The commenter stated that the information was not included with the proposed rule.

Our full calculation of all aspects of overtime fees, starting with direct labor costs and including all indirect costs and overhead elements, was included in the proposed rule, which is available for public review on the Internet at: <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047>. The regulatory impact analysis and initial regulatory flexibility analysis were also made available on Regulations.gov along with the proposed rule as part of the rule's supporting documents. We maintain that this level of detail provides the highest degree of transparency and supports the required increase needed in our rates.

As detailed above, APHIS calculates its overtime fees based on a variety of sources apart from employee salary considerations. Per OMB Circular A-25, the overtime program is a full cost recovery program, which includes the direct and indirect costs outlined previously.

One commenter stated that APHIS should reconsider its cost estimates since the initial impetus for the proposed rule was work done in 2010 at the height of the financial crisis. The commenter went on to say that, since that time, the rate of importation and export has increased significantly, which would increase Agency funds that might be used to cover these costs instead.

We disagree with the commenter's assessment. While there are other components involved, much of the cost of overtime inspection is made up of

inspector salaries. The APHIS budget provides funding for inspectors working within business hours, Monday through Friday, except holidays. Any work performed outside that timeframe is, by definition, additional and irregular. As detailed in OMB Circular A-25, Federal agencies are charged to recoup their costs in such instances via the assessment of overtime fees. Any additional funds that APHIS (or DHS for that matter) may receive via any increases in trade would remain in the accounts used by the specific Agency and programs that provide the services and incur the costs.

Comments on Billing Procedures

Two commenters stated that most, if not all, of the ports require that overtime be requested and paid for in a minimum of 4-hour blocks regardless of whether those 4 hours are needed or used. The commenters suggested that APHIS change its overtime billing policy so that importers would only be charged for the time required to conduct the requested inspection. The commenters also suggested that, if an inspector is called for overtime work in the 4 hour block described above and the whole of that time is not used, that inspector should then remain onsite for the remainder of the 4 hour time period in order to deal with any other vessels or cargoes that may arrive and require immediate inspection.

In § 354.1, paragraph (a)(2) states that a minimum charge of 2 hours will be made for inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, weekdays, or Sundays. In addition, overtime fees may include a commuted traveltime period (CTT), which is established by APHIS to cover the time an employee spends reporting to and returning from the place where the requested overtime duties are performed.³ We believe the 4-hour minimum cited by the commenters includes the minimum overtime work time of 2 hours in addition to 2 hours of CTT. Although CTT ranges from 1 to 12 hours, 2 hours is the allotted CTT at many of our busiest ports. Regarding the commenters' second point concerning inspectors remaining onsite to perform other unexpected inspection; an arrangement of this nature is not precluded by the regulations. However, APHIS leaves such administrative details to the knowledge and discretion of the individual ports. The actual management of staffs, inspectors, hours, staffing for arrival, and identification of

risk and needs varies from port to port and is best handled by port directors equipped with the detailed information necessary to make daily staffing decisions.

Two commenters observed that, in many instances, vessels and cargoes are ready for inspection during normal business hours only to find that DHS inspectors are not available due to the volume of inspections required for other vessels. The commenters stated that users should not be made to pay for services rendered in overtime periods that could have been conducted during normal business hours had sufficient personnel been available.

We have considered the commenters' point and have received detailed information from DHS regarding their staffing policies at the ports. Overall, DHS employs a rigorous, data-driven methodology to identify staffing requirements. It is composed of multiple elements—some fixed, others variable—that may be adjusted according to changing priorities, risks, and threats. In early 2014, a risk-based Agriculture Resource Allocation Model was finalized, which will serve as an important component of DHS's methodology. The Agriculture Resource Allocation Model will more accurately calculate the number of agricultural inspectors required to efficiently handle workflow at the ports. DHS will integrate the results of the Agriculture Resource Allocation Model into its existing methodology in order to provide a more holistic view of DHS's staffing requirements. Generally speaking, APHIS and DHS staffing decisions for agricultural inspections are continuously being reformulated based on changing conditions so that the ports may operate at a constantly improving level of service.

Two commenters stated that the regulations should stipulate that any overtime fees collected should be returned to the port where the services are rendered. The commenters said that this would ensure that sufficient funds are available where needed, and the Agencies would not be required to utilize appropriated funds or cash reserves to cover expenses associated with overtime fees.

We disagree with the commenters. It would be administratively burdensome for APHIS (or DHS for that matter) to maintain and track reimbursable overtime collections for agricultural inspection to a port-by-port level. Because the application of reimbursable overtime rates distinctively mirrors the work the employees perform and are paid for, there is no need to track collections and costs to this level.

³ A full listing of CTT periods may be found in § 354.2 of the regulations.

Program budgeters carefully consider the amount of reimbursable overtime work at their ports in providing budget estimates from year to year. Finally, APHIS and DHS overtime fee collections are already tracked to the agency level; those collections remain in the appropriate accounts to fund each Department's respective overtime operations.

Two commenters observed that both APHIS and DHS must be able to provide invoices for all overtime fees in a timely manner. The commenters suggested that the regulations stipulate that invoices will be provided within 30 days of the inspection date.

Comments referring to specific billing practices are outside the scope of the current rulemaking. Invoices are generally provided simultaneous to inspection; however the commenters should contact the port director with any questions or concerns about the timeliness of billing.

Other commenters stated that it would be possible for APHIS and DHS to assess overtime fees at a lower rate if industry were involved in negotiations between those Agencies and the inspectors' union.

Any discussion of union contract negotiation is outside the scope of the current rulemaking.

A commenter observed that greater responsiveness to current industry practices is needed. The commenter went on to state that, at the port in Atlanta, GA, importers cannot request weekend overtime after 3 p.m. on Friday, however it is impossible to determine with certainty by that time how much overtime will be necessary. The commenter is engaged in the importation of plant cuttings or live plants, which are perishable, and the busiest importing days, based on industry need and long-established industry practice, include Saturdays and Sundays.

Another commenter stated that the port in Miami, FL, had recently extended its weekday operational hours. The commenter urged APHIS to maintain those hours.

As previously stated, APHIS leaves such administrative details as the deadline for requesting weekend overtime and the operational hours of the ports to the knowledge and discretion of those individual ports. If the first commenter wishes to propose an extension of the deadline for requesting weekend overtime and the second commenter would like to maintain extended weekday hours of operation they should contact their local port directors.

Comments on Proposed Costs

A number of commenters expressed concern at the cost numbers supplied by APHIS in the proposed rule.

Several commenters observed that the proposed rule would increase the cost for overtime services by 30 to 49 percent (some commenters cited the increase as 45 to 55 percent); a number that represents 3 to 5 times the rate of inflation since the last increase in 2002. Further, the commenters remarked that the U.S. Department of Labor had reported only a 10 percent increase in the Consumer Price Index since 2002. The commenters were troubled by the difference between the inflation rate, the Consumer Price Index rate, and the proposed percentage increase to overtime fees.

Overtime fees are not solely based on either the rate of inflation or the Consumer Price Index. As stated previously, the cost of providing these services includes direct and indirect costs. The direct costs are an employee's salary and specific benefits, which are APHIS' payment of the hospital insurance tax and its contribution to the FICA, and the Agency's costs for work performed at night. The indirect costs are area delivery costs, billing and collection costs, program direction and support costs, central/departmental charges, and unfunded leave costs.

Another commenter suggested that the cost increases should be made incrementally over the next several years to lessen the burden on producers and exporters and help them maintain their competitive position.

A phase-in of the proposed changes would simply delay achieving the rule's objectives: To properly recover costs and adequately fund program operations. We would add that the decision to request overtime services, and therefore to incur additional costs, is left to the importer and such importers may realize price efficiencies by scheduling inspections during regular business hours.

Several commenters observed that the increase in the overtime fees will come in conjunction with a new fee of \$375 per treatment for various types of treatments currently offered at no charge. The commenters asserted that the cumulative effect of these cost increases will have a chilling effect on the perishable goods import/export market in the United States.

The fee to which the commenters refer was included in a proposal to add new fee categories and adjust current fees charged for certain agricultural quarantine and inspection services provided in connection with certain

commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers arriving at ports in the customs territory of the United States.⁴ While the fees discussed in that rule are compulsory, overtime fees represent the cost of providing the additional service outside of regular business hours. As stated previously, the decision to request overtime services, and therefore to incur additional costs, is left to the importer.

Comments on Economic Impact

A number of commenters from Florida stated that the proposed increase in overtime fees would prove detrimental to trade, commerce, and the economy of that State.

We disagree with the commenters' assessment. Based on the economic assessment included with the proposal, we estimate that the impact of this rule will be minor. Further, the commenters did not provide any economic data in support of their claim for APHIS to examine.

Another commenter observed that Florida has successfully worked with APHIS to implement the first ever cold treatment pilot project for perishable commodities. The commenter was concerned that increased overtime fee rates would prove economically detrimental to the future of that project both in Florida and other areas where cold treatment is already permitted.

We disagree with the commenter's statement. APHIS' agreement with the shipping lines in the Florida cold treatment pilot program requires that cold treatment be completed before the ship arrives at the port because there are no approved cold treatment facilities available in Florida. Since the cold treatment must take place prior to shipment arrival, any information regarding application of cold treatment may be transmitted to the ports during regular business hours.

Comments on Comment Period

We received several requests for an extension of the comment period on the proposed rule. After careful consideration, we determined to keep the original deadline. While APHIS has not updated its overtime fees since 2005, these increases remain a routine cost-recovery measure for the Agency.

Comments on Agency Jurisdiction

Two commenters stated that, to the extent APHIS and CBP are performing the same inspection services, the

⁴ You may view the proposed rule at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021>.

shipping community has a reasonable right to expect that the rates charged will be consistent across the agencies and that any internal conflicts in pay and rate schedules should be transparent to the service recipient. The commenters concluded that, to the extent one agency is acting on behalf of the other, it is imperative that the agency which is incurring the costs retains the appropriate percentage of the revenues collected.

We agree with the commenters' observations. Providing clarity while allowing APHIS and DHS to recoup inspection costs was our intent in publishing this rule.

Finally, one commenter said that there is confusion about which agencies have responsibility for and jurisdiction over various functions. The commenter said that the rule should clearly delineate which functions are performed by APHIS and which are performed on behalf of APHIS by DHS. The commenter concluded that fees should be listed only in the relevant sections of the CFR, and there must be no question that both APHIS and DHS are not billing individually for the same services.

Generally speaking, most of the agricultural inspections discussed in this rule are performed by DHS pursuant to the Homeland Security Act. Examples of agricultural inspections performed by APHIS include those associated with the importation of live plants, which occur at designated plant inspection stations, and APHIS oversight of certain port of entry treatments. As stated in the proposed rule, DHS conducts billings of their overtime charges in accordance with the regulations in 5 CFR part 551, 7 CFR 354.1, 9 CFR 97.1, 9 CFR 130.50, or 19 CFR 24.16. The DHS fees for agricultural inspection overtime work are not listed in a specific section of the CFR as the Homeland Security Act that first established DHS did not provide any new regulatory authority to DHS but rather used the existing regulatory authority of those agencies or programs whose functions were transferred to DHS. So APHIS' regulatory authority is used to enumerate or revise agricultural inspection overtime rates.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with a few, minor editorial changes.

Executive Order 12866 and Regulatory Flexibility Act

This final rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget

has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS charges hourly overtime rates to individuals, firms, and corporations requesting inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the regularly established hours of service. These overtime rates are charged to the individuals, firms, or corporations requesting the services, and the fees vary depending on the type of service performed and when the service is provided. This rule amends the fees for reimbursable overtime to reflect increased costs associated with providing these services.

APHIS is updating these fees to take into account the routine increases in the cost of conducting business during overtime hours. The cost to the import/export program to provide these services has increased year to year, and these proposed increases are necessary to more accurately provide the full cost recovery of this Agency activity.

Currently, APHIS charges \$51 per hour per employee for inspection, testing, certification, or quarantine of animals or agricultural products outside the employee's regular tour of duty, and \$67 per hour per employee for inspection, testing, certification, or quarantine of animals or agricultural products that is performed on Sundays outside the employee's regular tour of duty. APHIS charges \$41 per hour per employee for commercial airline inspection services that are performed outside of the regularly established hours of service on a holiday or any other period and \$55 per hour per employee for commercial airline inspection services that are performed outside of the regularly established hours of service on a Sunday. This rule establishes hourly overtime rates for each of the fiscal years 2016 through 2018. From FY 2016 through FY 2018, these rates would increase by \$24 for inspection, testing, certification, or quarantine of animals or agricultural products outside the employee's regular tour of duty (Monday through Saturday and holidays), by \$33 for inspection, testing, certification, or quarantine of

animals or agricultural products that is performed on Sundays outside the employee's regular tour of duty, by \$24 for commercial airline inspection services that are performed outside of the regularly established hours of service on a holiday or any other period, and by \$31 for commercial airline inspection services that are performed outside of the regularly established hours of service on a Sunday.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

Title 7—Agriculture**PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES**

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.1 is amended as follows:

■ a. By revising paragraph (a)(1) introductory text, including the table.

■ b. In paragraph (a)(1)(i), by removing the words “the Customs Service, Immigration and Naturalization Service” and adding the words “U.S. Customs and Border Protection” in their place.

■ c. By revising the table in paragraph (a)(1)(iii).

■ d. In paragraph (a)(2), by removing the word “A” in the first sentence and adding the words “Except as provided in paragraph (a)(3) of this section, a” in its place.

■ e. By adding paragraph (a)(3).

■ f. In paragraphs (a)(2), (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words “or U.S. Customs and Border Protection” after the words “Animal and Plant Health Inspection Service” each time they appear.

The addition and revisions read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal

byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and subchapter D of chapter I, title 9 CFR, who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1)(i), (ii), and (iii), and (a)(3) of this section:

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Nov. 2, 2015– Sept. 30, 2016	Oct. 1, 2016– Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$75	\$75	\$75
Sundays	99	99	100

* * * * *

(iii) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES¹

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Nov. 2, 2015– Sept. 30, 2016	Oct. 1, 2016– Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$65	\$65
Sundays	85	86	86

¹ These charges exclude administrative overhead costs.

* * * * *

(3) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

Title 9—Animals and Animal Products**PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS**

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 97.1 is amended as follows:

■ a. By revising paragraph (a) introductory text, including the table.

■ b. In paragraph (a)(1), by removing the words “the Customs Service, Immigration and Naturalization Service” and adding the words “U.S. Customs and Border Protection” in their place.

■ c. By revising the table in paragraph (a)(3).

■ d. By adding paragraph (a)(4).

■ e. In paragraphs (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words “or U.S. Customs and Border Protection” after the words “Animal and Plant Health Inspection Service” each time they appear.

The addition and revisions read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.¹

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of the

¹ For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs, see §§ 93.102, 93.203, 93.303, 93.403, 93.503, 93.703, and 93.805 of this chapter. For designated ports of entry for certain purebred animals see § 151.1 through 151.3 of this chapter.

employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S.

Customs and Border Protection inspector in charge to furnish the service and shall pay the Government at the rate listed in the following table,

except as provided in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Nov. 2, 2015– Sept. 30, 2016	Oct. 1, 2016– Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$75	\$75	\$75
Sundays	99	99	100

* * * * *

(3) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES ¹

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Nov. 2, 2015– Sept. 30, 2016	Oct. 1, 2016– Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	\$64	\$65	\$65
Sundays	85	86	86

¹ These charges exclude administrative overhead costs.

(4) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

PART 130—USER FEES

■ 5. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 130.50 is amended as follows:

■ a. In paragraph (b)(3) introductory text, by removing the words “or (ii)”

and adding the words “, (ii), or (iii)” in their place.

■ b. By revising the table in paragraph (b)(3)(i).

■ c. By adding paragraph (b)(3)(iii).
The addition and revision read as follows:

\$ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES ^{1 2}

	Outside of the employee's normal tour of duty	Overtime rates (per hour)		
		Nov. 2, 2015– Sept. 30, 2016	Oct. 1, 2016– Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities ³ .	Monday–Saturday and holidays.	\$75	\$75	\$75
	Sundays	99	99	100
Rate for commercial airline inspection services ⁴	Monday–Saturday and holidays.	64	65	65
	Sundays	85	86	86

¹ Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

² When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

³ See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

⁴ See § 97.1(a)(3) of this chapter for details.

* * * * *

(iii) For information on rules pertaining to the charges associated with employees of U.S. Customs and Border Protection performing agricultural inspection services, please see 7 CFR 354.1 and 9 CFR 97.1.

* * * * *

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25101 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-0493; Directorate Identifier 2014-NM-184-AD; Amendment 39-18283; AD 2015-20-05]

RIN 2120-AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the upper and lower wing skin planks at the attachment of the main landing gear (MLG) ribs at certain wing-stations are subject to widespread fatigue damage (WFD). This AD requires an inspection (for cracking) and modification of the chordwise fastener rows of the upper and lower wing planks at the attachments to the MLG ribs at certain wing-stations. We are issuing this AD to prevent fatigue cracking of the upper and lower wing skin planks at the attachment of the MLG ribs, which could result in failure of the wing.

DATES: This AD is effective November 6, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2015.

ADDRESSES: For service information identified in this AD, contact Lockheed

Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P-58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770-494-5444; fax 770-494-5445; email ams.portal@lmco.com; Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0493.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0493; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5554; fax: 404-474-5605; email: Carl.W.Gray@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188 series airplanes. The NPRM published in the **Federal Register** on March 24, 2015 (80 FR 15525). The NPRM was prompted by an evaluation by the DAH indicating that the upper and lower wing skin planks at the attachment of the MLG ribs at certain wing-stations are subject to WFD. The NPRM proposed to require an inspection (for cracking) and modification of the chordwise fastener rows of the upper and lower wing planks at the attachments to the MLG

ribs at certain wing-stations. We are issuing this AD to prevent fatigue cracking of the upper and lower wing skin planks at the attachment of the MLG ribs, which could result in failure of the wing.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 15525, March 24, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 15525, March 24, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 15525, March 24, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 14 CFR Part 51

We reviewed Lockheed Martin Electra Service Bulletin 88/SB-721, dated April 30, 2014. This service information describes procedures for doing a bolt-hole eddy current (BHEC) inspection for cracking and repair of cracking. This service information also describes procedures for modification of the chordwise fastener rows of the upper and lower wing planks at the attachments to the MLG ribs at wing-station (WS) 167 and WS 209 by removing the original fasteners and replacing them with new first oversize fasteners of the same type or approved substitute type for original fasteners. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Modification	560 work-hours × \$85 per hour = \$47,600	\$5,000	\$52,600	\$210,400

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–20–05 Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company: Amendment 39–18283; Docket No. FAA–2015–0493; Directorate Identifier 2014–NM–184–AD.

(a) Effective Date

This AD is effective November 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 188A and 188C airplanes, certificated in any category, serial numbers 1001 and subsequent.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the upper and lower wing skin planks at the attachment of the main landing gear (MLG) ribs at certain wing-stations are subject to widespread fatigue damage. We are issuing this AD to prevent fatigue cracking of the upper and lower wing skin planks at the attachment of the MLG ribs, which could result in failure of the wing.

(f) Compliance

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

(g) Inspection, Modification, and Corrective Action

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Remove the chordwise fastener rows of the upper and lower wing planks at the attachments to the MLG ribs at wing-station (WS) 167 and WS 209; do a bolt-hole eddy current (BHEC) inspection to detect cracking

of the fastener rows; and replace the original fasteners with new, first oversize fasteners; in accordance with the Accomplishment Instructions of Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014. If any cracking is found during any inspection required by this paragraph: Before further flight, repair the cracking, in accordance with the Accomplishment Instructions of Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014.

(1) At the applicable time specified table 1 of paragraph 1.E., "Compliance," of Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014. Where table 1 of paragraph 1.E., "Compliance," of Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014, specifies "Flt. Hrs.," this AD specifies "total flight hours."

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

(h) No Reporting

Although Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Alternative Methods of Compliance (AMOCs)

(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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD.

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

(j) Related Information

For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; fax: 404–474–5605; email: carl.w.gray@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Lockheed Martin Electra Service Bulletin 88/SB–721, dated April 30, 2014.

(ii) Reserved.

(3) For Lockheed service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P-58, 86 S. Cobb Drive, Marietta, GA 30063; telephone 770-494-5444; fax 770-494-5445; email ams.portal@lmco.com; Internet <http://www.lockheedmartin.com/ams/tools/TechPubs.html>.

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on September 18, 2015.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-24839 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0128; Directorate Identifier 2013-NM-133-AD; Amendment 39-18278; AD 2015-19-16]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for The Boeing Company Model 777 airplanes equipped with Rolls-Royce Trent 800 series engines. This AD was prompted by reports of in-flight separation of the engine's aft plug from the forward plug, which are the two parts of the turbine exhaust plug assembly. This AD requires installation of a serviceable turbine exhaust plug assembly (for certain airplanes), and a general visual inspection (for certain airplanes) to determine the diameter of the bolt used at the forward and aft plug interface, and applicable corrective actions. We are issuing this AD to prevent separation of the aft plug from the forward plug of the turbine exhaust plug assembly, which could result in parts departing the airplane and hitting the

empennage, and destabilizing the airplane during a critical flight phase. In addition, parts remaining on a runway could pose a hazard to another airplane.

DATES: This AD is effective November 6, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 6, 2015.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0128.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0128; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6501; fax: 425-917-6590; email: kevin.nguyen@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to The Boeing Company Model 777 airplanes equipped with Rolls-Royce Trent 800 series engines. The NPRM published in the **Federal Register** on March 3, 2014 (79 FR 11725); corrected March 11, 2014 (79 FR

13592). The NPRM was prompted by reports of in-flight separation of the engine's aft plug from the forward plug, which are the two parts of the turbine exhaust plug assembly. The NPRM proposed to require installation of a serviceable turbine exhaust plug assembly (for certain airplanes), and a general visual inspection (for certain airplanes) to determine the diameter of the bolt used at the forward and aft plug interface, and applicable corrective actions. We are issuing this AD to prevent separation of the aft plug from the forward plug of the turbine exhaust plug assembly, which could result in parts departing the airplane and hitting the empennage, and destabilizing the airplane during a critical flight phase. In addition, parts remaining on a runway could pose a hazard to another airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592); and the FAA's response to each comment.

Request To Match Compliance Time

Cathay Pacific requested that we ensure that the AD compliance date will be the same as the compliance time of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012; or Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014. Cathay Pacific reasoned that paragraph (i) of the proposed AD specified compliance within 60 months after the effective date of the proposed AD, and both revisions of this service information specify a compliance time that is within 60 months after the Revision 3 date of the service bulletin.

We infer that Cathay Pacific is requesting that we reduce the compliance time of this final rule to match the compliance time listed in the service information. We do not agree with the commenter's request. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation for an appropriate compliance time, the time required for the rulemaking process, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that corresponds to the typical scheduled maintenance for the majority of affected operators. Under the provisions of paragraph (l) of this AD,

we may approve requests for adjustments to the compliance time, if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Define “Serviceable” To Include Pre-Boeing Service Bulletin 777-78-0051 Plug Assemblies

Cathay Pacific requested that we revise paragraph (j) of the proposed AD; corrected March 11, 2014 (79 FR 13592) to define “serviceable” plug assemblies. Cathay Pacific reasoned that both pre- and post-Boeing Service Bulletin 777-78-0051 plug assemblies can be installed, and the modification can be completed before the required compliance time of the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)).

We do not agree to revise paragraph (j) of this AD because serviceable assemblies are already defined in paragraph (h) of this AD. This definition applies to the entire AD. Also, pre-Boeing Service Bulletin 777-78-0051 plug assemblies do not meet the definition of serviceable, as specified in the service information.

Request To Revise Definition of a Serviceable Assembly

American Airlines (AA) requested that we revise paragraph (h) of the proposed AD to add another definition: Serviceable plug assemblies, as those maintained in accordance with the operator’s continued airworthiness maintenance program (CAMP), prior to issuance of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012. AA explained that prior to release of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, due to reported events of exhaust plug losses by other operators, AA recognized that multiple removals of the exhaust aft plug causes the 3/16” nutplate locking feature to wear out, which could then result in loss of the aft plug. As a result, AA implemented a maintenance program as part of its CAMP, which offers a level of safety equivalent to that of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012. During every engine removal, for a refurbishment or overhaul shop visit, the pre-Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, exhaust aft plug nutplates are replaced with new nutplates.

In addition, AA stated that the holes are inspected for elongation and cracks in accordance with procedures

equivalent to Boeing Special Attention Service Bulletin 777-78-0051 inspection procedures. Model 777 Airplane Maintenance Manual Chapter 78-11-02-400-803-R00, requires that the minimum fastener run-on torque of 2 in-lbs is met during every installation of the aft exhaust plug. In addition, each of the exhaust aft plug fasteners receives a general visual check, using a ladder/stand and a bright light, every 150 flight hours. AA expressed that it is currently the largest Model 777-200 Trent 800 operator in the worldwide fleet and has not lost an exhaust aft plug due to loose or missing fasteners, as its CAMP demonstrates an equivalent level of safety to the service information.

As an alternative, AA requested that we revise the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)) to include, as serviceable exhaust aft plugs, those maintained in accordance with the operator’s own maintenance program, such as AA’s approved CAMP prior to issuance of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, and to remain in service until the next engine removal for refurbishment or overhaul shop visit, or 60 months from the effective date of the AD, whichever is later.

We do not agree to include the requested provision. The maintenance program described by AA is likely to be acceptable in lieu of direct compliance with portions of this AD; however, the description of that program provided in AA’s comment is not sufficient to serve as engineering data for the FAA to approve as an optional method of compliance in this AD. Operators can submit a request for approval of an alternative method of compliance (AMOC), with a more detailed proposal to use the maintenance program, if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Change Compliance Time of Parts Installation Limitation

Boeing and Cathay Pacific requested that we revise paragraph (j) of the proposed AD to change the installation limitation from the effective date of the AD to the compliance deadline for the AD. Boeing reasoned that paragraph (j) of the proposed AD currently creates an alternative and indeterminate compliance deadline. Boeing explained that during the compliance interval and prior to the AD deadline, operators may be required, due to unforeseen circumstances, to install a unit that is not a serviceable unit, and that under

the current wording, this would unnecessarily ground the airplane.

We do not agree to revise paragraph (j) of this AD to change the installation limitation from the effective date of the AD to the compliance date of the AD. Grace period compliance times are provided in ADs in recognition that an immediate unscheduled modification requirement would be disruptive. A grace period is included to give operators a reasonable period of time to schedule and perform actions that are required by the AD and that otherwise would not have occurred. A parts installation limitation is included in some cases to require that, if the parts affected by the AD are already being removed for a reason other than the AD itself, that opportunity to correct the unsafe condition should be taken. We determine whether such a parts installation limitation should be included in the AD, and what the specific requirements of the limitation will be, based on the risk level associated with the unsafe condition and the expected availability of required replacement parts.

In this case, we made a determination that the risk warranted the consideration of a parts installation limitation. We also determined that sufficient parts would be available to meet that limitation, and that sufficient time to perform any required actions to make a nozzle assembly serviceable as defined in paragraph (h) of this AD would exist in situations where the nozzle might be removed in maintenance. Specifically, we considered the case of an unscheduled engine change where an operator may not have included a serviceable nozzle assembly with the replacement engine. Modification of a nozzle assembly to meet the definition of a serviceable nozzle can be performed in roughly the same or less elapsed time than it takes to perform the engine replacement itself. We did not foresee any other commonly occurring situation where an engine nozzle assembly would be removed for maintenance. However, as discussed in response to the comment issue “Request to Revise Definition of a Serviceable Assembly,” if an operator specifically and adequately addresses the management of this unsafe condition within its CAMP, we will consider AMOC approvals to allow installation of nozzle assemblies that do not meet the definition of serviceable nozzle in paragraph (h) of this AD.

We clarified paragraph (j) of this AD as a result of these comments. We considered the explanatory statements about the intent of the parts installation limitation language used in several

recent ADs, and determined that different language should be used in this case to more clearly convey the intent of the parts installation limitation contained in this AD. We have added the words “or re-install” to paragraph (j) to clarify that any installation of a nozzle assembly, regardless of the reason for the removal of the nozzle assembly and regardless of the source of the replacement nozzle assembly, is subject to the parts installation limitation of paragraph (j) of this AD.

Request To Clarify Paragraph (j) of the Proposed AD

AA requested that we clarify paragraph (j) of the proposed AD. AA explained that paragraph (j) of the proposed AD allows that only a serviceable turbine exhaust plug assembly may be installed on any airplane as of the effective date of this AD, while paragraph (i) of the proposed AD requires a compliance time within a certain time after the effective date of this AD, without any referral to serviceable turbine exhaust plug assembly. AA reasoned that as written, these steps are confusing and could lead operators to believe the actions required by the AD are due as of the effective date of this AD.

We agree with the commenter and have clarified paragraph (j) of this AD by including references to paragraphs (h)(1) and (h)(2) of this AD.

Request To Clarify the AMOC Paragraph

Boeing requested that we revise paragraph (k)(3) of the proposed AD (paragraph (l)(3) of this AD) to indicate that an AMOC, approved for a repaired serviceable unit is to be attached to, and travel with, the repaired serviceable unit. Boeing explained that the AMOC approval should apply to the deviation on the serviceable unit and thereby travel with the serviceable unit, which is rotatable and could be installed on numerous airplanes during its service life. Boeing also explained that a unit repaired in accordance with an approved AMOC will fulfill the intent of airplane safety when the unit is installed on an airplane, and that the unit will be in compliance with the AD as long as the part is serviceable as defined by the AD.

We agree with the commenter and have revised paragraph (l)(3) of this AD accordingly.

Request To Use the CAMP

AA requested that we revise the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)), to include language that allows

the optional re-identification of the exhaust plug with the correct post-Boeing Special Attention Service Bulletin 777-78-0051, part number identity in accordance with a method approved by the operator's approved CAMP, as the CAMP provides an equivalent level of safety. AA explained that prior to the release of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, AA implemented a maintenance program to install data plates on the forward and aft exhaust plug. The plates were installed because the manufacturer part number and serial number, which were chemical-etched on the exhaust plug skin by the manufacturer, were no longer legible. AA stated that the data plates contain the original part number, a company-assigned serial number, and the text “MATCHED SET. DO NOT SEPARATE.” AA added that the installed identification plates are in the same location as, but a different length than, the plates specified in Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012.

We agree to allow alternative permanent part-marking methods. If the markings contain the required information and are permanent, the intent of the marking requirement is addressed, and additional flexibility is provided to operators. Therefore, part-marking methods for the CAMP might be approved, provided that the markings are permanent and contain the information specified in Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014. We have added this information to paragraph (g) of this AD accordingly.

Request To Eliminate AMOC Approval Requirement for Previous Repairs

AA requested that we revise paragraph (h) of the proposed AD, to allow repairs accomplished prior to the release of this AD, in accordance with Boeing instructions and approved per 14 CFR part 121.379, or a Boeing ODA, to be included as acceptable repairs in this AD, without the requirement to obtain a Boeing ODA AMOC or Seattle Aircraft Certification Office AMOC approval.

AA explained that, prior to release of the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)); exhaust aft plugs have received repairs at the exhaust aft plug mate line during inspection or during incorporation of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, utilizing procedures provided by Boeing without Boeing ODA approval;

rather, the repair was approved per 14 CFR part 121.379. AA expressed that paragraph (h) of the proposed AD specifies using a repair method approved in accordance with the procedures specified in paragraph (k) of the proposed AD, and these previously accomplished repairs, which followed Boeing repair instructions, offer an equivalent level of safety to the NPRM.

We partially agree with the request. We agree to add paragraph (l)(4) in this AD to eliminate the requirement for subsequent AMOC approval for repairs that were previously approved by the Boeing ODA, using an FAA Form 8100-9, and having met the requirements of paragraph (h) of this AD, for the definition of serviceable turbine exhaust plug assemblies. We are confident that the Boeing ODA repair approval process ensures that each repair is reviewed by qualified engineering staff with knowledge of the original airplane design and compliance substantiation. At the same time, we want to ensure that those repairs would have a configuration that meets the definition of serviceable turbine exhaust plug assemblies as defined in the service information. We have added paragraph (l)(4) in this AD to state that repairs approved prior to the effective date of this AD, by the Boeing ODA using FAA Form 8100-9, and having met the requirements of paragraph (h) of this AD for the definition of serviceable turbine exhaust plug assemblies, do not require AMOC approval.

We disagree, however, to eliminate the AMOC approval requirement for repairs approved by other means. Even though Boeing Service Engineering may have provided a “no technical objection” statement, qualified engineering staff with knowledge of the original airplane design and compliance substantiation may not have been involved in evaluating the repair. We have not changed this AD in this regard.

Additional Changes to This AD

We have revised this AD to refer to Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014, as the appropriate source of service information for the required actions. Among other things, this service information adds Group 2 airplanes to paragraph 1.E., “Compliance;” includes a maintenance records check; adds a general visual inspection to determine the diameter of the bolt used at the forward and aft plug interface; and adds applicable corrective actions—all of which we have clarified in new paragraph (g)(4) of this AD. Paragraphs (g)(3) and (c) of the proposed AD already accounted for the Group 2

airplanes defined in Boeing Special Attention Service Bulletin 777–78–0051, Revision 4, dated February 7, 2014. Paragraph (g)(2) of the proposed AD accounted for the required actions.

We have also added a new paragraph (k) to this AD to provide credit for certain actions, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–78–0051, Revision 3, dated August 23, 2012. We have redesignated the subsequent paragraphs of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously

and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 11725, March 3, 2014; corrected March 11, 2014 (79 FR 13592)).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–78–

0051, Revision 4, dated February 7, 2014. Among other things, this service information adds Group 2 airplanes to paragraph 1.E., “Compliance;” includes a maintenance records check; adds a general visual inspection to determine the diameter of the bolt used at the forward and aft plug interface; and adds applicable corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	5 work-hours × \$85 per hour = \$425	\$0	\$425	\$14,875
General visual inspection	2 work-hours × \$85 per hour = \$170	\$0	\$170	\$5,950

We estimate the following costs to do any necessary replacement that would

be required based on the results of the inspection. We have no way of

determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement (replacing the $\frac{3}{16}$ -inch bolts with $\frac{1}{4}$ -inch bolts).	5 work-hours × \$85 per hour = \$425	\$0	\$425

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–19–16 The Boeing Company:

Amendment 39–18278; Docket No. FAA–2014–0128; Directorate Identifier 2013–NM–133–AD.

(a) Effective Date

This AD is effective November 6, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777-200, -200LR, -300, -300ER, and 777F series airplanes; certificated in any category; equipped with Rolls-Royce Trent 800 series engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by reports of in-flight separation of the engine's aft plug from the forward plug, which are the two parts of the turbine exhaust plug assembly. We are issuing this AD to prevent separation of the aft plug from the forward plug of the turbine exhaust plug assembly, which could result in parts departing the airplane and hitting the empennage or hitting a person on the ground, and destabilizing the airplane during a critical flight phase; parts remaining on a runway could cause damage to another airplane.

(f) Compliance

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

(g) Installation and General Visual Inspection

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014, except as provided by paragraph (i) of this AD, do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014. Alternative part marking methods are allowed for the requirements of this paragraph, if approved by the FAA principal maintenance inspector, provided that the markings are permanent and contain the information required by Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014.

(1) For airplanes identified as Group 1, Configuration 1, in Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014: Install a serviceable turbine exhaust plug assembly.

(2) For airplanes identified as Group 1, Configurations 2 and 3, in Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014: Do a general visual inspection to determine the diameter of the bolt used at the forward and aft plug interface, and before further flight, do all applicable corrective actions.

(3) For airplanes listed in paragraph (c) of this AD that are not listed in the "Effectivity" section of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014: Do a general visual inspection to determine if a serviceable

turbine exhaust plug assembly is installed. If a serviceable turbine exhaust plug assembly is not installed, before further flight, install a serviceable turbine exhaust plug assembly.

(4) For airplanes identified as Group 2, in Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014: Do a maintenance records check to determine affected turbine exhaust plug assemblies, and for affected assemblies, do a general visual inspection to determine the diameter of the bolt used at the forward and aft plug interface, and before further flight, do all applicable corrective actions.

(h) Definition of Serviceable Assembly

For the purposes of this AD, an acceptable serviceable turbine exhaust plug assembly must meet the conditions specified in paragraph (h)(1) or (h)(2) of this AD.

(1) A new assembly with part number 314W5520-22.

(2) A serviceable assembly as defined in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014; except, for any assembly on which the actions specified in Part 2 or Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014, are done, and Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014, specifies to contact Boeing for repair instructions, this AD requires repair before further flight, using a method approved in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) Exception to Service Information Specifications

Where paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014, specifies a compliance time "after the Revision 3 date of this service bulletin," or "after the Revision 4 date of this service bulletin," this AD requires compliance within the applicable time after the effective date of this AD.

(j) Parts Installation Limitation

As of the effective date of this AD, only a serviceable turbine exhaust plug assembly that meets the requirements of paragraph (h)(1) or (h)(2) of this AD may be installed or reinstalled on any airplane.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012 (which is not incorporated by reference in this AD), provided that for Group 1, Configuration 2, airplanes, on which the condition defined in Table 2 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 777-78-0051, Revision 3, dated August 23, 2012, was found (*i.e.*, only ¼ inch diameter bolts are found installed at all 33 locations forward and aft plug interface), the re-identification of the forward and aft plug was done before further flight after the inspection.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD. An AMOC approved as described in this paragraph for a specific serviceable nozzle assembly may be transferred with that nozzle assembly to another aircraft without an additional AMOC approval being required.

(4) Repairs approved prior to the effective date of this AD by the Boeing ODA do not require AMOC approval if those repairs were approved using FAA Form 8100-9 and those repairs meet the definition of a serviceable assembly contained in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014.

(m) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office (ACO) FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6501; fax: 425-917-6590; email: kevin.nguyen@faa.gov.

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

(n) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 777-78-0051, Revision 4, dated February 7, 2014.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone

206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>.

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

Issued in Renton, Washington, on September 16, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-24677 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 18, 36, 40, 140

RIN 3038-AE10

Repeal of the Exempt Commercial Market and Exempt Board of Trade Exemptions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (the “Commission”) is taking final action to revise its regulations by removing the part 36 regulations. Those regulations implemented provisions of the Commodity Exchange Act (“CEA”) that established exempt boards of trade and exempt commercial markets—two categories of derivatives-trading platforms that were eliminated from the CEA by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). This action also removes various cross-references in other Commission regulations implicating exempt boards of trade and exempt commercial markets.

DATES: This rulemaking is effective on October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; Dana R. Brown, Division of Market Oversight, telephone (202) 418-5093 and email dbrown@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.¹ Title VII of the Dodd-Frank Act² amended the CEA³ to establish a comprehensive framework for the regulation of over-the-counter derivatives, also known as swaps. Among other reforms, Title VII requires that any person who operates a facility to trade swaps register as a designated contract market (“DCM”) or a swap execution facility (“SEF”);⁴ the latter is a category of trading market newly established under the law. Concurrently, Title VII eliminated from the CEA two categories of exempt markets for the trading of derivatives originally established in the CEA by the Commodity Futures Modernization Act of 2000 (“CFMA”):⁵ exempt commercial markets (“ECMs”) and exempt boards of trade (“EBOTs”).

Under the CFMA’s revisions to the CEA, ECMs could trade exempt commodities⁶ (i.e. any commodity other than an excluded commodity⁷ and agricultural commodities) on electronic trading facilities between eligible commercial entities⁸ without complying with comprehensive designation criteria and core principles that were applicable to designated contract markets. A facility that elected to operate as an ECM was generally exempt from regulation, but was still required to comply with certain informational and recordkeeping requirements, if the market satisfied the

conditions for the exemption found in Sections 2(h)(3) through (5) of the CEA, 7 U.S.C. 2(h)(3)–(5), including a requirement that the ECM notify the Commission of its intent to rely upon the exemption.⁹

Under CEA Section 5d, 7 U.S.C. 7a–3, EBOTs were facilities that traded commodities (other than securities or securities indexes) that had a nearly inexhaustible deliverable supply and either no cash market or a cash market so liquid that any contract traded on the commodity was highly unlikely to be susceptible to manipulation. EBOT transactions were limited to eligible contract participants¹⁰ and subject to minimal trading prohibitions, including anti-fraud and anti-manipulation restrictions. EBOTs were required to file notice with the Commission of their election to operate as an EBOT.¹¹

Section 723 of the Dodd-Frank Act repealed CEA Section 2(h)(3) as it then existed,¹² thus eliminating the ECM category. Section 734 of the Dodd-Frank Act similarly repealed CEA Section 5d,¹³ thus eliminating the EBOT category. Both Sections 723 and 734 of the Dodd-Frank Act contain grandfather provisions allowing existing ECMs and EBOTs to petition the Commission to continue to operate as ECMs and EBOTs subject to the requirements of the CEA Sections 2(h)(3) and 5d, respectively, for a limited period of time.¹⁴ Pursuant to these grandfather provisions, the Commission issued an order in September 2010 granting petitioning ECMs and EBOTs up to one year of grandfather relief from the general effective date of the Dodd-Frank Act amendments to the CEA (“Grandfather Relief Order”).¹⁵

Subsequent to the Grandfather Relief Order, the Commission issued a series

⁹ The Commission’s part 36 regulations established similar requirements for EBOTs.

¹⁰ The definition of “Eligible Contract Participant” is found in Section 1a(18) of the CEA, 7 U.S.C. 1a(18) (2012).

¹¹ The Commission’s Part 36 regulations established similar requirements for ECMs.

¹² The Dodd-Frank Act amended Section 2(h) of the CEA effective July 16, 2011, H.R. 4173, Section 723(a)(1), Public Law 111–203, 124 Stat. 1376, by striking existing subsection (h)—“Transactions in exempt commodities” and inserting new subsection (h)—“Clearing requirement” not addressed to exempt commercial markets.

¹³ The Dodd-Frank Act repealed Section 5d of the CEA effective July 16, 2011, H.R. 4173, Section 734(a), Public Law 111–203, 124 Stat. 1376 (2010).

¹⁴ ECMs and EBOTs were permitted to continue operations until July 16, 2012 pursuant to a grandfather relief order issued by the Commission pursuant to Sections 723(c)(2)(B) and 734(c)(2) of the Dodd-Frank Act, respectively.

¹⁵ 75 FR 56513 (September 16, 2010).

¹ Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

² Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

³ 7 U.S.C. 1 *et seq.* (2012).

⁴ Dodd-Frank Act Section 733 (amending the CEA to add new section 5h).

⁵ Public Law 106–554, 114 Stat. 2763 (December 21, 2000).

⁶ See CFMA Section 101(4) (amending CEA to add definition of “Exempt Commodity,” currently codified as CEA Section 1(a)(20), 7 U.S.C. 1a(20) (2012)).

⁷ “Excluded Commodity” is also a statutorily defined term, currently codified as CEA Section 1(a)(19), 7 U.S.C. 1a(19) (2012). Generally characterized, the term captures, among other things specified financial instruments, measures, and indexes (e.g., securities and security indexes, currencies, interest rates, debt instruments, and credit ratings); any “other rate, differential, index, or measure of economic or commercial risk, return or value” not substantially based on the value of a narrow commodity group or solely based on a commodity or commodities with no cash value; and other economic or commercial indexes, or occurrences and contingencies associated with an economic consequence, beyond the control of parties to the relevant contract, agreement or transaction.

⁸ The definition of “Eligible Commercial Entity” is found in Section 1a(17) of the CEA. 7 U.S.C. 1a(17) (2006).

of orders¹⁶ and Commission staff issued various no-action letters¹⁷ that effectively extended expiration of the relief provided to ECMs and EBOTs in the Grandfather Relief Order.

Collectively, the Grandfather Relief Order and subsequent Commission orders and staff no-action letters allowed ECMs and EBOTs, as well as other markets that relied on various pre-Dodd-Frank Act provisions of the CEA,¹⁸ to continue operations under a regulatory status quo and, thus, ensured that industry practices would not be unduly disrupted during the transition to the new Dodd-Frank Act regulatory regime.¹⁹

The Grandfather Relief Order and various subsequent Commission orders have all expired, and entities that previously operated as ECMs or EBOTs are seeking registration to become either DCMs or SEFs to continue their operations. Accordingly, the Commission is removing all references to the Commission exemptive orders from Title 17 of the Code of Federal Regulations.

As discussed in section III.A. below, the Commission is publishing this final rule pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(A), which provides that the requirements for notice and opportunity for public comment do not apply to “rules of agency organization, procedure, or practice”²⁰ The rulemaking conforms the Commission’s regulations to the statutory requirements of the CEA by removing provisions that are of no legal effect because they concern exempt market categories that Congress, through the Dodd-Frank Act, removed from the statute; the Commission has no authority or discretion under the statute to retain the ECM and EBOT category designations in its regulations. As such, the amendments effected through this rulemaking—which have no impact on substantive rights or obligations under

the CEA, as amended by the Dodd-Frank Act—are entirely ministerial and procedural in nature.

II. Amended Regulations

A. Part 36

The Commission is removing part 36 of its regulations in its entirety in order to reflect the Dodd-Frank Act’s elimination of the two categories of exempt markets—ECMs and EBOTs—from the CEA.

B. Parts 15, 18, 40, and 140

The Commission is removing from parts 15, 18, 40, and 140 all references to the Grandfather Relief Orders added to the Commission’s regulations by Adaptation of Regulations To Incorporate Swaps rulemaking,²¹ as the authority under which those orders were issued has expired, and is removing all references in the Commission’s regulations to the terms ECMs, EBOTs, and electronic trading facilities (as sometimes used in the Commission’s regulations to refer to ECMs).²²

1. *Regulation 15.05*: Designation of agent for foreign persons.

The Commission is removing from regulation 15.05 all references to contracts identified in part 36.

2. *Regulation 18.05*: Maintenance of books and records.

The Commission is removing from regulation 18.05 all references to ECMs and EBOTs.

3. *Regulation 40.8*: Availability of public information.

The Commission is removing from regulation 40.8 all references to electronic trading facilities on which significant price discovery contracts are traded or executed.

4. Appendix D to Part 40—Submission Cover Sheet and Instructions.

The Commission is removing from Appendix D to part 40 the reference to electronic trading facilities with a significant price discovery contract.

5. *Regulation 140.99*: Requests for exemptive, no-action and interpretative letters.

The Commission is removing from regulation 140.99 all references to ECMs and EBOTs.

III. Administrative Compliance

A. Administrative Procedure Act

The Administrative Procedure Act (“APA”)²³ generally requires a Federal agency to publish notice of a proposed rulemaking in the **Federal Register** and allow opportunity for public comment before propounding a final rule.²⁴ This requirement does not apply, however, to non-legislative rules of “agency organization, procedure, or practice.”²⁵ In this case, the revisions to the Commission’s regulations in this rulemaking do not establish any new substantive or legislative rules. Rather, this final rule makes technical amendments to various Commission regulations to reflect the fact that Congress has eliminated the ECM and EBOT category designations from the CEA. As such, the amendments effected through this rulemaking—which have no impact on substantive rights or obligations under the CEA, as amended by the Dodd-Frank Act—are entirely ministerial and procedural in nature. This final rule shall become effective upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.²⁶ The Commission certifies that this rulemaking will have no significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.²⁷ There is no additional submission required as a result of this action. Accordingly, the Commission is not obligated to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (“OMB”) pursuant to the Paperwork Reduction Act.²⁸ This rulemaking contains no collection of information that obligates the Commission to obtain a control number from OMB.

¹⁶ 76 FR 42522 (July 19, 2011), 76 FR 80233 (December 23, 2011), and 77 FR 41260 (July 13, 2012).

¹⁷ CFTC No-Action Letter No. 12–48 (December 11, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-48.pdf> and CFTC No-Action Letter No. 13–28 (June 17, 2013), available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-28.pdf>.

¹⁸ See e.g., CEA Sections 2(d), 2(e), 2(g), 2(h), and 5d.

¹⁹ The Commission orders and no-action letters were generally structured to permit transactions and relevant persons and entities to continue to rely on various CEA exemptive and excluding provisions in place prior to July 16, 2011 subject to other conditions, various anti-fraud and anti-manipulation prohibitions and the expiration of exemptive relief orders as various Dodd-Frank Act implementing regulations became effective.

²⁰ See 5 U.S.C. 553(b) & (c).

²¹ Adaptation of Regulations To Incorporate Swaps, 77 FR 66288 (November 2, 2012).

²² The Commission proposed and finalized rules in the “Adaptation of Regulations to Incorporate SEFs” to make a number of conforming amendments to integrate the Commission’s regulations more fully with the new swaps framework created by the Dodd-Frank Act. 77 FR 66288 (November 2, 2012).

²³ 5 U.S.C. 551 *et seq.*

²⁴ See 5 U.S.C. 553(b) & (c).

²⁵ See 5 U.S.C. 553(b)(A).

²⁶ See 5 U.S.C. 601 *et seq.*

²⁷ See *id.*

²⁸ See 44 U.S.C. 3501 *et seq.*

D. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.²⁹ Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

The Commission is removing its Part 36 regulations and amending §§ 15.05, 18.05, 40.8, Appendix D to part 40, and § 140.00. Part 36 originally implemented provisions of the pre-Dodd-Frank CEA that established EBOTs and ECMs—two categories of derivatives-trading platforms that were eliminated from the CEA by the Dodd-Frank Act—while the other regulations contained references to ECM and EBOTs. The Commission is using the CEA, as amended by the Dodd-Frank Act, as the baseline for assessing whether and to what extent costs or benefits are likely to flow from the amendments, and is only considering the costs and benefits of its discretionary actions permissible within the parameters of the statute.

2. Costs

Since the Dodd-Frank Act eliminated ECMs and EBOTs from the CEA, the Commission lacks authority to make or retain provisions for them within its regulations. Accordingly, there are no costs to the industry or the public associated with the amendments to remove implementing language for ECMs and EBOTs in part 36 and obsolete, vestigial references to ECMs and EBOTs in parts 15, 18, 40, and 140.

3. Benefits

The Commission believes that market participants and the public will benefit from these ministerial rule amendments since they eliminate obsolete, vestigial provisions and references that otherwise could be construed to give rise to confusing inconsistencies between the Commission's regulations and the provisions of the CEA, as amended by the Dodd-Frank Act.

4. Section 15(a) Factors

Protection of market participants and the public. By squaring its regulations with Dodd-Frank Act amendments to the CEA eliminating authorization for ECMs and EBOTs, the Commission believes it is furthering the interest of protecting market participants and the public. These amendments eliminate potential for confusion that otherwise might arise from retaining outdated provisions addressed to statutorily-obsolete trading platforms.

Efficiency, competitiveness, and financial integrity of futures markets.

The Commission believes that the amendments will not materially affect the efficiency, competitiveness, and financial integrity of futures markets.

Price discovery. The Commission believes that the amendments will not materially affect the price discovery process.

Sound risk management practices.

The Commission believes that the amendments will not materially affect sound risk management practices.

Other public interest considerations.

The Commission believes that the amendments will not materially affect other public interest considerations.

List of Subjects

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 18

Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures.

17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (government agencies), Conflicts of interest, Organization and functions (government agencies).

For the reasons stated in the preamble, under the authority of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), the Commodity Futures Trading Commission amends 17 CFR chapter I as set forth below:

PART 15—REPORTS—GENERAL PROVISIONS

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

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as

amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Revise paragraph (a) of § 15.05 to read as follows:

§ 15.05 Designation of agent for foreign persons.

(a) For purposes of this section, the term “futures contract” means any contract for the purchase or sale of any commodity for future delivery, traded or executed on or subject to the rules of any designated contract market, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term “option contract” means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act, traded or executed on or subject to the rules of any designated contract market, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term “customer” means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term “communication” means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

* * * * *

PART 18—REPORTS BY TRADERS

■ 3. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 6t, 12a, and 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 18.05 [Amended]

■ 4. Amend § 18.05 as follows:

■ a. Remove paragraphs (a)(3) and (a)(4);

■ b. In paragraph (a)(2), add the word “and” after the semicolon at the end of the paragraph; and

■ c. Redesignate paragraph (a)(5) as paragraph (a)(3).

PART 36—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 36.

²⁹ 7 U.S.C. 19(a).

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

■ 6. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 40.8 [Amended]

■ 7. Amend § 40.8 by removing and reserving paragraph (b).

■ 8. Revise Appendix D to part 40 to read as follows:

Appendix D to Part 40—Submission Cover Sheet and Instructions

(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically by a registered entity in a format and manner specified by the Secretary of the Commission to the Secretary of the Commission. A properly completed submission cover sheet shall include all of the following:

1. *Identifier Code (optional)*—A registered entity Identifier Code at the top of the cover sheet, if applicable. Such codes are commonly generated by registered entities to provide an identifier that is unique to each filing (e.g., NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (e.g., CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR).

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (e.g., rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked “confidential treatment requested” on the Submission

Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in § 40.8 and, where appropriate, § 145.9 of this chapter, and will not substitute for notice or full compliance with such requirements.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 9. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a, 13(c), 13(d), 13(e), and 16(b).

■ 10. Revise paragraph (d)(2)(i) of § 140.99 to read as follows:

§ 140.99 Requests for exemptive, no-action and interpretative letters.

* * * * *

(d) * * *

(2)(i) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered swap execution facilities, registered swap data repositories, registered foreign boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, made available for trading determinations, position limits, hedging exemptions, position aggregation treatment or the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

* * * * *

Issued in Washington, DC, on September 28, 2015, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

Appendix To Repeal of the Exempt Commercial Market and Exempt Board of Trade Exemptions—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2015–25029 Filed 10–1–15; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9911; 34–75918; 39–2506; IC–31823]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made to add two new Security-based Swap Data Repository (SDR) submission form types; make available new exhibit EX–36 (Depositor Certification for shelf offerings of asset-backed securities) on EDGARLink Online for submission form types SF–3, SF–3/A, 8–K, and 8–K/A; accept Exhibit K and Exhibit L in eXtensible Business Reporting Language (XBRL) format for submission form types SDR, SDR/A, SDR–A, and SDR–W; consider valid XBRL file attachments if they contain multiple identically tagged XBRL facts; make documentation updates to Chapter 2 of the “EDGAR Filer Manual, Volume I: General Information” and Chapters 2, 3, and 7 of the “EDGAR Filer Manual, Volume II: EDGAR Filing” relating to Form NRSRO; and make formatting changes to “EDGAR Filer Manual, Volume I: General Information”, “EDGAR Filer Manual, Volume II: EDGAR Filing”, and “EDGAR Filer Manual, Volume III: N–SAR Supplement” for compliance with Section 508 of the U.S. Rehabilitation Act. The Filer Manual is also being revised to address software changes made previously in EDGAR. On July 10, 2015, Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, and 1–A POS were updated to prevent a filer from entering a response in Item 6(d) when the “None” option has been selected on Item 6. The EDGAR system is scheduled to be upgraded to support this functionality on September 14, 2015.

DATES: Effective October 2, 2015. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of October 2, 2015.

FOR FURTHER INFORMATION CONTACT: In the Division of Trading and Markets, for

questions concerning SDR and NRSRO form types, contact Kathy Bateman at (202) 551-4345; in the Division of Corporation Finance, for questions concerning SF-3, 8-K, and Regulation A form types, contact Heather Mackintosh at (202) 551-8111; in the Division of Economic and Risk Analysis, for questions concerning XBRL submissions, contact Walter Hamscher at (202) 551-5397; and in the Office of Information Technology, for questions concerning Section 508 of the U.S. Rehabilitation Act, contact Tammy Borkowski at (202) 551-7208.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I, Volume II, and Volume III. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.¹ It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: "General Information," Version 23 (September 2015), Volume II entitled EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 34 (September 2015), and Volume III entitled EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 5 (September 2015). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.² Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.³

The EDGAR system will be upgraded to Release 15.3 on September 14, 2015 and will introduce the following changes:

As part of the final rules adopted on January 14, 2015 for regulating security-based swap data repositories (SDR), the

following submission form types will be added to EDGAR:⁴

- SDR-CCO—Annual Compliance Report and Annual Financial Report
- SDR-CCO/A—Amendment to Annual Compliance Report and Annual Financial Report

These submission form types can be accessed by selecting the 'EDGARLink Online Form Submission' link on the EDGAR Filing Web site. Additionally, applicants may construct XML submissions for SDR-CCO and SDR-CCO/A by following the "EDGARLink Online XML Technical Specification" document available on the SEC's Public Web site (<http://www.sec.gov/info/edgar.shtml>).

Submission form types SDR-CCO and SDR-CCO/A will include the "Request Confidentiality" check box to allow applicants to request confidential treatment for each attached document. After an SDR-CCO or SDR-CCO/A filing is submitted, SEC staff will review the submission and make a determination of whether the information for which confidential treatment is requested should be made public. EDGAR will only disseminate the attached documents of the submission that the SEC staff has determined to be public.

In connection with the Commission's revised rules and forms for disclosure by asset-backed securities issuers, new exhibit EX-36 (Depositor Certification for shelf offerings of asset-backed securities) will be available on EDGARLink Online for submission form types SF-3, SF-3/A, 8-K, and 8-K/A.⁵ This change will allow registrants to file a certification required for shelf offerings of asset-backed securities as an EX-36. Filers will have the option to attach exhibit EX-36 in official HTML or ASCII format (and unofficially in PDF format) on submission form types SF-3 and SF-3/A and on submission form types 8-K and 8-K/A, when the SIC code associated with the Primary Filer CIK is 6189 (Asset-Backed Securities).

EDGAR will be updated to include the following XBRL document types for submission form types SDR, SDR/A, SDR-A, and SDR-W:

- EX-99.K SDR.INS, EX-99.K SDR.SCH, EX-99.K SDR.PRE, EX-99.K SDR.LAB, EX-99.K SDR.CAL, and EX-99.K SDR.DEF
- EX-99.L SDR.INS, EX-99.L SDR.SCH, EX-99.L SDR.PRE, EX-99.L SDR.LAB,

EX-99.L SDR.CAL, and EX-99.L SDR.DEF

Filers will now be able to submit SDR Exhibit K and Exhibit L in XBRL format for submission form types SDR, SDR/A, SDR-A, and SDR-W. Filers can continue to provide SDR Exhibit K and Exhibit L in ASCII or HTML formats for submission form types SDR, SDR/A, SDR-A, and SDR-W.

XBRL file attachments will be considered valid if they contain multiple identically tagged XBRL facts.

Documentation updates were made to Chapter 2 of the "EDGAR Filer Manual, Volume I: General Information" and Chapters 2, 3, and 7 of the "EDGAR Filer Manual, Volume II: EDGAR Filing" relating to Form NRSRO.

Formatting changes were made to "EDGAR Filer Manual, Volume I: General Information", "EDGAR Filer Manual, Volume II: EDGAR Filing", and "EDGAR Filer Manual, Volume III: N-SAR Supplement" for compliance with Section 508 of the U.S. Rehabilitation Act.

The Filer Manual is also being revised to address software changes made previously in EDGAR. On July 10, 2015, EDGAR Release 15.2.e.4 introduced the following change:

- Regulation A submission form types DOS, DOS/A, 1-A, 1-A/A, and 1-A POS were updated to prevent a filer from entering a response in Item 6(d) when the "None" option has been selected on Item 6.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).⁶ It follows that

¹ We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on August 3, 2015. See Release No. 33-9874 (August 24, 2015) [80 FR 51123].

² See Rule 301 of Regulation S-T (17 CFR 232.301).

³ See Release No. 33-9874 in which we implemented EDGAR Release 15.2.2. For additional history of Filer Manual rules, please see the cites therein.

⁴ See Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 34-74246 (Feb. 11, 2015), 80 FR 14437 (March 9, 2015).

⁵ See Asset-Backed Securities Disclosure and Registration, Securities Act Release No. 33-9638 (September 4, 2014).

⁶ 5 U.S.C. 553(b).

the requirements of the Regulatory Flexibility Act⁷ do not apply.

The effective date for the updated Filer Manual and the rule amendments is October 2, 2015. In accordance with the APA,⁸ we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 15.3 is scheduled to become available on September 14, 2015. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁹ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,¹⁰ Section 319 of the Trust Indenture Act of 1939,¹¹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹²

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350 unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The

requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: “General Information,” Version 23 (September 2015). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: “EDGAR Filing,” Version 34 (September 2015). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: “N-SAR Supplement,” Version 5 (September 2015). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Dated: September 15, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015-24904 Filed 10-1-15; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 2013R-9F; AG Order No. 3566-2015]

Technical Amendments to Regulations; Correction

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Final rule; Correcting amendments.

SUMMARY: The Department of Justice published in the **Federal Register** of August 11, 2014, a final rule making technical changes to correcting a technical amendment to a definition in the Bureau of Alcohol, Tobacco, Firearms, and Explosives regulations related to commerce in explosives. That document inadvertently included an incorrect definition for “Customs officer” in 27 CFR part 555. This final rule corrects the 2014 amendments by revising the definition.

DATES: This rule is effective October 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648-7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) administers regulations published in title 27, chapter II, Code of Federal Regulations (CFR). On August 11, 2014, the Department of Justice (DOJ) published in the **Federal Register** a final rule that made technical amendments and corrected typographical errors in ATF regulations in the CFR (79 FR 46690). Many of the technical changes were made to reflect changes in nomenclature resulting from the transfer of ATF to DOJ from the Department of the Treasury, pursuant to the Homeland Security Act of 2002. The changes were designed to provide clarity and enhance uniformity throughout these regulations.

The 2014 technical amendments inadvertently contained an incorrect definition for “Customs officer” in 27 CFR part 555. This final rule corrects the changes in the Code of Federal Regulations made by the 2014 technical amendments by revising the definition. Section 555.11, defining “Customs officer,” is being amended so that it no longer contains a reference to “Customs Service.” The new definition reads as follows: “Any officer of U.S. Customs and Border Protection, any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law to perform the duties of a customs officer.”

⁷ 5 U.S.C. 601-612.

⁸ 5 U.S.C. 553(d)(3).

⁹ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

¹⁰ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

¹¹ 15 U.S.C. 77sss.

¹² 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866 and Executive Order 13563

This final rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1, General Principles of Regulation. This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a “regulation” or “rule” as defined by that Executive Order.

B. Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, “Federalism,” the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. 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.”

D. Administrative Procedure Act

This final rule is purely a matter of agency management. Accordingly, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2). In addition, prior notice and comment are not required because the final rule is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b). Moreover, the Department finds good cause for exempting the rule from those requirements. Because this final rule makes a technical correction for accuracy and to improve the clarity of the regulations, the Department finds it unnecessary to publish this rule for public notice and comment. *See* 5 U.S.C. 553(b). Similarly, because delaying the effective date of this rule would serve no purpose, the Department also finds good cause to make this rule effective upon publication. *See* 5 U.S.C. 553(d)(3).

E. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 604.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

G. Unfunded Mandates Reform Act of 1995

This rule was not preceded by a published notice of proposed rulemaking; will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year; will not significantly or uniquely affect small governments; and does not contain significant intergovernmental mandates. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1535.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

I. Congressional Review Act

This action pertains to agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). *See* 5 U.S.C. 804(3). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Customs duties and inspection, Explosives, Hazardous substances, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Revise the definition of “Customs officer” in § 555.11 to read as follows:

§ 555.11 Meaning of terms.

* * * * *

Customs officer. Any officer of U.S. Customs and Border Protection, any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law to perform the duties of a customs officer.

* * * * *

Dated: September 28, 2015.

Loretta E. Lynch,
Attorney General.

[FR Doc. 2015–25190 Filed 10–1–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 236

[DOD–2014–OS–0097]

RIN 0790–AJ29

Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities

AGENCY: Office of the DoD Chief Information Officer, DoD.

ACTION: Interim final rule.

SUMMARY: DoD is revising its DoD–DIB Cybersecurity (CS) Activities regulation to mandate reporting of cyber incidents that result in an actual or potentially adverse effect on a covered contractor information system or covered defense information residing therein, or on a contractor’s ability to provide operationally critical support, and modify eligibility criteria to permit greater participation in the voluntary

DoD-Defense Industrial Base (DIB) Cybersecurity (CS) information sharing program.

DATES: Effective Date: This rule is effective October 2, 2015. Comments must be received by December 1, 2015.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301-9010.

FOR FURTHER INFORMATION CONTACT: DoD-DIB Cybersecurity Activities Office: (703) 604-3167, toll free (855) 363-4227.

SUPPLEMENTARY INFORMATION:

Executive Summary

This rule revises the DoD-DIB cybersecurity information sharing program regulation to implement new statutory requirements for DoD contractors and subcontractors to report cyber incidents that result in an actual or potentially adverse effect on a covered contractor information system or covered defense information residing therein, or on a contractor's ability to provide operationally critical support. The program also retains the voluntary information sharing activities for cybersecurity information that is outside the scope of the mandatory reporting requirements.

Regarding the mandatory reporting, this part has been revised to set forth mandatory cyber incident reporting requirements that will apply to all forms of contracts or other agreements between DoD and DIB companies (e.g., procurement contracts, cooperative agreements, other transaction agreements). Thus, all relevant contracts or agreements are required to include these cyber reporting requirements (e.g., through incorporation of the reporting requirements by reference, or by expressly setting forth reporting requirements consistent with this part). The revisions provided in this rule are part of DoD's efforts to establish a single reporting mechanism for such cyber incidents on unclassified DoD contractor information systems. These requirements are focused on cyber incidents that threaten specific types of DoD program information, such as technical information controlled under the International Traffic in Arms

Regulations or the Export Administration Regulations or otherwise controlled by DOD and operational security information that relates to DoD activities. Additional cyber incident reporting requirements for other important types of controlled unclassified information (CUI) (e.g., personally identifiable information (PII), budget or financial information) are more specifically addressed through other regulatory mechanisms, and thus are outside the scope of this rule. To clarify this distinction, the rule explicitly states that reporting under this program does not abrogate the contractor's responsibility for any other applicable cyber incident reporting requirements (§ 236.4(o)).

The rule also revises the program's definitions to better harmonize with definitions that are already established and used by DoD and other Government agencies in similar contexts, such as those relating to the handling and safeguarding of Controlled Unclassified Information as used by the National Archives and Records Administration pursuant to Executive Order 13556 "Controlled Unclassified Information" (November 4, 2010) (see <http://www.archives.gov/cui/>), and those widely used in the context of cybersecurity activities (see the Committee on National Security Systems Instruction No. 4009, "National Information Assurance Glossary").

This rule is intended to streamline the reporting process for DoD contractors and minimize duplicative reporting processes, while preserving distinctions where appropriate. Cyber incident reporting involving classified information on classified contractor systems will be in accordance with the National Industrial Security Program Operating Manual (DoD-M 5220.22 (<http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf>)).

This rule also modifies eligibility criteria to permit greater participation in the voluntary DoD-DIB CS information sharing program. Expanding participation in the DoD-DIB CS information sharing program is part of DoD's comprehensive approach to counter cyber threats through information sharing between the Government and DIB participants. The DoD-DIB CS information sharing program allows eligible DIB participants to receive Government furnished information (GFI) and cyber threat information from other DIB participants, thereby providing greater insights into adversarial activity targeting the DIB. The activities in this rule implement DoD statutory authorities to establish programs and activities to protect

sensitive DoD information, including when such information resides on or transits information systems operated by contractors or others in support of DoD activities (e.g., 10 U.S.C. 391 and 2224, the Federal Information Security Modernization Act (FISMA), codified at 44 U.S.C. 3551 *et seq.*, section 941 of the NDAA for FY 2013 (Public Law 112-239)). Activities under this rule also fulfill important elements of DoD's critical infrastructure protection responsibilities, as the sector specific agency for the DIB sector (see Presidential Policy Directive 21 (PPD-21), "Critical Infrastructure Security and Resilience," available at <https://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>).

Under this rule, contractors will incur costs associated with requirements for reporting cyber incidents of covered defense information on their covered contractor information system(s) or those affecting the contractor's ability to provide operationally critical support. Costs for contractors include identifying and analyzing cyber incidents and their impact on covered defense information, or a contractor's ability to provide operationally critical support, as well as obtaining DoD-approved medium assurance certificates to ensure authentication and identification when reporting cyber incidents to DoD. Government costs include onboarding new companies under the voluntary DoD-DIB CS information sharing program, and collecting and analyzing cyber incident reports, malicious software, and media.

A foundational element of these new mandatory reporting requirements, as well as the voluntary DoD-DIB CS information sharing activities, is the recognition that the information being shared between the parties includes extremely sensitive information that requires protection. For additional information regarding the Government's safeguarding of information received from the contractors that require protection, see the Privacy Impact Assessment (PIA) for the DIB Cybersecurity/Information Assurance Activities located at http://dodcio.defense.gov/Portals/0/Documents/DIB%20CS-IA%20PIA_FINAL_signed_30jun2011_VMSS_GGMR_RC.pdf. The PIA provides detailed procedures for handling personally identifiable information (PII), attributional information about the strengths or vulnerabilities of specific covered contractor information systems, information providing a perceived or real competitive advantage on future

procurement action, and contractor information marked as proprietary or commercial or financial information.

Interim Final Rule Justification

This rule is being published as an interim rule in order to comply with statutory guidance under Section 941 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, and section 391 of Title 10, United States Code (U.S.C.), requiring defense contractors to rapidly report cyber incidents on their unclassified networks or information systems that may affect unclassified defense information, or that affect their ability to provide operationally critical support to the Department. Issuing this rule as an interim final rule underscores the importance of better protecting unclassified defense information against the immediate cyber threat, while preserving the intellectual property and competitive capabilities of our national defense industrial base. The interim final rule enables DoD to better assess, in the near term, when mission critical capabilities and services are affected by cyber incidents and reinforces DoD's overall efforts to defend DoD information, protect U.S. national interests against cyber-attacks, and support military operations and contingency plans worldwide. Cybersecurity is a Congressional priority and this interim final rule supports the Administration's national cybersecurity strategy emphasizing public-private information sharing.

Regulatory Procedures

Executive Orders 12866, "Regulatory Planning and Review" and 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

Public Law 104–121, "Congressional Review Act" (5 U.S.C. 801)

It has been determined that this rule is not a "major" rule under 5 U.S.C. 801, enacted by Public Law 104–121, because it will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not contain a Federal mandate that may result in expenditure by State, local and tribal Governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that 32 CFR part 236 does contain reporting or recordkeeping requirements under the Paper Reduction Act (PRA) of 1995. These reporting requirements apply existing collection approvals under Office of Management and Budget (OMB) Control Numbers: 0704–0489, "Defense Industrial Base Cyber Security/Information Assurance (DIB CS/IA) Cyber Incident Reporting," and 0704–0490, "Defense Industrial Base Cyber Security/Information Assurance (DIB CS/IA) Points of Contact (POC) Information."

DoD has submitted a revision for the 0704–0489 collection to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) in response to 32 CFR part 236 expanding the number of companies under mandatory cyber incident reporting requirements. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have

practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Cyber Incident Reporting by DoD Contractors

Type of Request: Revision.

Number of DoD contractors impacted is 10,000.

Projected Responses Per Participant Per Year: 5.

Annual Total Responses: Up to 50,000.

Average Burden Per Response: 7 hours (this includes searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information).

Annual Total Burden Hours: 250,000 hours for all participants.

Needs and Uses: The requested information supports the mandatory cyber incident reporting requirements under Section 941 of the NDAA for Fiscal Year (FY) 13 and Section 1632 of the NDAA for FY 15, and facilitates cyber situational awareness and cyber threat information sharing. DoD contractors report incidents using the standard Incident Collection Format (ICF). The primary means of reporting is through a secure unclassified web portal, but a company may report incidents through other communication means if necessary.

Affected Public: DoD contractors with the provisions of 32 CFR part 236 in their agreements with DoD.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

DoD has submitted a revision for the 0704–0490 collection to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) in response to 32 CFR part 236 expanding the number of companies eligible to participate in the voluntary DIB CS information sharing program. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Defense Industrial Base Cybersecurity Activities Points of Contact (POC) Information.

Type of Request: Revision.

Number of DoD contractors impacted is 8,500. DoD estimates that no more than 10% of the total eligible population of cleared defense contractors will apply to the voluntary DIB Cybersecurity Activities program resulting in 850 cleared defense contractors impacted annually. An additional 10% of the population or 85 contractors may provide updated points of contact for the program, as required.

Projected Responses Per Participant: Initial collection is one per company with updates on a case-by-case basis.

Annual Total Responses: 935.

Average Burden Per Response: 20 minutes.

Annual Total Burden Hours: 312 hours for all participants.

Needs and Uses: The Government will collect business points of contact (POC) information from all Defense Industrial Base (DIB) Cybersecurity program participants on a one-time basis, with updates as necessary, to facilitate communications and the sharing of share unclassified and classified cyber threat information.

Affected Public: Business or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer:

Written comments and recommendations on these information collections should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Director, DoD-DIB Cybersecurity Activities Office, at the Office of the DoD Chief Information Officer, 6000 Defense Pentagon, Attn: DIB CS Activities Office, Washington, DC 20301-6000, or email at OSD.DIBCSIA@mail.mil.

You may also submit comments, identified by docket number and title, by the following method:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (a) The States;
- (b) The relationship between the National Government and the States; or
- (c) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 236

Government contracts, Security measures.

Accordingly, 32 CFR part 236 is revised to read as follows:

PART 236—DEPARTMENT OF DEFENSE (DoD)-DEFENSE INDUSTRIAL BASE (DIB) CYBERSECURITY (CS) ACTIVITIES

Sec.

- 236.1 Purpose.
- 236.2 Definitions.
- 236.3 Policy.
- 236.4 Mandatory cyber incident reporting procedures.
- 236.5 DoD-DIB CS information sharing program.
- 236.6 General provisions of the DoD-DIB CS information sharing program.
- 236.7 DoD-DIB CS information sharing program requirements.

Authority: 10 U.S.C. 391; 10 U.S.C. 2224; 44 U.S.C. 3506; 44 U.S.C. 3544; and Section 941, Publ. L. 112-239, 126 Stat. 1632.

§236.1 Purpose.

Cyber threats to contractor unclassified information systems represent an unacceptable risk of compromise of DoD information and pose an imminent threat to U.S. national security and economic security interests. This part requires all DoD contractors to rapidly report cyber incidents involving covered defense information on their covered contractor information systems or cyber incidents affecting the contractor's ability to provide operationally critical support. The part also modifies the eligibility criteria to permit greater participation in the voluntary DoD-DIB CS information sharing program in which DoD provides cyber threat information and cybersecurity best practices to DIB participants. The DoD-DIB CS information sharing program enhances and supplements DIB participants' capabilities to safeguard DoD information that resides on, or transits, DIB unclassified information systems.

§236.2 Definitions.

As used in this part:

Access to media means provision of media, or access to media physically or

remotely to DoD personnel, as determined by the contractor.

Cleared defense contractor (CDC) means a private entity granted clearance by DoD to access, receive, or store classified information for the purpose of bidding for a contract or conducting activities in support of any program of DoD.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor means an individual or organization outside the U.S. Government who has accepted any type of agreement or order to provide research, supplies, or services to DoD, including prime contractors and subcontractors.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled Technical Information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, "Distribution Statements of Technical Documents," available at <http://www.dtic.mil/whs/directives/corres/pdf/523024p.pdf>. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an information system that is owned or operated by or for a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified information that:

(1) Is:

- (i) Provided to the contractor by or on behalf of the DoD in connection with the performance of a contract; or
- (ii) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of a contract; and

(2) Falls in any of the following categories:

(i) Controlled Technical Information; (ii) Critical information (operations security). Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process);

(iii) Export Control. Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information;

(iv) Any other information, marked or otherwise identified by the Government, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies (e.g., privacy, proprietary business information).

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Cyber incident damage assessment means a managed, coordinated process to determine the effect on defense programs, defense scientific and research projects, or defense warfighting capabilities resulting from compromise of a contractor's unclassified computer system or network.

Defense Industrial Base (DIB) means the Department of Defense, Government, and private sector worldwide industrial complex with capabilities to perform research and development, design, produce, and maintain military weapon systems, subsystems, components, or parts to satisfy military requirements.

DIB participant means a CDC that has met all of the eligibility requirements to participate in the voluntary DoD-DIB CS Information Sharing Program as set forth in this part (see § 236.7).

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Government furnished information (GFI) means information provided by the Government under the voluntary DoD-DIB CS information sharing

program including but not limited to cyber threat information and cybersecurity practices.

Information means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces, including but not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered Contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapid(ly) report(ing) means within 72 hours of discovery of any cyber incident.

Technical Information means technical data or computer software, as those terms are defined in DFARS 252.227-7013, "Rights in Technical Data—Noncommercial Items" (48 CFR 252.227-7013). Examples of technical information include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

Threat means any circumstance or event with the potential to adversely impact organization operations (including mission, functions, image, or reputation), organization assets, individuals, other organizations, or the Nation through an information system via unauthorized access, destruction, disclosure, modification of information and/or denial of service.

U.S. based means provisioned, maintained, or operated within the physical boundaries of the United States.

U.S. citizen means a person born in the United States or naturalized.

§236.3 Policy.

It is DoD policy to:

(a) Establish a comprehensive approach to require safeguarding of covered defense information on covered contractor information systems and to require contractor cyber incident reporting.

(b) Increase Government stakeholder and DIB situational awareness of the extent and severity of cyber threats to DoD information by implementing a streamlined approval process that enables the contractor to elect, in conjunction with the cyber incident reporting and sharing, the extent to which DoD may share cyber threat information obtained from a contractor (or derived from information obtained from the company) under this part that is not information created by or for DoD with:

(1) DIB contractors participating in the DoD-DIB CS information sharing program to enhance their cybersecurity posture to better protect covered defense information on covered contractor information systems, or a contractor's ability to provide operationally critical support; and

(2) Other Government stakeholders for lawful Government activities, including cybersecurity for the protection of Government information or information systems, law enforcement and counterintelligence (LE/CI), and other lawful national security activities directed against the cyber threat (e.g., those attempting to infiltrate and compromise information on the contractor information systems).

(c) Modify eligibility criteria to permit greater participation in the voluntary DoD-DIB CS information sharing program.

§ 236.4 Mandatory cyber incident reporting procedures.

(a) *Applicability and order of precedence.* The requirement to report cyber incidents shall be included in all applicable agreements between the Government and the contractor in which covered defense information resides on, or transits covered contractor information systems or under which a contractor provides operationally critical support, and shall be identical to those requirements provided in this section (e.g., by incorporating the requirements of this section by reference, or by expressly setting forth

such reporting requirements consistent with those of this section). Any inconsistency between the relevant terms and condition of any such agreement and this section shall be resolved in favor of the terms and conditions of the agreement, provided and to the extent that such terms and conditions are authorized to have been included in the agreement in accordance with applicable laws and regulations.

(b) *Cyber incident reporting requirement.* When a contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein or that affects the contractor's ability to provide operationally critical support, the contractor shall:

(1) Conduct a review for evidence of compromise of covered defense information including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the contractor's ability to provide operationally critical support; and

(2) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(c) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(d) *Subcontractor reporting procedures.* Contractors shall flow down the cyber incident reporting requirements of this part to their subcontractors, as appropriate. Contractors shall require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime contractor (or next higher-tier subcontractor) as soon as practicable.

(e) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this part, the contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/certificate.html>.

(f) If the contractor utilizes a third-party service provider (SP) for information system security services, the SP may report cyber incidents on behalf of the contractor.

(g) Contractors are encouraged to report information to promote sharing of cyber threat indicators that they believe are valuable in alerting the Government and others, as appropriate in order to better counter threat actor activity. Cyber incidents that are not compromises of covered defense information or do not adversely affect the contractor's ability to perform operationally critical support may be of interest to the DIB and DoD for situational awareness purposes.

(h) *Malicious software.* Malicious software discovered and isolated by the contractor will be submitted to the DoD Cyber Crime Center (DC3) for forensic analysis.

(i) *Media preservation and protection.* When a contractor discovers a cyber incident has occurred, the contractor shall preserve and protect images of known affected information systems identified in paragraph (b) of this section and all relevant monitoring/packet capture data for at least 90 days from submission of the cyber incident report to allow DoD to request the media or decline interest.

(j) *Access to additional information or equipment necessary for forensics analysis.* Upon request by DoD, the contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(k) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, DoD will request that the contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this section.

(l) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this part that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (b) of this section. To the maximum extent practicable, the contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that

information that is necessary for the authorized purpose(s) for which the information is being released.

(m) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this part that is not created by or for DoD is authorized to be released outside of DoD:

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct LE/CI investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including sharing with DIB contractors participating in the DIB CS program authorized by this part); or

(5) To a support services contractor ("recipient") that is directly supporting Government activities related to this part and is bound by use and non-disclosure restrictions that include all of the following conditions:

(i) The recipient shall access and use the information only for the purpose of furnishing advice or technical assistance directly to the Government in support of the Government's activities related to this part, and shall not be used for any other purpose;

(ii) The recipient shall protect the information against unauthorized release or disclosure;

(iii) The recipient shall ensure that its employees are subject to use and non-disclosure obligations consistent with this part prior to the employees being provided access to or use of the information;

(iv) The third-party contractor that reported the cyber incident is a third-party beneficiary of the non-disclosure agreement between the Government and the recipient, as required by paragraph (m)(5)(iii) of this section;

(v) That a breach of these obligations or restrictions may subject the recipient to:

(A) Criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and other appropriate remedies by the United States; and

(B) Civil actions for damages and other appropriate remedies by the third party that reported the incident, as a third party beneficiary of the non-disclosure agreement.

(6) Use and release of contractor attributional/proprietary information created by or for DoD. Information that

is obtained from the contractor (or derived from information obtained from the contractor) under this part that is created by or for DoD (including the information submitted pursuant to paragraph (b) of this section) is authorized to be used and released outside of DoD for purposes and activities authorized by this section, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(n) Contractors shall conduct their respective activities under this part in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(o) *Freedom of Information Act (FOIA)*. Agency records, which may include qualifying information received from non-federal entities, are subject to request under the Freedom of Information Act (5 U.S.C. 552) (FOIA), which is implemented in the DoD by DoD Directive 5400.07 and DoD Regulation 5400.7-R (see 32 CFR parts 285 and 286, respectively). Pursuant to established procedures and applicable regulations, the Government will protect sensitive nonpublic information reported under mandatory reporting requirements against unauthorized public disclosure by asserting applicable FOIA exemptions. The Government will inform the non-Government source or submitter (e.g., contractor or DIB participant of any such information that may be subject to release in response to a FOIA request), in order to permit the source or submitter to support the withholding of such information or pursue any other available legal remedies.

(p) *Other reporting requirements*. Cyber incident reporting required by this part in no way abrogates the contractor's responsibility for other cyber incident reporting pertaining to its unclassified information systems under other clauses that may apply to its contract(s), or as a result of other applicable U.S. Government statutory or regulatory requirements, including Federal or DoD requirements for Controlled Unclassified Information as established by Executive Order 13556, as well as regulations and guidance established pursuant thereto.

§ 236.5 DoD-DIB CS information sharing program.

(a) All contractors that are CDCs and meet the requirements set forth in § 236.7 are eligible to join the voluntary

DoD-DIB CS information sharing program as a DIB participant.

(b) Under the voluntary activities of the DoD-DIB CS information sharing program, the Government and each DIB participant will execute a standardized agreement, referred to as a Framework Agreement (FA) to share, in a timely and secure manner, on a recurring basis, and to the greatest extent possible, cybersecurity information.

(c) Each such FA between the Government and a DIB participant must comply with and implement the requirements of this part, and will include additional terms and conditions as necessary to effectively implement the voluntary information sharing activities described in this part with individual DIB participants.

(d) The DoD-DIB CS Activities Office is the overall point of contact for the program. The DC3 managed DoD-DIB Collaborative Information Sharing Environment (DCISE) is the operational focal point for cyber threat information sharing and incident reporting under the DoD-DIB CS information sharing program.

(e) The Government will maintain a Web site or other internet-based capability to provide potential DIB participants with information about eligibility and participation in the program, to enable online application or registration for participation, and to support the execution of necessary agreements with the Government.

(f) *GFI*. The Government shall share GFI with DIB participants or designated SP in accordance with this part.

(g) Prior to receiving GFI from the Government, each DIB participant shall provide the requisite points of contact information, to include security clearance and citizenship information, for the designated personnel within their company (e.g., typically 3-10 company designated points of contact) in order to facilitate the DoD-DIB interaction in the DoD-DIB CS information sharing program. The Government will confirm the accuracy of the information provided as a condition of that point of contact being authorized to act on behalf of the DIB participant for this program.

(h) GFI will be issued via both unclassified and classified means. DIB participant handling and safeguarding of classified information shall be in compliance with DoD 5220.22-M, "National Industrial Security Program Operating Manual (NISPOM)," available at <http://www.dss.mil/documents/odaa/nispom2006-5220.pdf>. The Government shall specify transmission and distribution procedures for all GFI, and shall inform DIB participants of any

revisions to previously specified transmission or procedures.

(i) Except as authorized in this part or in writing by the Government, DIB participants may:

(1) Use GFI only on U.S. based covered contractor information systems, or U.S. based networks or information systems used to provide operationally critical support; and

(2) Share GFI only within their company or organization, on a need-to-know basis, with distribution restricted to U.S. citizens.

(j) In individual cases DIB participants may request, and the Government may authorize, disclosure and use of GFI under applicable terms and conditions when the DIB participant can demonstrate that appropriate information handling and protection mechanisms are in place and has determined that it requires the ability:

(1) To share the GFI with a non-U.S. citizen; or

(2) To use the GFI on a non-U.S. based covered contractor information system; or

(3) To use the GFI on a non-U.S. based network or information system in order to better protect a contractor's ability to provide operationally critical support.

(k) DIB participants shall maintain the capability to electronically disseminate GFI within the Company in an encrypted fashion (e.g., using Secure/Multipurpose Internet Mail Extensions (S/MIME), secure socket layer (SSL), Transport Layer Security (TLS) protocol version 1.2, DoD-approved medium assurance certificates).

(l) DIB participants shall not share GFI outside of their company or organization, regardless of personnel clearance level, except as authorized in this part or otherwise authorized in writing by the Government.

(m) If the DIB participant utilizes a SP for information system security services, the DIB participant may share GFI with that SP under the following conditions and as authorized in writing by the Government:

(1) The DIB participant must identify the SP to the Government and request permission to share or disclose any GFI with that SP (which may include a request that the Government share information directly with the SP on behalf of the DIB participant) solely for the authorized purposes of this program.

(2) The SP must provide the Government with sufficient information to enable the Government to determine whether the SP is eligible to receive such information, and possesses the capability to provide appropriate protections for the GFI.

(3) Upon approval by the Government, the SP must enter into a legally binding agreement with the DIB participant (and also an appropriate agreement with the Government in any case in which the SP will receive or share information directly with the Government on behalf of the DIB participant) under which the SP is subject to all applicable requirements of this part and of any supplemental terms and conditions in the DIB participant's FA with the Government, and which authorizes the SP to use the GFI only as authorized by the Government.

(n) The DIB participant may not sell, lease, license, or otherwise incorporate the GFI into its products or services, except that this does not prohibit a DIB participant from being appropriately designated an SP in accordance with paragraph (m) of this section.

§ 236.6 General provisions of the DoD–DIB CS information sharing program.

(a) Confidentiality of information that is exchanged under the DoD–DIB CS information sharing program will be protected to the maximum extent authorized by law, regulation, and policy. DoD and DIB participants each bear responsibility for their own actions under the voluntary DoD–DIB CS information sharing program.

(b) All DIB CS participants may participate in the Department of Homeland Security's Enhanced Cybersecurity Services (ECS) program (<http://www.dhs.gov/enhanced-cybersecurity-services>).

(c) Participation in the voluntary DoD–DIB CS information sharing program does not obligate the DIB participant to utilize the GFI in, or otherwise to implement any changes to, its information systems. Any action taken by the DIB participant based on the GFI or other participation in this program is taken on the DIB participant's own volition and at its own risk and expense.

(d) A DIB participant's participation in the voluntary DoD–DIB CS information sharing program is not intended to create any unfair competitive advantage or disadvantage in DoD source selections or competitions, or to provide any other form of unfair preferential treatment, and shall not in any way be represented or interpreted as a Government endorsement or approval of the DIB participant, its information systems, or its products or services.

(e) The DIB participant and the Government may each unilaterally limit or discontinue participation in the voluntary DoD–DIB CS information sharing program at any time.

Termination shall not relieve the DIB participant or the Government from obligations to continue to protect against the unauthorized use or disclosure of GFI, attribution information, contractor proprietary information, third-party proprietary information, or any other information exchanged under this program, as required by law, regulation, contract, or the FA.

(f) Upon termination of the FA, and/or change of Facility Security Clearance (FCL) status below Secret, GFI must be returned to the Government or destroyed pursuant to direction of, and at the discretion of, the Government.

(g) Participation in these activities does not abrogate the Government's, or the DIB participants' rights or obligations regarding the handling, safeguarding, sharing, or reporting of information, or regarding any physical, personnel, or other security requirements, as required by law, regulation, policy, or a valid legal contractual obligation. However, participation in the voluntary activities of the DoD–DIB CS information sharing program does not eliminate the requirement for DIB participants to report cyber incidents in accordance with § 236.4.

§ 236.7 DoD–DIB CS information sharing program requirements.

(a) To participate in the DoD–DIB CS information sharing program, a contractor must be a CDC and shall:

(1) Have an existing active FCL granted under the NISPOM (DoD 5220.22–M); and

(2) Execute the standardized FA with the Government (available during the application process), which implements the requirements set forth in §§ 236.5 through 236.7, and allows the CDC to select their level of participation in the voluntary DoD–DIB CS information sharing program.

(3) In order for participating CDCs to receive classified cyber threat information electronically, they must:

(i) Have or acquire a Communication Security (COMSEC) account in accordance with the NISPOM Chapter 9, Section 4 (DoD 5220.22–M), which provides procedures and requirements for COMSEC activities; and

(ii) Have or acquire approved safeguarding for at least Secret information, and continue to qualify under the NISPOM for retention of its FCL and approved safeguarding; and

(iii) Obtain access to DoD's secure voice and data transmission systems supporting the voluntary DoD–DIB CS information sharing program.

(b) [Reserved]

Dated: September 14, 2015.

Patricia L. Toppings,

*OSD Federal Register, Liaison Officer,
Department of Defense.*

[FR Doc. 2015–24296 Filed 10–1–15; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2014–CRB–0001–WR (2016–2020) (Web IV)]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish final regulations that set the rates and terms for the digital performances of sound recordings by certain public radio stations and for the making of ephemeral recordings necessary to facilitate those transmissions for the period commencing January 1, 2016, and ending on December 31, 2020.

DATES: *Effective:* January 1, 2016.

FOR FURTHER INFORMATION CONTACT: LaKeshia Keys, Program Specialist, by telephone at (202) 707–7658, or by email at crb@loc.gov.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Judges (“Judges”) received a joint motion from SoundExchange, Inc. (“SoundExchange”), National Public Radio, Inc. (“NPR”) and the Corporation for Public Broadcasting (“CPB”) in which they announced a partial settlement in the above proceeding (“Settlement”) regarding royalty rates and terms for certain internet transmissions by NPR, American Public Media, Public Radio International, and certain public radio stations (“covered entities”). The parties to the agreement requested that the Judges adopt the Settlement as a determination of rates and terms under Sections 112(e) and 114 of the Copyright Act for eligible transmissions by covered entities through their Web sites and related ephemeral recordings, as more specifically set forth in the Settlement. The Judges published the proposed Settlement and requested comments from the public. 80 FR 15958 (March 26, 2015).

Background

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by “some or all of the participants in a proceeding at any time during the proceeding” provided the settling parties submit the negotiated rates and terms to the Judges for approval. That provision directs the Judges to provide those who would be bound by the negotiated rates and terms an opportunity to comment on the agreement. Unless a participant in a proceeding objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory rates or terms, the Judges adopt the negotiated rates and terms. 17 U.S.C. 801(b)(7)(A).

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [to the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 17 U.S.C. 801(b)(7)(A)(ii).

Section 801(b)(7)(A) limits the circumstances under which the Judges may decline to adopt aspects of an agreement; nevertheless it does not preclude the Judges from declining to adopt portions of an agreement that would be contrary to the provisions of the applicable license or otherwise contrary to statutory law. *See Review of Copyright Royalty Judges Determination*, 74 FR 4537, 4540 (Jan. 26, 2009).

By its terms, this partial Settlement applies to “covered entities,” which are defined as NPR, American Public Media, Public Radio International, Public Radio Exchange, and up to 530 originating public radio stations as named by CPB. Proposed Regulation 380.31. Notwithstanding the royalty rates and terms set forth in the partial Settlement, copyright owners and licensees are permitted, consistent with the partial Settlement, to adopt rates and terms that would apply in lieu of those established in the partial Settlement. Proposed Regulation 380.30(c). According to the Joint Motion, “[b]ecause the Settlement applies to only a closed group of licensees, and has a single payor (CPB), the Settlement is being submitted to the Judges for adoption as a statutory rate and terms [sic] only so that it will be binding on all copyright owners and performers, including those that are not members of SoundExchange.” Joint Motion at 3.

The Judges received one comment in response to their request for comments published in the **Federal Register**. In that comment, Intercollegiate Broadcasting System (“IBS”), a participant in the captioned proceeding, objected to adoption of the Settlement prior to the Judges’ issuance of a determination in the proceeding, arguing that doing so would be premature, given that the proceeding is still pending.¹ IBS contends that if the Judges were to adopt the partial Settlement prior to issuing a final determination in the proceeding, the application of the settled rates and terms could prejudice the other noncommercial webcasters remaining in the proceeding. Comments of IBS at 1. IBS contends that there are “few or no legal, FCC licensing, ownership, and locational differences between IBS members and NPR–CPB-qualified public radio stations and webcasters.” *Id.* at 4. As a result, IBS contends that differences in royalty rates between these two groups should be a function of usage and that entities purportedly represented by IBS would qualify for lower rates than those set by the Settlement. *Id.* at 5.

Notwithstanding IBS’s objection, the Judges find that the partial Settlement provides a reasonable basis for setting statutory terms and rates and therefore they adopt the partial Settlement, with one exception, discussed below. The IBS position is clearly at odds with the language of Section 801(b)(7)(A), which authorizes adoption of settlements “at any time during the proceeding.” Further, the proposed Settlement pertains solely to public broadcasting entities, which are expressly excluded from the definition of “noncommercial educational webcasters” in existing regulations. *See* 37 CFR 380.21. To emphasize the limits of the proposed rates and terms, the settling parties proposed adoption of the Settlement as a separate Subpart, Subpart D, of the existing regulations.

IBS’s concern that some unnamed webcasters could be prejudiced by the adoption of the Settlement is speculative, unsupported by evidence, and does not, without more, challenge the validity of the Settlement in establishing a reasonable basis for setting statutory terms or rates. Without evidence to the contrary, the Judges find that the agreement reached voluntarily between the Settling Parties does in fact establish a reasonable basis for setting statutory terms and rates.

¹ *Comments of Intercollegiate Broadcasting System Opposing SX–NPR’s Proposed Settlement* (April 16, 2015).

The Judges do not adopt at this time, however, the provision in proposed § 380.31, which states: “For the 2016–2020 license period, the collective is SoundExchange, Inc.” Designation of the Collective under the statutory license is within the Judges’ purview and they will make that designation in the Judges’ final determination in the proceeding.² With that exception, therefore, the Judges adopt the proposed regulations that codify the partial Settlement. In doing so, the Judges make clear that the adoption of the partial Settlement should in no way suggest that they are more or less inclined to adopt the reasoning or proposals of any of the parties remaining in the proceeding.

List of Subjects in 37 CFR Part 380

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Final Regulation

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NON-SUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Add subpart D to read as follows:

Subpart D—Certain Transmissions by Public Broadcasting Entities

Sec.

² *See Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 771 (D.C. Cir. 2009) (“in setting the rates and terms of the statutory license, the Judges will designate a single entity to receive royalty payments,” internal quotation marks omitted, emphasis added). *See also Review of Copyright Royalty Judges Determination*, 74 FR 4537, 4540 (Jan. 26, 2009) (the Judges are not compelled to adopt a privately negotiated agreement to the extent it includes provisions that are inconsistent with the applicable statutory license or otherwise contrary to statutory law). The Judges adopted as proposed references to SoundExchange in the *covered entities* definition in proposed § 380.31; those references do not by their terms refer to SoundExchange in its capacity as the Judge-designated Collective. The Judges also left intact provisions referring to SoundExchange in its capacity as the Collective in proposed § 380.33. Those references are expressly limited to Subpart D and are qualified by the clause in proposed § 380.33(b) “[u]ntil such time as a new designation is made.” Unrelated to the Collective designation issue, the Judges also corrected a typographical error in the last sentence of proposed § 380.32 (e) by adding the words “of the” between the words “remainder Term.” The Judges adopted all other provisions of the Settlement as proposed.

- 380.30 General.
- 380.31 Definitions.
- 380.32 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
- 380.33 Terms for making payment of royalty fees and statements of account.
- 380.34 Confidential Information.
- 380.35 Verification of royalty payments.
- 380.36 Verification of royalty distributions.
- 380.37 Unclaimed funds.

Subpart D—Certain Transmissions by Public Broadcasting Entities

§ 380.30 General.

(a) *Scope*. This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions, through Authorized Web sites, by means of Web site Performances, by certain Covered Entities as set forth in this subpart in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Covered Entities in accordance with the provisions of 17 U.S.C. 112(e) solely as necessary to encode Sound Recordings in different formats and at different bit rates as necessary to facilitate Web site Performances, during the period January 1, 2016, through December 31, 2020. The provisions of this subpart shall apply to the Covered Entities in lieu of other rates and terms applicable under 17 U.S.C. 112(e) and 114.

(b) *Legal compliance*. Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations.

(c) *Relationship to voluntary agreements*. Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.31 Definitions.

For purposes of this subpart, the following definitions shall apply:

Aggregate Tuning Hours (ATH) means the total hours of programming that Covered Entities have transmitted during the relevant period to all listeners within the United States from all Covered Entities that provide audio programming consisting, in whole or in part, of Web site Performances, less the actual running time of any sound recordings for which the Covered Entity has obtained direct licenses apart from this Agreement. By way of example, if

a Covered Entity transmitted one hour of programming to ten (10) simultaneous listeners, the Covered Entity's Aggregate Tuning Hours would equal ten (10). If three (3) minutes of that hour consisted of transmission of a directly licensed recording, the Covered Entity's Aggregate Tuning Hours would equal nine (9) hours and thirty (30) minutes. As an additional example, if one listener listened to a Covered Entity for ten (10) hours (and none of the recordings transmitted during that time was directly licensed), the Covered Entity's Aggregate Tuning Hours would equal 10.

Authorized Web site is any Web site operated by or on behalf of any Covered Entity that is accessed by Web site Users through a Uniform Resource Locator ("URL") owned by such Covered Entity and through which Web site Performances are made by such Covered Entity.

CPB is the Corporation for Public Broadcasting.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges.

Copyright Owners are Sound Recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Covered Entities are NPR, American Public Media, Public Radio International, and Public Radio Exchange, and up to 530 Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Covered Entities hereunder (subject to the numerical limitations set forth herein). The number of Originating Public Radio Stations treated hereunder as Covered Entities shall not exceed 530 for a given year without SoundExchange's express written approval, except that CPB shall have the option to increase the number of Originating Public Radio Stations that may be considered Covered Entities as provided in section 380.32(c).

Ephemeral Phonorecords are Phonorecords of all or any portion of any Sound Recordings; provided that:

(1) Such Phonorecords are limited solely to those necessary to encode Sound Recordings in different formats and at different bit rates as necessary to facilitate Web site Performances covered by this subpart;

(2) Such Phonorecords are made in strict conformity with the provisions set forth in 17 U.S.C. 112(e)(1)(A)-(D); and

(3) The Covered Entities comply with 17 U.S.C. 112(a) and (e) and all of the terms and conditions of this Agreement. *Music ATH* is ATH of Web site Performances of Sound Recordings of musical works.

NPR is National Public Radio, Inc. *Originating Public Radio Station* is a noncommercial terrestrial radio broadcast station that—

(1) Is licensed as such by the Federal Communications Commission;

(2) Originates programming and is not solely a repeater station;

(3) Is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or another public radio station that is qualified to receive funding from CPB pursuant to its criteria;

(4) Qualifies as a "noncommercial webcaster" under 17 U.S.C.

114(f)(5)(E)(i); and

(5) Either—

(i) Offers Web site Performances only as part of the mission that entitles it to be exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501); or

(ii) In the case of a governmental entity (including a Native American Tribal governmental entity), is operated exclusively for public purposes.

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the individuals and entities identified in 17 U.S.C. 114(g)(2)(D).

Person is a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

Phonorecords have the meaning set forth in 17 U.S.C. 101.

Qualified Auditor is a Certified Public Accountant, or a person, who by virtue of education or experience, is appropriately qualified to perform an audit to verify royalty payments related to performances of sound recordings.

Side Channel is any Internet-only program available on an Authorized Web site or an archived program on such Authorized Web site that, in either case, conforms to all applicable requirements under 17 U.S.C. 114.

Sound Recording has the meaning set forth in 17 U.S.C. 101.

Term is the period January 1, 2016, through December 31, 2020.

Web site is a site located on the World Wide Web that can be located by a Web site User through a principal URL.

Web site Performances are all public performances by means of digital audio transmissions of Sound Recordings,

including the transmission of any portion of any Sound Recording, made through an Authorized Web site in accordance with all requirements of 17 U.S.C. 114, from servers used by a Covered Entity (provided that the Covered Entity controls the content of all materials transmitted by the server), or by a contractor authorized pursuant to Section 380.32(f), that consist of either the retransmission of a Covered Entity's over-the-air terrestrial radio programming or the digital transmission of nonsubscription Side Channels that are programmed and controlled by the Covered Entity. This term does not include digital audio transmissions made by any other means.

Web site Users are all those who access or receive Web site Performances or who access any Authorized Web site.

§ 380.32 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* The total license fee for all Web site Performances by Covered Entities during the Term, up to a total Music ATH of 285,132,065 per calendar year, and Ephemeral Phonorecords made by Covered Entities solely to facilitate such Web site Performances, during the Term shall be \$2,800,000 (the "License Fee"), unless additional payments are required as described in paragraph (c) of this section.

(b) *Calculation of License Fee.* It is understood that the License Fee includes:

(1) An annual minimum fee of \$500 for each Covered Entity for each year during the Term;

(2) Additional usage fees for certain Covered Entities; and

(3) A discount that reflects the administrative convenience to the Collective of receiving annual lump sum payments that cover a large number of separate entities, as well as the protection from bad debt that arises from being paid in advance.

(c) *Increase in Covered Entities.* If the total number of Originating Public Radio Stations that wish to make Web site Performances in any calendar year exceeds the number of such Originating Public Radio Stations considered Covered Entities in the relevant year, and the excess Originating Public Radio Stations do not wish to pay royalties for such Web site Performances apart from this subpart, CPB may elect by written notice to the Collective to increase the number of Originating Public Radio Stations considered Covered Entities in the relevant year effective as of the date of the notice. To the extent of any such elections, CPB shall make an additional

payment to the Collective for each calendar year or part thereof it elects to have an additional Originating Public Radio Station considered a Covered Entity, in the amount of \$500 per Originating Public Radio Station per year. Such payment shall accompany the notice electing to have an additional Originating Public Radio Station considered a Covered Entity.

(d) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by Covered Entities solely to facilitate Web site Performances for which royalties are paid pursuant to this subpart shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

(e) *Effect of non-performance by any Covered Entity.* In the event that any Covered Entity violates any of the material provisions of 17 U.S.C. 112(e) or 114 or this subpart that it is required to perform, the remedies of the Collective shall be specific to that Covered Entity only, and shall include, without limitation, termination of that Covered Entity's right to be treated as a Covered Entity hereunder upon written notice to CPB. The Collective and Copyright Owners also shall have whatever rights may be available to them against that Covered Entity under applicable law. The Collective's remedies for such a breach or failure by an individual Covered Entity shall not include termination of the rights of other Covered Entities to be treated as Covered Entities hereunder, except that if CPB fails to pay the License Fee or otherwise fails to perform any of the material provisions of this subpart, or such a breach or failure by a Covered Entity results from CPB's inducement, and CPB does not cure such breach or failure within 30 days after receiving notice thereof from the Collective, then the Collective may terminate the right of all Covered Entities to be treated as Covered Entities hereunder upon written notice to CPB. In such a case, a prorated portion of the License Fee for the remainder of the Term (to the extent paid by CPB) shall, after deduction of any damages payable to the Collective by virtue of the breach or failure, be credited to statutory royalty obligations of Covered Entities to the Collective for the Term as specified by CPB.

(f) *Use of contractors.* The right to rely on this subpart is limited to Covered Entities, except that a Covered Entity may employ the services of a third Person to provide the technical services and equipment necessary to deliver Web site Performances on behalf of such Covered Entity, but only through an Authorized Web site. Any agreement

between a Covered Entity and any third Person for such services shall:

(1) Obligate such third Person to provide all such services in accordance with all applicable provisions of the statutory licenses and this subpart;

(2) Specify that such third Person shall have no right to make Web site Performances or any other performances or Phonorecords on its own behalf or on behalf of any Person or entity other than a Covered Entity through the Covered Entity's Authorized Web site by virtue of its services for the Covered Entity, including in the case of Phonorecords, pre-encoding or otherwise establishing a library of Sound Recordings that it offers to a Covered Entity or others for purposes of making performances, but instead must obtain all necessary licenses from the Collective, the copyright owner or another duly authorized Person, as the case may be;

(3) Specify that such third Person shall have no right to grant any sublicenses under the statutory licenses; and

(4) Provide that the Collective is an intended third-party beneficiary of all such obligations with the right to enforce a breach thereof against such third Person.

§ 380.33 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* CPB shall pay the License Fee to the Collective in five equal installments of \$560,000 each, which shall be due December 31, 2015, and annually thereafter through December 31, 2019.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments for Covered Entities under this subpart and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Judges

designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized the Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Reporting.* CPB and Covered Entities shall submit reports of use and other information concerning Web site Performances as agreed upon with the Collective.

(d) *Late payments and statements of account.* A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective.

(e) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from CPB to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all Web site Performances by Covered Entities equally based upon the reporting information provided by CPB/NPR.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (e)(1) of the section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 380.37.

(f) *Retention of records.* Books and records of CPB and Covered Entities and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.34 Confidential Information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge, or documents or information that become publicly known through no fault of the Collective or are known by the Collective when disclosed by CPB/NPR. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto and enforcement of the terms of the statutory licenses.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Licensee's statement of account pursuant to § 380.35 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.36;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114 before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the

proceedings or the courts, subject to the provisions of any relevant agreements restricting the activities of CPB, Covered Entities or the Collective in such proceedings.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.35 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by CPB.

(b) *Frequency of verification.* The Collective may conduct a single audit of any Covered Entities, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit CPB and Covered Entities, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on CPB. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* CPB and Covered Entities shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of CPB in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of CPB reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(f) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case CPB shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.36 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the

appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(f) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.37 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: July 28, 2015.

Suzanne M. Barnett,
Chief Copyright Royalty Judge

Approved by:

James H. Billington,
Librarian of Congress.

[FR Doc. 2015-24504 Filed 10-1-15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2015-0388; FRL-9933-30]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 30 chemical substances which were the subject of premanufacture notices (PMNs). Nine of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (including

import) or process any of these 30 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on December 1, 2015. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on October 16, 2015.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before November 2, 2015 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before November 2, 2015, EPA will withdraw the relevant sections of this direct final rule before its effective date.

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2015-0388, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-9232; email address: moss.kenneth@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of a proposed or final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (FRL-3658-5). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees

appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 30 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 30 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).

- Chemical Abstracts Service (CAS) Registry number (assigned for non-confidential chemical identities).

- Basis for the TSCA section 5(e) consent order or the basis for the TSCA non-section 5(e) SNURs (*i.e.*, SNURs without TSCA section 5(e) consent orders).

- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).

- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.*, limits on manufacture volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 8 PMN substances that are subject to “risk-based” consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called “TSCA section 5(e) SNURs” on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The TSCA section 5(e) SNURs designate as a “significant new use” the absence of the protective measures required in the corresponding consent orders.

In addition, this rule includes one SNUR on a PMN substance that is subject to an “exposure-based” consent order under TSCA section 5(e)(1)(A)(ii)(II), wherein EPA determined that the PMN substance is expected to be produced in substantial quantities, and that there may either be significant or substantial human exposure and/or the PMN substance may enter the environment in substantial quantities. The TSCA section 5(e) consent order requires submission of certain test data to EPA before the manufacturer may exceed a specified production volume. These SNURs designate as a “significant new use” the absence of the protective measures or exceedance of the production volume limit required in the TSCA section 5(e) consent order.

This rule also includes SNURs on 21 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons,

EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a “significant new use.” These so-called “TSCA non-section 5(e) SNURs” are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a “significant new use” in all TSCA non-section 5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.*, these significant new use activities are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified” for the PMN substance.

PMN Numbers P-12-69, P-12-70, and P-12-520

Chemical name: Fatty acids compound with cyclohexanamine (generic) (P-12-69 and 70) and Fatty acids amine salt (generic) (P-12-0520).

CAS numbers: Claimed Confidential.

Effective date of TSCA section 5(e)

consent order: February 11, 2015.

Basis for TSCA section 5(e) consent order: The PMNs states that the generic (non-confidential) use of the substances will be as a lubricity additive (P-12-69 and P-12-70) and a chemical component for fuel additives (P-12-520). Based on structure-activity relationship (SAR) analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms to occur at concentrations that exceed 52 parts per billion (ppb) (P-12-69), 4 ppb (P-12-70) and 180 ppb (P-12-520) of the PMN substances in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMNs, exceed releases from the use described in the PMNs. For the uses described in the PMNs, environmental releases did not exceed 52 ppb, 4 ppb, or 180 ppb, respectively, for more than 20 days per year. The consent order for these PMN substances was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the uncontrolled

manufacture, processing, distribution in commerce, use and disposal may present an unreasonable risk to the environment. To protect against these risks, the consent order requires manufacturing, processing, or use of the substance for the specific confidential uses stated in the PMNs. The SNUR designates as a “significant new use” the absence of these protective measures.

Recommended testing: EPA has determined that the results of a fish early life-stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnia chronic toxicity test (OPPTS 850.1300) would help characterize the environmental effects of the PMN substances. Testing should be done on P-12-69 only. The submitter has agreed not to exceed a confidential volume limit without performing this testing.

CFR citations: CFR 721.10852 (P-12-69 and P-12-70) and 40 CFR 721.10856 (P-12-520).

PMN Number P-12-169

Chemical name: Fluoro-modified acrylic copolymer (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e)

consent order: March 19, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the use of the substance will be as a substrate wetting and leveling agent for organic solvent-based paints and inks. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These fluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, which suggests that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, including the presumed environmental degradant. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities,

and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substance may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Submission of certain physical/chemical property and environmental fate testing on a related PMN substance prior to exceeding the confidential production volume limits as specified in the consent order of the PMN substance.

3. Recording and reporting of certain fluorinated impurities in the starting raw material and the initially isolated intermediates; and manufacture of the PMN substance not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain physical/chemical property and environmental fate testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substance and its degradation products. The Order prohibits the Company from exceeding specified confidential production volumes unless the Company submits the information described in the Testing section of this Order in accordance with the conditions specified in the Testing section. Further, EPA has identified certain toxicity and environmental fate testing described in the Pended Testing section of the Preamble to the Order that would help characterize the possible effects of the PMN substance. The Order does not require submission of the pended testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10853.

PMN Number P-12-451

Chemical name: Siloxanes and Silicones, alkyl, alky propoxy ethyl, methyl octyl, alkyl polyfluorooctyl (generic).

CAS number: Claimed confidential.
Effective date of TSCA section 5(e) consent order: March 19, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a coating additive. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These fluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, which suggests that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, including the presumed environmental degradant. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

2. Submission of certain physical/chemical property and environmental fate testing on a related PMN substance prior to exceeding the confidential production volume limits as specified in the consent order of the PMN substances.

3. Recording and reporting of certain fluorinated impurities in the starting raw material and the initially isolated intermediates; and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new

use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain physical/chemical property and environmental fate testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substances and their degradation products. The Order prohibits the Company from exceeding specified confidential production volumes unless the Company submits the information described in the Testing section of this Order in accordance with the conditions specified in the Testing section. Further, EPA has identified certain toxicity and environmental fate testing described in the Pended Testing section of the Preamble to the Order that would help characterize the effects of the PMN substances. The Order does not require submission of the pended testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10854.

PMN Number P-12-450 and P-12-451

Chemical name: Partially fluorinated alcohol, reaction products with phosphorus oxide (P₂O₅), amine salts (generic).

CAS number: Claimed confidential.
Effective date of TSCA section 5(e) consent order: March 16, 2015.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be as coating additives and surface active agents. EPA has concerns for potential incineration or other decomposition products of the PMN substances. These perfluorinated decomposition products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers, which suggests that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic (PBT) to people, wild mammals, and birds. These concerns are based on data on analogous chemical substances, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, including the presumed environmental degradant. The order was issued under TSCA

sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If as a result of the test data required, the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a MSDS, within 90 days.

2. Submission of certain physical/chemical property and environmental fate testing on a related PMN substance prior to exceeding the confidential production volume limits as specified in the consent order of the PMN substances.

3. Recording and reporting of certain fluorinated impurities in the starting raw material and the initially isolated intermediates; and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain physical/chemical property and environmental fate testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substances and their degradation products. The Order prohibits the Company from exceeding specified confidential production volumes unless the Company submits the information described in the Testing section of this Order in accordance with the conditions specified in the Testing section. Further, EPA has identified certain toxicity and environmental fate testing described in the Pended Testing section of the Preamble to the Order that would help characterize the effects of the PMN substances. The Order does not require submission of the pended testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the Order is modified or revoked

by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10855.

PMN Number P-13-292

Chemical name: Organophosphorus polymer (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: February 13, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as an additive for polymers. Using available exposure information from the public literature (*i.e.*, measured values for similar substances in house dust in homes), and certain assumptions for mouthing behavior by young children, EPA identified concerns for potential exposure to the general population. However, there is uncertainty about the risk from this scenario due to the absence of hazard data on the PMN substance itself and information on the ability for the PMN substance to migrate or leach out of certain consumer products. Consumer exposure is possible if the PMN migrates from these products or decomposes to form dust particles that can be inhaled or ingested. Analogous chemicals, including Tris(2-chloroethyl)phosphate (TCEP) and Tris(1,3-dichloro-2-propyl) phosphate (TDCPP), can be found in household dust, and are widespread in the environment. Assuming similar use patterns over time, the PMN substance may be expected to display similar exposure patterns. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(II), based on a finding that this substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To address potential exposures and hazards, the consent order requires certain testing by certain confidential production volume limits.

Recommended testing: EPA has determined that the results of certain physical/chemical property, toxicity, potential for migration from products, and dermal and other absorption testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substance. The Order prohibits the Company from exceeding specified confidential production volumes unless the Company submits the information described in the Testing section of this Order in accordance with

the conditions specified in the Testing section.

CFR citation: 40 CFR 721.10857.

PMN Number P-13-305

Chemical name: Fluorinated acid alkylester (generic).

CAS number: Claimed confidential.

Effective date of TSCA section 5(e) consent order: February 27, 2015.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. EPA has concerns that the PMN substance will persist in the environment, could bioaccumulate, and be toxic ("PBT") to humans, other mammals, and birds. EPA's concerns are based on data on the PMN substance, and analogy to perfluorobutanoic acid (PFBA), PFOA, perfluorooctanol sulfonate (PFOS), and other analogs. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I), based on a finding that this substance may present an unreasonable risk of injury to the environment and human health. To protect against these exposures and risks, the consent order requires:

1. Risk notification. If the company becomes aware that the PMN substances may present a risk of injury to human health or the environment, the company must incorporate this new information, and any information on methods for protecting against such risk into a Material Safety Data Sheet (MSDS), within 90 days.

2. Use of personal protective equipment including impervious gloves and a National Institute of Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 10, when there is potential exposure.

3. Establishment and use of a hazard communication program, including health hazard precautionary statements on each label and the MSDS.

4. Use of the PMN substance only as a chemical intermediate. Any chemical substance manufactured using the PMN substance may contain residuals of the PMN substance at a certain maximum level.

5. Recover and convert, capture (destroy), recycle, or reuse the substance at a certain overall efficiency when the PMN substance is used as an intermediate in accordance with the provisions.

6. Not use the PMN substance in consumer products.

The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain

toxicity, metabolism and pharmacokinetics testing described in the Pended Testing section of the Preamble to the Order would help characterize the human health effects of the PMN substance. The Order does not require submission of the pended testing at any specified time or production volume. However, the Order's restrictions on manufacture, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the Order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10858.

PMN Number P-14-563

Chemical name: Quaternary alkyl methyl amine ethoxylate methyl chloride (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a cleaner/degreaser. Based on submitted test data on the PMN substance as well as SAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 29 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 29 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 29 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10859.

PMN Number P-14-756

Chemical name: Substituted carboxamide (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a material for highly dispersive use in consumer products and component of a consumer product. Based on submitted test data on the PMN substance as well as SAR

analysis of test data on analogous amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 3 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) and would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10860.

PMN Number P-14-804

Chemical name: Phosphoric acid, sodium titanium (4+) salt (3:1:2).

CAS number: 22239-24-3.

Basis for action: The PMN states that the substance will be used as a component in anode material in sealed batteries. Based on SAR analysis of test data on analogous inorganic phosphates and titanium compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10861.

PMN Numbers P-15-1, P-15-2, P-15-3, P-15-4, P-15-5, and P-15-6

Chemical names: Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate (P-15-1); Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, sodium salt (P-15-2); Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, potassium salt (P-15-3); Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, ammonium salt (P-15-4); Ethanol, 2-amino-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate (P-15-5); and Ethanol, 2,2',2''-nitritoltris-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate (P-15-6).

CAS numbers: 73361-29-2 (P-15-1); 151688-56-1 (P-15-2); 1456802-88-2 (P-15-3); 1456802-89-3 (P-15-4); 1456803-12-5 (P-15-5); and 1456803-14-7 (P-15-6).

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as inert surfactants in pesticide formulations. Based on SAR analysis of test data on analogous anionic surfactant compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 18 ppb in aggregate of the PMN substances in surface waters. As described in the PMNs, releases of the substances are not expected to result in surface water concentrations exceeding 18 ppb in aggregate. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances that results in aggregate releases to surface waters exceeding 18 ppb may result in significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS Test Guideline 850.1075), an acute invertebrate toxicity test (OPPTS Test Guideline 850.1010), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substances. The recommended testing may be performed on any one of the 6 PMN chemicals.

CFR Citation: 40 CFR 721.10862.

PMN Number P-15-25

Chemical name: Nitrile amine (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a site-limited chemical intermediate. Based on submitted test data on the PMN substance as well as SAR analysis of test data on analogous neutral organic compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10863.

PMN Number P-15-26

Chemical name: 1,3-Propanediamine, N1, N1-alkyl (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a friction modifier. Based on submitted test data on an analogous substance as well as SAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 32 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 32 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 32 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance

meets the concern criteria at

§ 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance. EPA also recommends that the guidance document on aquatic toxicity testing of difficult substance and mixtures (Organisation for Economic Co-operation and Development (OECD) Test Guideline 23) be consulted to facilitate solubility in the test media, because of the PMN substance's low water solubility.

CFR Citation: 40 CFR 721.10864.

PMN Number P-15-36

Chemical name: 2-Pyridinecarboxylic acid, 4,5,6-trichloro-.

CAS number: 496849-77-5.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on SAR analysis of test data on analogous pyridine- α -acids and neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 30 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations exceeding 30 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface water concentrations exceeding 30 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), an algal toxicity test (OCSPP Test Guideline 850.4500), and the aerobic/anaerobic transformation in soil test (OECD 307) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10865.

PMN Number P-15-61

Chemical name: Imidazoliurn, polymer with cyclic anhydride and alkenoic acid, alkali salt (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a leather chemical. Based on SAR analysis of test data on analogous polyanionic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 200 ppb of the PMN substance in surface waters for greater than 20 days per year. This 20-day criterion is derived from partial life cycle tests (daphnid chronic and fish early life stage tests) that typically range from 21 to 28 days in duration. EPA predicts toxicity to aquatic organisms may occur if releases of the substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the use described in the PMN, environmental releases did not exceed 200 ppb for more than 20 days per year. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as listed in the PMN may result in significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110), a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300), and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10866.

PMN Number P-15-98

Chemical name:

Hydrochlorofluorocarbon (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate in the production of a hydrofluorocarbon (HFC). Based on SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 99 ppb of the PMN substance in surface waters. Further, based on test data on analogous organohalogen compounds, there were health concerns regarding anesthesia at high inhalation doses from exposure to the PMN substance via dermal and inhalation exposure. As described in the PMN, exposure is expected to be minimal due to use of adequate dermal and respiratory

personal protection equipment and releases of the substance are not expected to result in surface water concentrations exceeding 99 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance that results in releases to surface waters exceeding 99 ppb, or any use without the use of NIOSH-certified organic vapor cartridge respirator with an assigned protection factor of at least 25, or any use other than as a chemical intermediate may result in serious human health or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of an acute inhalation toxicity test (OPPTS Test Guideline 870.1300), fish acute toxicity test (OPPTS Test Guideline 850.1075), an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010), and algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10867.

PMN Number P-15-136

Chemical name: Alkylalkenoic acid copolymer (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an encapsulating polymer. Based on test data on analogous high molecular weight polymers, EPA identified concerns for lung toxicity. As described in the PMN, EPA does not expect significant worker inhalation exposure due to no domestic manufacture, and the substance is not manufactured, processed, or used in the form of a powder. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any domestic manufacture of the substance or any import, processing, or use of the substance in the form of a powder may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test with a 60-day holding period (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10868.

PMN Number P-15-141

Chemical name: D-Glucitol, alkylamino-N-acyl derivs. (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the substance will be used as a surfactant in cleaning products and liquid soaps. Based on test data on the PMN substance, as well as SAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 14 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 14 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 14 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a ready biodegradability test (OECD Test Guideline 301) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10869.

PMN Number P-15-150

Chemical name:

Cyclohexanedicarboxylic acid, dialkyl ester (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adjuvant used in reaction processes. Based on SAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 10 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets

the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an acute invertebrate toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10870.

PMN Number P-15-221

Chemical name: Isocyanate prepolymer (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as ingredient in an industrial adhesive. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for irritation and sensitization to the skin and lungs. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure, or any use in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10871.

PMN Number P-15-242

Chemical name: Heteropolycyclic, polymer with alkanedioic acid, dialkenoate (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coating resin. Based on test data on analogous acrylates, EPA identified concerns for oncogenicity, developmental toxicity, liver and kidney toxicity, sensitization,

irritation, and acute toxicity. Further, based on SAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 120 ppb of the PMN substance in surface waters. As described in the PMN, occupational exposures are expected to be minimal due to the use of impervious gloves, goggles, and NIOSH-certified particulate respirators with an APF of at least 10. Further, releases of the substance are not expected to result in surface water concentrations exceeding 120 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without use of impervious gloves and goggles, when there is a potential dermal exposure; use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10, where there is a potential for inhalation exposures; or any use of the substance that results in releases to surface waters exceeding 120 ppb may result in significant adverse health and environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/developmental toxicity screening test (OPPTS 870.3650); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test (OCSPP Test Guideline 850.4500) would help characterize the human health and environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.10872.

PMN Number P-15-247

Chemical name: Methylene diisocyanate polymer with diols and triols (generic).

CAS number: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an industrial adhesive. Based on SAR analysis of test data on analogous diisocyanates, EPA identified concerns for respiratory and dermal sensitization and lung and mucous membrane irritation based on the isocyanate moiety. As described in the PMN, EPA does not expect significant occupational dermal or inhalation exposure due to use of adequate personal protective equipment and consumer exposures are not expected as the PMN substance is not used in consumer products. Therefore,

EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure, or any use in consumer products, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10873.

PMN Number P-15-278

Chemical name: Polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (generic).

CAS numbers: Claimed confidential.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a crosslinker. Based on analogous diisocyanates, EPA identified concerns for potential dermal and respiratory sensitization from dermal and inhalation exposures, and for pulmonary toxicity from inhalation exposure, to the PMN substance when the average molecular weight is below 2500 daltons and any molecular weight species is below 1000 daltons. EPA does not expect significant exposures from the form of the PMN substance as described in the PMN. Therefore, EPA has not determined that the proposed manufacture of the substance may present an unreasonable risk. EPA has determined, however, that any manufacture of the PMN substance with an average molecular weight of below 2500 daltons and any molecular weight species below 1000 daltons may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a skin sensitization test (OPPTS Test Guideline 870.2600) and a 90-day subchronic inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR Citation: 40 CFR 721.10874.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 9 of the 30 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit VI.).

In the other 21 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.

- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.

- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA section 5(e), 5(f), 6, or 7.

- EPA will ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the

Internet at <http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html>.

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is December 1, 2015 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before November 2, 2015.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before November 2, 2015, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of the Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) consent orders have been issued for 9 of the 30 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which would be designated as significant new uses. The identities of

22 of the 30 chemical substances subject to this rule have been claimed as confidential and EPA has received no post-PMN *bona fide* submissions (per §§ 720.25 and 721.11). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

Therefore, EPA designates October 2, 2015 as the cutoff date for determining whether the new use is ongoing. Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until the notice review period, including any extensions, expires. If such a person met the conditions of advance compliance under § 721.45(h), the person would be considered exempt from the requirements of the SNUR. Consult the **Federal Register** document of April 24, 1990 for a more detailed discussion of the cutoff date for ongoing uses.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the OCSPP test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test

Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>.

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have

been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the

procedures set forth in 40 CFR 720.40 and § 721.25. E-PMN software is available electronically at <http://www.epa.gov/opptintr/newchems>.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2015–0388.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is “good cause” under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden

requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
2. The SNUR submitted by any small entity would not cost significantly more than \$8,300.

A copy of that certification is available in the docket for this action.

This action is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than \$8,300.

Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined

that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This action does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice

related issues as delineated by Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 21, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

- 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

- 2. In § 9.1, add the following sections in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation

OMB Control
No.

40 CFR Citation			OMB Control No.	
*	*	*	*	*
Significant New Uses of Chemical Substances				
*	*	*	*	*
721.10852	.....		2070–0012	
721.10853	.....		2070–0012	
721.10854	.....		2070–0012	
721.10855	.....		2070–0012	
721.10856	.....		2070–0012	
721.10857	.....		2070–0012	
721.10858	.....		2070–0012	
721.10859	.....		2070–0012	
721.10860	.....		2070–0012	
721.10861	.....		2070–0012	
721.10862	.....		2070–0012	
721.10863	.....		2070–0012	
721.10864	.....		2070–0012	
721.10865	.....		2070–0012	
721.10866	.....		2070–0012	
721.10867	.....		2070–0012	
721.10868	.....		2070–0012	
721.10869	.....		2070–0012	
721.10870	.....		2070–0012	
721.10871			2070–0012	
721.10872			2070–0012	
721.10873			2070–0012	
721.10874			2070–0012	

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PART 721—[AMENDED]

- 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

- 4. Add § 721.10852 to subpart E to read as follows:

§ 721.10852 Fatty acids compound with cyclohexanamine (generic).

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances identified generically as fatty acids compound with cyclohexanamine (PMNs P–12–69 and P–12–70) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 5. Add § 721.10853 to subpart E to read as follows:

§ 721.10853 Fluoro-modified acrylic copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as fluoro-modified acrylic copolymer (PMN P-12-169) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substance, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum

impurity levels of certain fluorinated impurities), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 6. Add § 721.10854 to subpart E to read as follows:

§ 721.10854 Siloxanes and Silicones, alkyl, alkyl propoxy ethyl, methyl octyl, alkyl polyfluorooctyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as siloxanes and silicones, alkyl, alkyl propoxy ethyl, methyl octyl, alkyl polyfluorooctyl (PMN P-12-351) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substance is any manner or method of manufacture or processing associated with any use of the substance without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substance, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance is not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance from the employer, or who have received the PMN substance from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the

time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 7. Add § 721.10855 to subpart E to read as follows:

§ 721.10855 Partially fluorinated alcohol, reaction products with phosphorus oxide (P₂O₅) amine salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as partially fluorinated alcohol, reaction products with phosphorus oxide (P₂O₅), amine salts (PMNs P-12-450 and P-12-451) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of the substances is any manner or method of manufacture or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) are not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (a significant new use is any use other than as allowed by the section 5(e) consent order, which includes analysis and reporting and limitations of maximum impurity levels of certain fluorinated impurities), and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), and (i) are applicable to manufacturers and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b) (1) apply to paragraph (a)(2)(ii) of this section.

■ 8. Add § 721.10856 to subpart E to read as follows:

§ 721.10856 Fatty acids amine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as fatty acids amine salt (PMN P-12-520) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 9. Add § 721.10857 to subpart E to read as follows:

§ 721.10857 Organophosphorus polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organophosphorus polymer (PMN P-13-292) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. Add § 721.10858 to subpart E to read as follows:

§ 721.10858 Fluorinated acid alkylester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as fluorinated acid alkylester (PMN P-13-305) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational

Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4): Any NIOSH-certified air-purifying full facepiece respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters.

(ii) *Hazard communication program.*

Requirements as specified in § 721.72(a), (b), (c), (d), (e), (f) (concentration set at 1.0 percent), (g)(1) (The PMN substance may cause central nervous system depression, liver effects, endocrine effects), (g)(2), and (g)(5). In addition a significant new use of the substances is any manner or method of manufacture or processing associated with any use of the substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for the substances, the employer becomes aware that the substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If the substance(s) are not being manufactured, processed, or used in the employer's workplace, the employer must add the new information to a MSDS before the substance(s) are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive the PMN substance(s) from the employer, or who have received the PMN substance(s) from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A) of this section, are provided an MSDS containing the information required under paragraph (a)(2)(i)(A) of this section within 90 days from the time the employer becomes aware of the new information.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (o). It is a significant new use for any chemical substance manufactured using the PMN substance to contain residuals of the PMN substance above the level specified in the consent order. It is a significant new use to recover and convert, capture (destroy), recycle, or reuse the PMN substance below the overall efficiency specified in the consent order, when the PMN substance is used as an intermediate.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 11. Add § 721.10859 to subpart E to read as follows:

§ 721.10859 Quaternary alkyl methyl amine ethoxylate methyl chloride (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as quaternary alkyl methyl amine ethoxylate methyl chloride (PMN P-14-563) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=29).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10860 to subpart E to read as follows:

§ 721.10860 Substituted carboxamide (generic).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified generically as substituted carboxamide (PMN P-14-756) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10861 to subpart E to read as follows:

§ 721.10861 Phosphoric acid, sodium titanium (4+) salt (3:1:2).

(a) Chemical substance and significant new uses subject to reporting. (1) The chemical substance identified as phosphoric acid, sodium titanium (4+) salt (3:1:2) (PMN P-14-804; CAS No. 22239-24-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10862 to subpart E to read as follows:

§ 721.10862 Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate; Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, sodium salt; Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, potassium salt; Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, ammonium salt; Ethanol, 2-amino-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate; and Ethanol, 2,2',2''-nitrilotris-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified as oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate (P-15-1; CAS No. 73361-29-2); oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, sodium salt (P-15-2; CAS No. 151688-56-1); oxirane, 2-methyl-, polymer with oxirane, monohexadecyl

ether, phosphate, potassium salt (P-15-3; CAS No. 1456802-88-2); oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate, ammonium salt (P-15-4; CAS No. 1456802-89-3); ethanol, 2-amino-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate (P-15-5; CAS No. 1456803-12-5); and ethanol, 2,2',2''-nitrilotris-, compd. with 2-methyloxirane polymer with oxirane monohexadecyl ether phosphate (PMN P-15-6; CAS No. 1456803-14-7) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=18 in aggregate).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10863 to subpart E to read as follows:

§ 721.10863 Nitrile amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as nitrile amine (PMN P-15-25) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10864 to subpart E to read as follows:

§ 721.10864 1,3-propanediamine, N1, N1-alkyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1,3-propanediamine, N1, N1-alkyl (PMN P-15-26) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=32).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10865 to subpart E to read as follows:

§ 721.10865 2-Pyridinecarboxylic acid, 4,5,6-trichloro-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 2-pyridinecarboxylic acid, 4,5,6-trichloro- (PMN P-15-36; CAS No. 496849-77-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=30).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10866 to subpart E to read as follows:

§ 721.10866 Imidazoliurn, polymer with cyclic anhydride and alkenoic acid, alkali salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified

generically as imidazoliurn, polymer with cyclic anhydride and alkenoic acid, alkali salt (PMN P-15-61) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80 (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 19. Add § 721.10867 to subpart E to read as follows:

§ 721.10867 Hydrochlorofluorocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as hydrochlorofluorocarbon. (PMN P-15-98) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 40 CFR 721.63 (a)(4), (a)(6)(i), (a)(6)(ii), (b)(concentration set at 1.0 percent), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 25 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(ii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80 (g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=99).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10868 to subpart E to read as follows:

§ 721.10868 Alkylalkenoic acid copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkylalkenoic acid copolymer (PMN P-15-136) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.10869 to subpart E to read as follows:

§ 721.10869 D-Glucitol, alkylamino-N-acyl derivs. (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as D-glucitol, alkylamino-N-acyl derivs. (PMN P-15-141) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=14).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. Add § 721.10870 to subpart E to read as follows:

§ 721.10870 Cyclohexanedicarboxylic acid, dialkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as cyclohexanedicarboxylic acid, dialkyl ester (PMN P-15-150) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.10871 to subpart E to read as follows:

§ 721.10871 Isocyanate prepolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as isocyanate prepolymer (PMN P-15-221) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering

control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.10872 to subpart E to read as follows:

§ 721.10872 Heteropolycyclic, polymer with alkanedioic acid, di-alkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as heteropolycyclic, polymer with alkanedioic acid, di-alkenoate (PMN P-15-242) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (a)(4), (a)(6)(ii), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to

prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(ii) *Release to water.* Requirements as specified 721.90 (a)(4), (b)(4), and (c)(4) (N=120).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. Add § 721.10873 to subpart E to read as follows:

§ 721.10873 Methylene diisocyanate polymer with diols and triols (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as methylene diisocyanate polymer with diols and triols (PMN P-15-247) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(6)(ii), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (e.g., enclosure or confinement of the operation, general and local ventilation) or administrative control measures (e.g., workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of at least 10 meet the requirements of § 721.63(a)(4):

(A) NIOSH-certified power air-purifying respirator with a hood or helmet and with appropriate gas/vapor (acid gas, organic vapor, or substance

specific) cartridges in combination with HEPA filters.

(B) NIOSH-certified continuous flow supplied-air respirator equipped with a loose fitting facepiece, hood, or helmet.

(C) NIOSH-certified negative pressure (demand) supplied-air respirator with a full facepiece.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. Add § 721.10874 to subpart E to read as follows:

§ 721.10874 Polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of isophorone diisocyanate and amine-terminated propoxylatedpolyol (PMN P-15-278) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80. The significant new use is manufacture of the substance where the average molecular weight is below 2500 daltons and where any molecular weight species is below 1000 daltons.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2015-24846 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0246; FRL-9931-19-Region 9]

Revisions to the California State Implementation Plan, Butte County Air Quality Management District, Feather River Air Quality Management District, and San Luis Obispo County Air Pollution Control District; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: On June 11, 2015, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** approving a revision to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). In that rulemaking, the EPA indicated that final approval of the revision would supersede certain older rules in the California SIP but failed to include regulatory text to that effect. This document adds appropriate regulatory text to correct that omission, clarifying the specific regulations that were superseded and that are no longer part of the applicable California SIP, and adds a line of text identifying the affected air quality district that was missing in the original action.

DATES: This action is effective on October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972-3073, gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: This action corrects inadvertent errors in a rulemaking related to BCAQMD's SIP-approved definitions. On June 11, 2015 (80 FR 33195), the EPA published a direct final rulemaking action approving revisions to various sections of the California State Implementation Plan (SIP). This action contained regulatory text amendments to 40 CFR part 52, subpart F. The amendments, which incorporated material by reference into section 52.220, Identification of plan, paragraph (c)(457), omitted regulatory language that addressed the replacement of Butte County Air Pollution Control District (BCAPCD) Rule 101—"Title" and parts of BCAPCD Rule 102—"Definitions" with BCAQMD Rule 101—"Definitions" as described in Footnote 1 of 80 FR 33195. This action adds regulatory text to clarify the rules or portions of rules that were

superseded in the Butte County AQMD portion of the California SIP by our June 11, 2015 direct final action.

The EPA has determined that this action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because this action correcting inadvertent regulatory text errors included in the EPA's June 11, 2015 final rule is consistent with the substantive revision to the California SIP as described in the preamble of said action concerning definitions for the BCAQMD portion of the California SIP. In addition, the EPA can identify no particular reason why the public would be interested in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the EPA's analysis or overall action related to the approval of BCAQMD's revisions to their definitions into the California SIP.

The EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behaviour and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this action merely corrects inadvertent errors for the regulatory text of the EPA's prior rulemaking for the California SIP. For these reasons, the EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Need for Correction

As published, the final regulations omitted amendatory language that addressed the replacement of BCAQMD Rule 101.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and

is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 14, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Accordingly, 40 CFR part 52 is corrected by making the following correcting amendments:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by:
 - a. Revising paragraph (c)(168)(i)(A)(7); and
 - b. Revising paragraph (c)(457)(i)(C).
 The revised text reads as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(168) * * *

(i) * * *

(A) * * *

(7) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(457)(i)(C)(1): Rule 101 “Title” and Rule 102 “Definitions”, except for the following definitions from existing SIP BCAPCD Rule 102: “approved ignition devices,” “open out-door fire”, “permissive burn day,” “range improvement burning,” “submerged fill pipe,” and “vapor recovery system.”.

* * * * *

(457) * * *

(i) * * *

(C) Butte County Air Quality Management District.

(1) Rule 101, “Definitions,” amended on April 24, 2014.

* * * * *

[FR Doc. 2015–24953 Filed 10–1–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0513; FRL–9934–98–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Limited Maintenance Plan for the St. Louis Nonclassifiable Maintenance Area for the 8-Hour Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri relating to the Limited Maintenance Plan for the St. Louis area for the 8-Hour Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS). On April 8, 2014, the Missouri Department of Natural Resources (MDNR) submitted to EPA a second 10-year maintenance plan for the St. Louis area for the CO NAAQS. This maintenance plan addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. In accordance with the requirements of the Clean Air Act (CAA), EPA is approving the revision because the State adequately demonstrates that the St. Louis Maintenance area will maintain air quality standards for CO through the year 2022.

DATES: This direct final rule will be effective December 1, 2015, without further notice, unless EPA receives adverse comment by November 2, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0513, by one of the following methods:

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

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

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

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2015–0513. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your

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

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT:

Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7718 or by email at brown.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

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

- I. What is being addressed in this document?
- II. What is the background for this action?
- III. Have the requirements for approval of a SIP revision been met?
- IV. Evaluation of Missouri's Submittal
- V. Transportation and General Conformity
- VI. What action is EPA taking?

I. What is being addressed in this document?

The EPA is taking direct final action to approve revisions to the SIP submitted by the State of Missouri relating to the Limited Maintenance Plan for the St. Louis area for the 8-hour CO NAAQS.

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the state to submit a subsequent maintenance plan to EPA, covering a second 10-year period. This maintenance plan must demonstrate continued compliance with the NAAQS during this second 10-year period.

On April 8, 2014, the MDNR submitted to EPA a second 10-year maintenance plan for the St. Louis area for the CO NAAQS and requested that EPA approve this revision as meeting the CAA section 175A requirements.

This maintenance plan addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation.

This revision to Missouri's SIP does not have an adverse effect on air quality and EPA's approval of this SIP revision is being done in accordance with the requirements of the CAA.

II. What is the background for this action?

Under section 107(d)(1)(C) of the Act, any area designated before the date of enactment of the CAA Amendments of 1990 was to be designated upon enactment by operation of law. CO nonattainment areas that had not violated the CO standard in either year for the two-year period 1988–1989 were to be designated nonattainment and identified as “not classified” nonattainment areas. Accordingly, because the St. Louis area had not violated the standard in the 1988–1989 period, on November 6, 1991, the St. Louis area was designated nonattainment for the CO NAAQS and identified as “not classified” on November 6, 1991 (56 FR 56786).

On June 13, 1997, the State requested EPA to redesignate the St. Louis nonattainment area to attainment and submitted a limited maintenance plan to demonstrate maintenance of the standard for a 10-year period. EPA published approval of the redesignation request and maintenance plan on January 26, 1999 (64 FR 3855). The State has maintained the standard since and recently submitted a second 10-year maintenance plan to EPA on April 8, 2014.

An areas design value (DV) for the 8-hour CO NAAQS is calculated by finding the second maximum 8 hour average value at each monitor, for each year, for two years. The higher second maximum is used as the areas DV and the 8-hour CO standard is attained when the daily average 8-hour CO concentration of 9.0 parts per million (ppm) is not exceeded more than once a year.

Since the redesignation of the St. Louis area to attainment for CO on January 26, 1999, the second highest concentration in any calendar year measured by the EPA approved monitoring network was 5.7 ppm, which is less than 9.0 ppm.

In addition, areas that can demonstrate design values at or below 7.65 ppm (85 percent of the 9.0 ppm CO NAAQS) for 8 consecutive quarters may use a limited maintenance plan option. The State has opted to develop a limited maintenance plan to fulfill the second 10-year maintenance plan required by

the CAA. The base year in the State's second 10-year maintenance plan is 2008, which has a design value of 2.8 ppm. EPA also reviewed air quality monitoring data (2011–2012) and the 8-hour CO design value for the St. Louis area is 1.8 ppm. Thus, the area is well below the 7.65 ppm (85 percent of the 9.0 ppm CO NAAQS) for 8 consecutive quarters and qualifies to use the limited maintenance plan option.

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

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

IV. Evaluation of Missouri's Submittal

EPA has reviewed the St. Louis area second 10-year CO maintenance plan and concludes that the submittal meets the requirements of section 175A(b) of the Act. The following is a summary of the requirements and EPA's evaluation of how each requirement is met.

A. Base Year Emissions Inventory

The plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. The St. Louis area second 10-year CO maintenance plan contains an emissions inventory for the base year 2008 that is consistent with EPA's most recent guidance on maintenance plan emission inventories. The emissions inventory is a list, by source, of the air contaminants directly emitted into the St. Louis area. The data in the emissions inventory is based on calculations using emission factors, which is a method for converting source activity levels into an estimate of emissions contributions for those sources. Because violations of the CO NAAQS are most likely to occur on winter weekdays, the inventory prepared is in a “typical winter day” format. The table below shows the tons of CO emitted per winter day in 2008 by source category.

County	Source category	CO Emissions (tons per winter day)
St. Louis	Point Sources ...	17.26
St. Louis	Area Sources	70.26
St. Louis	On Road Mobile	532.42
St. Louis	Off Road Mobile	250.48
St. Louis	Total	870.42

B. Demonstration of Maintenance

The maintenance plan demonstration requirement is considered to be satisfied for areas using the limited maintenance plan option, which are required to demonstrate design values at or below 7.65 ppm (85 percent of the 9.0 ppm CO NAAQS) for 8 consecutive quarters. The State has opted to develop a limited maintenance plan to fulfill the St. Louis area second 10-year maintenance plan required by the CAA.

With the limited maintenance plan option, there is no requirement to project emissions of air quality over the maintenance period. EPA believes that if the area begins the maintenance period at, or below, 85 percent of the 9.0 ppm of the CO 8-hour NAAQS, the applicability of prevention of significant deterioration requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the 10-year maintenance period. The last monitored exceedance occurred in 1994 and previous to that, 1987. The St. Louis area met the requirements for the Limited Maintenance Plan option in the original redesignation and maintenance plan approval in 1999. The design value at that time (1994–1995) was 5.7 ppm and the monitored CO levels have been steadily in decline ever since. The 8-hour CO design value for the St. Louis area is 1.8 ppm based on 2011–2012 data, which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the St. Louis area has adequately demonstrated that it will maintain the CO NAAQS into the future.

C. Monitoring Network and Verification of Continued Attainment

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. The State has an approved monitoring network that includes the St. Louis area. The monitoring network was most recently approved by EPA on October 23, 2014. In the St. Louis second 10-year CO maintenance plan, MDNR commits to verify continued attainment through the EPA-approved monitoring network in accordance with 40 CFR part 58.

D. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions. The St. Louis second 10-year CO limited maintenance plan contains a contingency plan that

would institute lowering CO limits on existing rules that control CO emissions. The contingency plan is triggered either when (Level I) an exceedance of the 8 hour CO standard is recorded on any monitor, or (Level II) when a violation occurs at any monitor CO monitoring stations in the nonattainment area. EPA finds that the contingency measures provided in the maintenance plan are adequate to ensure prompt correction of a violation.

V. Transportation and General Conformity

Transportation conformity is required by section 176(c) of the CAA. EPA's conformity rule requires that transportation plans, programs, and projects that are funded under 23 U.S.C. or the Federal Transit Act conform to SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area. While EPA's limited maintenance plan option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the limited maintenance plan option, emissions budgets are essentially treated as not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the CO NAAQS would result. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited. While areas with maintenance plans approved under the limited maintenance plan option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

a. Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;

b. Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;

c. The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;

d. Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

f. Projects do not cause or contribute to any new localized CO or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The MPO and lead transportation agency in St. Louis is the East-West Gateway Council of Governments (EWG). EWG oversees transportation conformity determinations of the Interagency Consultation Committee established in Missouri Administrative Rule 10 CSR 10–5.480, which includes MDNR, the Missouri Transportation Department, the Federal Highway Administration, Federal Transit Administration, City of St. Louis Department of Health, St. Louis County Department of Health, St. Louis County Department of Highways and the EPA; as specified under 40 CFR part 93. St. Louis is currently meeting the requirements under 40 CFR part 93, subpart A.

VI. What action is EPA taking?

EPA is taking direct final action to approve this SIP revision. We are publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve this SIP revision, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will

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

Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. Section 52.1320(e) is amended by adding new entry (67) at the end of the table to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or Nonattainment area	State submittal date	EPA approval date	Explanation
* * *	*	*	*	*
(67) Missouri 8-Hour CO Second Ten year Limited Maintenance Plan.	St. Louis	4/8/14	10/2/15, [Insert FEDERAL REGISTER citation]	EPA-R07-OAR-2015-0513; FRL-9934-98-Region 7]

[FR Doc. 2015-25037 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0470; FRL-9934-91-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Approval of the Base Year Emissions Inventory for the Liberty-Clairton Nonattainment Area for the 2006 24-Hour Fine Particulate Matter Standard and Approval of Transportation Conformity Insignificance Findings for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standards for the Liberty-Clairton Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve two revisions to the Commonwealth of Pennsylvania (Pennsylvania) State Implementation Plan (SIP). The first revision consists of the 2007 base year emissions inventory for the Liberty-Clairton nonattainment area (hereafter “the Liberty-Clairton Area” or “the Area”) with respect the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS or standard). The second revision consists of insignificance findings for the mobile source contribution of PM_{2.5} and nitrogen oxides (NO_x) emissions for the Liberty-Clairton Area for both the 1997 annual and 2006 24-hour PM_{2.5} standards. EPA is approving the 2007 base year emissions inventory for the Liberty-Clairton Area for the 2006 24-hour PM_{2.5} NAAQS. Furthermore, EPA is finding the motor vehicle emission inventories adequate for transportation conformity purposes and is approving the insignificance findings for the mobile source contribution of PM_{2.5} and NO_x emissions for the Liberty-Clairton Area for both the 1997 annual and 2006 24-hour PM_{2.5} standards. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 1, 2015 without further notice, unless EPA receives adverse written comment by November 2, 2015. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register**

and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0470 by one of the following methods:

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

B. Email: Fernandez.cristina@epa.gov.
C. Mail: EPA-R03-OAR-2015-0470, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2015-0470. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT:

Emlyn Vélez-Rosa, (215) 814-2038, or by email at velez-rosa.emlyn@epa.gov.

SUPPLEMENTARY INFORMATION: On June 21, 2013, the Commonwealth of Pennsylvania submitted, on behalf of Allegheny County, a formal revision to its SIP. The SIP revision consisted of the 2006 24-hour PM_{2.5} NAAQS attainment plan for the Liberty-Clairton Area, which included among other things, an attainment demonstration, a 2007 base year emissions inventory, a reasonably available control measures (RACM) analysis, and a description of contingency measures. On July 31, 2014, the SIP revision was supplemented to include additional information regarding control measures as part of the attainment demonstration and insignificance findings for transportation conformity purposes for both the 1997 and 2006 24-hour PM_{2.5} NAAQS.

Today’s action only pertains to the approval of the 2007 base year emissions inventory to satisfy the requirement of section 172(c)(3) of the CAA and the transportation conformity insignificance findings to satisfy EPA’s requirements at 40 CFR 93.118(e)(4) and 40 CFR 93.109(f).

I. Background

On July 16, 1997, EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) (hereafter referred to as “the 1997 annual PM_{2.5} NAAQS”), based on a 3-year average of annual mean PM_{2.5} concentrations (62 FR 38652, July 18, 1997). At that time, EPA also established a 24-hour standard of 65 µg/m³ (hereafter referred to as “the 1997

24-hour PM_{2.5} NAAQS"). See 40 CFR 50.7. The 1997 PM_{2.5} standards were based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

On January 5, 2005 (70 FR 944), EPA published its nonattainment area designations for the 1997 annual PM_{2.5} NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations, effective on April 5, 2005, included the Liberty-Clairton Area as a nonattainment area. The Liberty-Clairton Area for the 1997 annual PM_{2.5} NAAQS is comprised of the following portion of Allegheny County: The boroughs of Lincoln, Glassport, Liberty, and Port Vue and the City of Clairton. See 40 CFR 81.339 (Pennsylvania). The Liberty-Clairton Area is surrounded by, but separate and distinct from, the Pittsburgh-Beaver Valley PM_{2.5} nonattainment area.

On September 21, 2006, EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 µg/m³ (hereby "the 2006 annual PM_{2.5} NAAQS") based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour standard of 35 µg/m³ (hereafter "the 2006 24-hour PM_{2.5} NAAQS") based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17, 2006). The revised 2006 24-hour PM_{2.5} standard became effective on December 18, 2006. See 40 CFR 50.13. The more stringent 2006 24-hour PM_{2.5} NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to PM_{2.5} at this level.

Many petitioners challenged aspects of EPA's 2006 revisions to the PM_{2.5} NAAQS. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded the 2006 annual PM_{2.5} NAAQS to EPA for further proceedings. The 2006 24-hour PM_{2.5} NAAQS was not affected by the remand and remains in effect.

On November 13, 2009, EPA published designations for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688). These designations, effective on December 14, 2009, included the Liberty-Clairton Area as a nonattainment area for the 2006 24-hour PM_{2.5} NAAQS, retaining the same geographical boundaries as for the 1997 annual PM_{2.5} NAAQS. See 40 CFR 81.339 (Pennsylvania).

A nonattainment designation under the CAA triggers additional planning requirements for states to show attainment of the NAAQS in the nonattainment areas by a statutory attainment date, as specified in the CAA. Since 2005, EPA had implemented the 1997 and 2006 PM_{2.5} NAAQS based on the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1). On January 4, 2013, in *Natural Resources Defense Council v. EPA* (*NRDC v. EPA*), the DC Circuit determined that EPA should be implementing its PM_{2.5} pollution standard under additional CAA requirements than those EPA had been following in subpart 1 and remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (1997 PM_{2.5} Implementation Rule) (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (2008 NSR PM_{2.5} Rule).¹ 706 F.3d 428 (D.C. Cir. 2013). The DC Circuit found that the EPA erred in implementing the 1997 annual PM_{2.5} NAAQS solely pursuant to subpart 1, without consideration of the particulate matter specific provisions of subpart 4 of Part D of Title I of the CAA (subpart 4).

While the regulatory provisions of EPA's 1997 PM_{2.5} Implementation Rule do not explicitly apply to the 2006 24-hour PM_{2.5} NAAQS, EPA's underlying statutory interpretation has been the same for both standards. On March 2, 2012, EPA provided implementation guidance for the 2006 24-hour PM_{2.5} NAAQS which reaffirmed and continued the framework and policy approaches of the 1997 PM_{2.5} Implementation Rule. On June 6, 2013, EPA withdrew the implementation guidance for the 2006 24-hour PM_{2.5} NAAQS, subsequent to the DC Circuit's decision in *NRDC v. EPA*.²

Although the DC Circuit declined to establish a deadline for EPA's response, EPA intends to respond promptly to the Court's remand and to promulgate new generally applicable implementation regulations for the PM_{2.5} NAAQS in accordance with the requirements of subparts 1 and 4. In the interim, however, states and EPA still need to proceed with implementation of the

PM_{2.5} NAAQS in a timely and effective fashion in order to meet statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

The statutory provisions in subpart 4 require EPA, among other things, to classify nonattainment areas for the PM_{2.5} NAAQS based on the severity of their pollution problem. Under EPA's prior approach to implementing the 1997 annual and 2006 24-hour PM_{2.5} standards according to subpart 1, EPA was not required to, and thus did not, identify any classifications for areas designated nonattainment. In contrast, subpart 4 of the CAA, at section 188, provides that all areas designated nonattainment are initially classified "by operation of law" as "Moderate" nonattainment areas, and they remain classified as Moderate nonattainment areas unless and until EPA later reclassifies them as Serious nonattainment areas or EPA determines that an area has not attained the PM_{2.5} NAAQS by the area's applicable attainment date.

On April 25, 2014, EPA finalized a rule identifying the classification of all PM_{2.5} areas currently designated nonattainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS as "Moderate," consistent with subpart 4 of the CAA. See 79 FR 31566 (June 2, 2014). Consequently, the Liberty-Clairton Area was classified as Moderate for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

On July 10, 2015 (80 FR 39696), EPA determined that the Liberty-Clairton Area had attained the 2006 24-hour PM_{2.5} NAAQS, based on quality-assured and certified ambient air quality data for the 2012–2014 monitoring period. This "clean data determination" suspended Pennsylvania's obligations to submit for the Liberty-Clairton Area an attainment demonstration, reasonably available control measures (RACM), reasonable further progress (RFP), and contingency measures for the 2006 24-hour PM_{2.5} NAAQS pursuant to subparts 1 and 4 of the CAA, for so long as the Area continues to attain the standard.

EPA incorporated its Clean Data Policy interpretation in both its 8-Hour Ozone Implementation Rule in 40 CFR 51.918 and in its 1997 PM_{2.5} Implementation Rule in 40 CFR 51.1004(c). See 72 FR 20585, 20665 (April 25, 2007). While the DC Circuit in its January 4, 2013 decision remanded the 1997 PM_{2.5} Implementation Rule, the Court did not address the merits of that regulation regarding our Clean Data Policy in 40 CFR 51.1004(c), nor cast any doubt on EPA's existing interpretation of the

¹ EPA's 2008 NSR PM_{2.5} Rule relates to requirements for the NSR permitting program required by parts C and D of title I of the CAA. The details and provisions of the 2008 NSR PM_{2.5} Rule are not relevant to this rulemaking.

² EPA's June 6, 2013 withdrawal memorandum is available at <http://www.epa.gov/ttn/naaqs/pm/pdfs/implementationguidancewithdrawmemo.pdf>.

statutory provisions for the Clean Data Policy.³

After EPA's final clean data determination for the Liberty-Clairton Area for the 2006 24-hour PM_{2.5} NAAQS, effective on August 10, 2015, the only pending statutory requirement for the Area relates to emissions inventories pursuant to section 172(c)(3) of subpart 1 of the CAA. Specifically, section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions for each nonattainment area. EPA's requirements for an emissions inventory for the PM_{2.5} NAAQS are set forth in 40 CFR 51.1008.

II. Summary of SIP Revision

As discussed earlier, the Liberty-Clairton's base year emissions inventory was submitted by Pennsylvania Department of the Environmental Protection (PADEP), on behalf of Allegheny County Health Department

(ACHD), as part of the June 21, 2013 SIP revision to demonstrate attainment of the 2006 24-hour PM_{2.5} NAAQS for the Liberty-Clairton Area. The June 21, 2013 SIP revision was amended on July 31, 2015 to include, among other things, the transportation conformity insignificance findings for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. In this rulemaking action, EPA is only acting on the portions of the submittals corresponding to the 2007 base year emissions inventory and the transportation conformity insignificance findings. A brief summary of the SIP revisions is provided in this section.

A. Base Year Emissions Inventory

The 2007 base year emissions inventory for the Liberty-Clairton Area intends to satisfy the requirements of section 172(c)(4) of the CAA for the 2006 24-hour PM_{2.5} NAAQS. The 2007 base year emissions inventory includes emissions estimates that cover the

general source categories of point sources, area sources, non-road mobile sources, and on-road mobile sources. The pollutants that comprise the inventory are NO_x, volatile organic compounds (VOC), PM_{2.5}, coarse particles (PM₁₀), ammonia, and sulfur dioxide (SO₂). ACHD selected 2007 as the base year for the emissions inventory, in accordance with 40 CFR 51.1008(b).

The 2007 emissions inventory submitted is the most current accurate and comprehensive actual emissions inventory of direct PM_{2.5}, PM₁₀, NO_x, SO₂, VOC, and ammonia for the Liberty-Clairton Area with respect to the 2006 24-hour PM_{2.5} NAAQS. The actual emissions were estimated based on pollutant emission factors and throughputs or capacities of each emission source. A summary of the Liberty-Clairton's 2007 base year emissions inventory is provided in Table 1.

TABLE 1—2007 BASE YEAR EMISSIONS INVENTORY FOR THE LIBERTY-CLAIRTON AREA FOR THE 2006 24-HOUR PM_{2.5} NAAQS
[Tons/Year]

	PM _{2.5}	PM ₁₀	SO ₂	NO _x	VOC	Ammonia
Point Sources	946.6	1136.9	1741.3	4841.9	590.5	18.4
Area Sources	26.3	50.5	50.1	38.8	255.9	4.2
Nonroad Sources	15.0	15.9	17.2	437.9	86.6	0.2
Mobile Sources	9.9	10.4	2.1	274.3	172.5	4.7
Totals	997.8	1213.8	1810.9	5592.9	1105.6	27.5

EPA has reviewed the procedures and methodologies used by ACHD for the 2007 base year emissions inventory submitted as part of the June 21, 2013 SIP revision and finds the inventory approvable. Further analysis of the emissions inventory development can be found in technical support document (TSD) dated August 12, 2015 included as part of the docket for this rulemaking action.

B. Transportation Conformity Insignificance Determinations

Transportation conformity is required under section 176(c) of the CAA to ensure that federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. The CAA requires federal actions in nonattainment and maintenance areas to "conform to" the goals of SIP. This means that such actions will not cause or contribute to violations of a NAAQS;

worsen the severity of an existing violation; or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the Transportation Conformity Rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, FHWA, and FTA to demonstrate that their metropolitan transportation plans and transportation improvement plans (TIPs) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs) contained in a SIP.

For MVEBs to be approvable, they must meet, at a minimum, EPA's

adequacy criteria found at 40 CFR 93.118(e)(4). However, the Transportation Conformity Rule at 40 CFR 93.109(f) allows areas to forgo establishment of a budget(s) where it is demonstrated that regional motor vehicle emissions for a particular pollutant or precursor pollutant are an insignificant contributor to the air quality problem in the area. The general criteria for insignificance determinations per 40 CFR 93.109(f) are based on a number of factors, including: (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions in the area.

The Liberty-Clairton's attainment demonstration for the 2006 24-hour PM_{2.5} NAAQS submitted by the

³ EPA addressed the effects of a final determination of attainment under the Clean Data Policy for the Liberty-Clairton Area as a 2006 24-

hour PM_{2.5} moderate nonattainment area under subpart 4 in the notice of proposed rulemaking for

the Area's determination of attainment. See 80 FR 22666 (April 23, 2015).

Commonwealth of Pennsylvania, on behalf of Allegheny County, includes a request for EPA to make insignificance findings for NO_x and directly emitted PM_{2.5} for the Area for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Pursuant to Section 93.118(e)(4) and 93.109(f) of the Transportation Conformity Rule, EPA has reviewed the Commonwealth of Pennsylvania's justification for the findings of insignificance for direct PM_{2.5} and also for NO_x as a precursor of PM_{2.5} in the Liberty-Clairton Area for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA agrees with Pennsylvania's conclusion that on-road emissions of PM_{2.5} and NO_x in the Liberty-Clairton Area are insignificant for transportation conformity purposes for both NAAQS.

EPA bases these findings on several factors: (1) The fact that the motor vehicle emissions constitute a low percentage of the total SIP inventory. In particular, for the 2007 base year, the direct PM onroad mobile source constitutes 0.99 percent (%) of the Liberty-Clairton Area's total PM_{2.5} emissions and decreases in the later analysis year to 0.88% (2014). For the 2007 base year, the NO_x onroad mobile source constitutes 4.9% of the Area's total NO_x emissions and decreases in the later analysis year to 3.07% (2014); (2) The fact that the Liberty-Clairton Area has been determined to attain the 1997 annual PM_{2.5} standard (October 25, 2013, 78 FR 63881) and the 2006 24-hour PM_{2.5} standard (July 10, 2015, 80 FR 39696), and continues to attain the standards with the most recent three years of complete, quality-assured monitoring data; (3) The absence of local on-road control measures; and (4) The continued downward trend, historically and in modeled future projections, of on-road NO_x and PM_{2.5} emissions.

With regard to on-road emissions of SO₂, VOC, and ammonia, Allegheny County did not provide an insignificance demonstration because it concluded, consistent with EPA's presumptions regarding these PM_{2.5} precursors, that the emissions of these precursors from motor vehicles are not significant contributors to the Liberty-Clairton Area's PM_{2.5} air quality problem. Therefore, EPA finds adequate, and is also approving as SIP revision, Pennsylvania's insignificance determinations for the Liberty-Clairton Area with respect both the 1997 annual and 2006 24-hour PM_{2.5} standards. Additional information pertaining to the review of the motor vehicle emission inventories can be found in the TSD dated August 27, 2015, as part of the docket for this final rulemaking action.

In this direct final rulemaking action, EPA is initiating the process for determining whether or not the motor vehicle emission inventories are adequate for transportation conformity purposes. The publication of this document starts a 30-day public comment period on the adequacy of the submitted motor vehicle emission inventories. This comment period is concurrent with the comment period on this direct final rulemaking action. Any comments on the motor vehicle emission inventories should be submitted to the docket for this rulemaking. The public can find the posting of these motor vehicle emissions inventories on EPA's adequacy Web page (<http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>). The adequacy of the motor vehicle emission inventories as well as the approval of the findings of insignificance will become effective upon the effective date of this direct final rulemaking action. Upon the effective date of this direct final rulemaking action, the Liberty-Clairton Area is no longer required to perform a regional emissions analysis for directly emitted PM_{2.5}, or NO_x, as part of future PM_{2.5} conformity determinations for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

III. Final Action

EPA is approving as a revision to the Pennsylvania SIP the Liberty-Clairton Area's 2007 base year emissions inventory for the 2006 24-hour PM_{2.5} NAAQS submitted as part of the June 21, 2013 SIP revision. EPA finds that the 2007 base year emissions inventory satisfies the requirements of 40 CFR 51.1008 and section 172(c)(3) of the CAA for the 2006 24-hour PM_{2.5} NAAQS for the Liberty-Clairton Area. EPA finds adequate and is also approving as a revision to the SIP Pennsylvania's determinations for both the 1997 annual and 2006 24-hour PM_{2.5} standards that onroad emissions of PM_{2.5} and NO_x are insignificant contributors to PM_{2.5} concentrations in the Liberty-Clairton Area for transportation conformity purposes, as submitted as part of the July 31, 2014 supplemental SIP revision. Upon the effective date of this direct final rulemaking action, the Liberty-Clairton Area is no longer required to perform a regional emissions analysis for directly emitted PM_{2.5}, or NO_x, as part of future PM_{2.5} conformity determinations for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment.

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *December 1, 2015* without further notice unless EPA receives adverse comment by *November 2, 2015*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving the 2007 base year emissions inventory for the Liberty-Clairton Area with respect the 2006 24-hour PM_{2.5} NAAQS and the transportation conformity insignificance findings for the Liberty-Clairton Area with respect the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, may not be

challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 16, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 2007 Base Year Emissions Inventory for the 2006 PM_{2.5} NAAQS for the Liberty-Clairton PM_{2.5} Nonattainment Area at the end of the table to read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2007 Base Year Emissions Inventory for the 2006 PM _{2.5} NAAQS.	Liberty-Clairton PM _{2.5} Nonattainment Area	6/21/13	10/2/15 [Insert Federal Register citation].	

* * * * *

■ 3. Section 52.2036 is amended by adding paragraph (y) to read as follows:

§ 52.2036 Base year emissions inventory.

(y) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2007 base year emissions inventory for the Liberty-Clairton 2006 24-hour PM_{2.5} nonattainment area submitted by the Pennsylvania Department of Environmental Protection, on behalf of Allegheny County Health Department, on June 21, 2013. The emissions inventory includes emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventory are PM_{2.5}, NO_x, VOCs, NH₃, and SO₂.

[FR Doc. 2015-24877 Filed 10-1-15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0916; FRL-9934-83-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to South Dakota Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on July 29, 2013. This SIP submission revises the Administrative Rules of South Dakota (ARSD) Article 74:36—Air Pollution Control Program. These revisions include renumbering, revisions to the date of incorporation by reference of the federal regulations referenced throughout ARSD Article 74:36, and removal of obsolete language regarding variance provisions and clean units. EPA is also clarifying a final rule issued on January 29, 2015 pertaining to South Dakota's infrastructure SIP. This

action is being taken in accordance with section 110 of the Clean Air Act (CAA).

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

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2014-0916. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

South Dakota's July 29, 2013 submittal covers the following rule changes: (1) Removal of obsolete language regarding variance provisions and clean units, and renumbering to the date of federal regulations referenced throughout ARSD Article 74:36 to July 1, 2012. A cross-walk table that identifies EPA's action on South Dakota's revisions is included in the docket for this rulemaking.

South Dakota's July 29, 2013 submittal also requests EPA approval of rule revisions for provisions that are not

required to be included in SIPs under section 110 of the CAA, most notably additions to the State's New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants and Title V permitting. These revisions, on which EPA is not taking action, are outlined in the cross-walk table located in the docket for this rulemaking.

II. What action is EPA taking?

EPA is finalizing action on South Dakota's July 29, 2013 submittal as outlined in Section III. of the proposal published on July 14, 2015, with one exception; EPA's proposed approval of South Dakota's updates to 74:36:05, "Operating Permits for Part 70 Sources," as part of its July 14, 2015 action (80 FR 40953). EPA published a notice of correction of the proposal on August 24, 2015 (80 FR 51152), because CAA Title V requirements are not subject to Section 110 of the Clean Air Act and are thus not required to be incorporated into a SIP. Therefore, EPA is not taking any action on South Dakota's updates to 74:36:05.

III. Clarification of January 29, 2015 Final Action

Under CAA sections 110(a)(1) and (2), states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). On January 29, 2015, EPA took final action on the infrastructure submittals which addressed several different NAAQS from the State of South Dakota (80 FR 4799). As part of the January 29, 2015 action, EPA approved South Dakota's 1997 PM_{2.5} NAAQS interstate transport infrastructure sub-element (CAA section 110(a)(2)(D)(i)(II)). However, EPA had already approved this sub-element in a final rulemaking on May 8, 2008 (73 FR 26019, effective July 7, 2008). Therefore, in this action EPA is clarifying that no action was required on this sub-element for this NAAQS in the January 29, 2015 approval of CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5}

NAAQS and the effective date of approval remains July 7, 2008.

IV. Response to Comments

EPA received one comment on the July 14, 2015 proposal with respect to air quality measurements. EPA acknowledges this comment but does not consider the comment to be relevant to the proposed action.

V. Summary of Action

In this rulemaking, EPA is approving most remaining portions of South Dakota's July 29, 2013 submittal as outlined in the crosswalk table located in the docket for this action. EPA is not taking action on certain portions of this submittal as described in the proposed rulemaking and the notice of correction to the proposal. Finally, EPA is also clarifying no action was required in the January 29, 2015 final action (80 FR 4799) regarding the effective date of approval for South Dakota's SIP regarding CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5} NAAQS as EPA had already approved this sub-element in a prior rulemaking.

VI. Incorporation by Reference

In this rulemaking, EPA is including final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is incorporating by reference the rules in ARSD Article 74:36 submitted by South Dakota for action which are identified within this notice of rulemaking. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this rule's preamble for more information).

VII. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *December 1, 2015*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 9, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart QQ—South Dakota

- 2. In § 52.2170, the table in paragraph (c)(1) is amended by:
 - a. Revising entries for "74:36:01:01"; "74:36:02:02"; "74:36:02:03"; "74:36:02:04"; "74:36:02:05"; and "74:36:04:04";
 - b. Adding an entry for "74:36:04:05" in numerical order;
 - c. Revising entries for "74:36:04:12" and "74:36:04:13";
 - d. Adding an entry for "74:36:04:14" in numerical order;
 - e. Revising entries for "74:36:04:15"; "74:36:11:01"; and "74:36:12:01";
 - f. Adding an entry for "74:36:12:02" in numerical order; and
 - g. Revising entries for "74:36:12:03"; "74:36:13:02"; "74:36:13:03"; "74:36:13:04"; "74:36:13:06"; "74:36:13:07"; "74:36:13:08"; "74:36:18:04"; "74:36:18:05"; "74:36:18:06"; "74:36:18:10";

“74:36:18:11”, “74:36:18:12”; “74:36:20:05”, “74:36:20:11”, “74:36:20:13”, “74:36:20:14”, “74:36:20:15”; “74:36:21:02”, “74:36:21:04”, “74:36:21:05”, and “74:36:21:09”.
The revisions and additions read as follows:

§ 52.2170 Identification of plan.

* * * * *
(c) * * *
(1) * * *

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
* * *	* * *	* * *	* * *	* * *
74:36:01 Definitions				
74:36:01:01	Definitions	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:02 Ambient Air Quality				
74:36:02:02	Ambient air quality standards	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:02:03	Methods of sampling and analysis.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:02:04	Air quality monitoring network	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:02:05	Air quality monitoring requirements.	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:04 Operating Permits for Minor Sources				
* * *	* * *	* * *	* * *	* * *
74:36:04:04	Standard for issuance of a minor source operating permit.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:04:05	Time period for operating permits and renewals.	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:04:12	Public participation in permitting process.	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:04:13	Final permit decision—Notice to interested persons.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:04:14	Right to petition for contested case hearing.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:04:15	Contents of operating permit	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:11 Performance Testing				
74:36:11:01	Stack performance testing or other testing methods.	6/25/2013	10/2/2015, [insert Federal Register citation].	
* * *	* * *	* * *	* * *	* * *
74:36:12 Control of Visible Emissions				
74:36:12:01	Restrictions on visible emissions.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:12:02	Exceptions to restrictions	6/25/2013	10/2/2015, [insert Federal Register citation].	Except for 74:36:12:02(3)
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators.	6/25/2013	10/2/2015, [insert Federal Register citation].	

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
*	*	*	*	*
74:36:13 Continuous Emission Monitoring Systems				
74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:13:03	Reporting requirements	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:13:04	Notice to department of exceedance.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:13:06	Compliance certification	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:13:07	Credible evidence	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:13:08	Compliance assurance monitoring.	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:18 Regulations for State Facilities in the Rapid City Area				
*	*	*	*	*
74:36:18:04	Time period for permits and renewals.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:18:05	Required contents of a complete application for a permit.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:18:06	Contents of permit	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:18:10	Visible emission limit for construction and continuous operation activities.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:18:11	Exception to visible emission limit.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:18:12	Notice of operating non-compliance—Contents.	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:20 Construction Permits for New Sources or Modifications				
*	*	*	*	*
74:36:20:05	Standard for issuance of construction permit.	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:20:11	Public participation in permitting process.	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:20:13	Final permit decision—Notice to interested persons.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:20:14	Right to petition for contested case hearing.	6/25/2013	10/2/2015, [insert Federal Register citation].	
74:36:20:15	Contents of construction permit.	6/25/2013	10/2/2015, [insert Federal Register citation].	
*	*	*	*	*
74:36:21 Regional Haze Program				
*	*	*	*	*
74:36:21:02	Definitions	6/25/2013	10/2/2015, [insert Federal Register citation].	

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
* * *	* * *	* * *	* * *	* * *
74:36:21:04	Visibility impact analysis	6/25/2013	10/2/2015, [<i>insert Federal Register citation</i>].	
74:36:21:05	BART determination	6/25/2013	10/2/2015, [<i>insert Federal Register citation</i>].	
* * *	* * *	* * *	* * *	* * *
74:36:21:09	Monitoring, recordkeeping, and reporting.	6/25/2013	10/2/2015, [<i>insert Federal Register citation</i>].	
* * *	* * *	* * *	* * *	* * *

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2015-24857 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2015-0029; FRL-9934-82-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation Request and Associated Maintenance Plan for the Pittsburgh-Beaver Valley Nonattainment Area for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Commonwealth of Pennsylvania's request to redesignate to attainment the Pittsburgh Nonattainment Area (Pittsburgh Area or Area) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS or standard). EPA has determined that the Pittsburgh Area attained both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. In addition, EPA is approving as a revision to the Pennsylvania State Implementation Plan (SIP) the associated maintenance plan to show maintenance of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS through 2025 for the Pittsburgh Area. The maintenance plan includes the 2017 and 2025 PM_{2.5} and nitrogen oxides (NO_x) motor vehicle emissions budgets (MVEBs) for the Pittsburgh Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, which EPA is approving for transportation conformity purposes. Furthermore, EPA is approving the 2007

emissions inventories for the 1997 annual PM_{2.5} NAAQS and the 2011 emissions inventories for the 2006 24-hour PM_{2.5} NAAQS included in the maintenance plan for the Pittsburgh Area. These actions are being taken under the Clean Air Act (CAA).

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

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2015-0029. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814-2182, or by email at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 2014, the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), formally submitted a request to redesignate the Pittsburgh Area from nonattainment to attainment for the 1997 annual and 2006 24-hour PM_{2.5}

NAAQS. Concurrently, PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to ensure continued attainment throughout the Pittsburgh Area over the next 10 years. The maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs for the Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, which EPA is approving for transportation conformity purposes. PADEP also submitted 2007 and 2011 comprehensive emissions inventories that were included in the maintenance plan for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively, for NO_x, sulfur dioxide (SO₂), volatile organic compounds (VOC), and ammonia (NH₃).

On May 20, 2015 (80 FR 28906), EPA published a notice of proposed rulemaking (NPR) for Pennsylvania. In the NPR, EPA proposed approval of Pennsylvania's December 22, 2014 request to redesignate the Pittsburgh Area to attainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. EPA also proposed approval of the associated maintenance plan as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, which includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs for both NAAQS, which EPA proposed to approve for purposes of transportation conformity. In addition, EPA proposed approval of the 2007 and 2011 emissions inventories included in the Pittsburgh Area's maintenance plan for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively, to meet the emissions inventory requirement of section 172(c)(3) of the CAA.

The details of Pennsylvania's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

II. Final Actions

EPA is taking final actions on the redesignation request and SIP revisions

submitted on December 22, 2014 by the Commonwealth of Pennsylvania for the Pittsburgh Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. First, EPA finds that the monitoring data demonstrates that the Area has attained the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, and continues to attain both NAAQS. Second, EPA is approving Pennsylvania's redesignation request for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for both NAAQS. Approval of this redesignation request will change the official designation of the Pittsburgh Area from nonattainment to attainment for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Third, EPA is approving the associated maintenance plan for the Pittsburgh Area as a revision to the Pennsylvania SIP for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS because it meets the requirements of section 175A of the CAA. The maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x MVEBs submitted by Pennsylvania for the Pittsburgh Area for transportation conformity purposes. In addition, EPA is approving the 2007 and the 2011 emissions inventories for the Pittsburgh Area as meeting the requirement of section 172(c)(3) of the CAA for 1997 annual and 2006 24-hour PM_{2.5} NAAQS, respectively.

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

comply with nonattainment-related planning requirements for the Pittsburgh Area pursuant to part D of the CAA and approves certain emissions inventories and MVEBs for the Pittsburgh Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this rulemaking action to become effective on the date of publication.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the redesignation request and maintenance plan for the Pittsburgh Area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS and the comprehensive emissions inventories for the Pittsburgh Area for the 1997

annual and the 2006 24-hour PM_{2.5} NAAQS, respectively, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 17, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—NN Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for “1997 Annual and 2006 24-Hour PM_{2.5} Maintenance Plan, and 2007 and 2011 Base Year Emissions Inventories” at the end of the table. The added text reads as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	*
(1)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1997 Annual and 2006 24-Hour PM _{2.5} Maintenance Plan, and 2007 and 2011 Base Year Emissions Inventories.	Pittsburgh-Beaver Valley	12/22/14	10/2/15 [<i>Insert Federal Register</i> citation].	See § 52.2036(y) and § 52.2059(t).

■ 3. Section 52.2036 is amended by adding paragraph (y) to read as follows:

§ 52.2036 Base year emissions inventory.

(y) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2007 and 2011 base year emissions inventories for the Pittsburgh-Beaver Valley 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) nonattainment area, respectively, submitted by the Pennsylvania Department of Environmental Protection on December 22, 2014. The emissions

inventories include emissions estimates that cover the general source categories of point, area, nonroad, and onroad sources. The pollutants that comprise the inventories are PM_{2.5}, nitrogen oxides (NO_x), volatile organic compounds (VOCs), ammonia (NH₃), and sulfur dioxide (SO₂).

■ 4. Section 52.2059 is amended by adding paragraph (t) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(t) EPA approves the maintenance plan for the Pittsburgh nonattainment area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS submitted by the Commonwealth of Pennsylvania on December 22, 2014. The maintenance plan includes the 2017 and 2025 PM_{2.5} and NO_x motor vehicle emissions budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Pittsburgh nonattainment area for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS.

PITTSBURGH-BEAVER VALLEY'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL AND 2006 24-HOUR PM_{2.5} NAAQS IN TONS PER YEAR

Type of control strategy SIP	Year	PM _{2.5}	NO _x	Effective date of SIP approval
Maintenance Plan	2017 2025	700 537	17,584 10,709	October 2, 2015. October 2, 2015.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 5. The authority citation for Part 81 continues to read as follows:

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

■ 6. Section 81.339 is amended by revising the “1997 Annual PM_{2.5} NAAQS” and the “2006 24-Hour PM_{2.5} NAAQS” tables entry for the Pittsburgh-Beaver Valley, PA to read as follows:

NAAQS” tables entry for the Pittsburgh-Beaver Valley, PA to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—1997 ANNUAL PM_{2.5} NAAQS

[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
* * *	*	*	*	*
Pittsburgh-Beaver Valley, PA:				

PENNSYLVANIA—1997 ANNUAL PM_{2.5} NAAQS—Continued
[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
Allegheny County (remainder)	October 2, 2015	Attainment.		
Armstrong County (part)	October 2, 2015	Attainment.		
Elderton Borough and Plumcreek and Washington Townships:				
Beaver County	October 2, 2015	Attainment.		
Butler County	October 2, 2015	Attainment.		
Greene County (part)	October 2, 2015	Attainment.		
Monongahela Township:				
Lawrence County (part)	October 2, 2015	Attainment.		
Township of Taylor south of New Castle City:				
Washington County	October 2, 2015	Attainment.		
Westmoreland County	October 2, 2015	Attainment.		
* * *	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

* * * * *

PENNSYLVANIA—2006 24-HOUR PM_{2.5} NAAQS
[Primary and secondary]

Designated area	Designation ^a		Classification	
	Date ¹	Type	Date ²	Type
* * *	*	*	*	*
Pittsburgh-Beaver Valley, PA:				
Allegheny County (remainder)	October 2, 2015	Attainment.		
Armstrong County (part)	October 2, 2015	Attainment.		
Elderton Borough and Plumcreek and Washington Townships:				
Beaver County	October 2, 2015	Attainment.		
Butler County	October 2, 2015	Attainment.		
Green County (part)	October 2, 2015	Attainment.		
Monongahela Township:				
Lawrence County (part)	October 2, 2015	Attainment.		
Township of Taylor south of New Castle City:				
Washington County	October 2, 2015	Attainment.		
Westmoreland County	October 2, 2015	Attainment.		
* * *	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 30 days after November 13, 2009, unless otherwise noted.

² This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015-24851 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2013-0141; FRL-9933-03]

Benzovindiflupyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of benzovindiflupyr in or on multiple commodities that are identified and discussed later in this document. Syngenta Crop Protection, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 2, 2015. Objections and requests for hearings must be received on or before December 1, 2015, and

must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2013-0141, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room

is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDPRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/textidx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2013-0141 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 1, 2015. Addresses for

mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2013-0141, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 5, 2013 (78 FR 33785) (FRL-9386-2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of two pesticide petitions (PP 2E8123 and 2F8121) by Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419. Petition 2E8123 requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, benzovindiflupyr in or on coffee, bean, green at 0.09 parts per million (ppm) and sugarcane, cane at 0.04 ppm. Petition 2F8121 requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide, benzovindiflupyr in or on apple, wet pomace at 0.6 ppm; barley, grain at 1.5 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm; corn, field, grain at 0.02 ppm; corn, field, forage at 3 ppm; corn, field, stover at 15 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 15 ppm; corn, sweet, ear at 0.01 ppm; corn, sweet, forage at 4 ppm; corn, sweet, stover at 5 ppm; cottonseed, subgroup 20C at 0.15 ppm; cotton, gin

byproducts at 3 ppm; vegetables, cucurbits, crop group 9 at 0.2 ppm; fruits, pome, crop group 11-10 at 0.2 ppm; fruits, small vines climbing, except fuzzy kiwi subgroup 13-07F at 1 ppm; grain, aspirated fractions at 7 ppm; oat, grain at 1.5 ppm; oat, hay at 15 ppm; oat, straw at 15 ppm; peas and bean, dried shelled, except soybean, subgroup 6C at 0.2 ppm; peas, hay at 7 ppm; peas, vine at 1.5 ppm; peanut, nutmeat at 0.01 ppm; peanut, hay at 15 ppm; potato, wet peel at 0.1 ppm; raisin at 4 ppm; rapeseed, subgroup 20A at 0.15 ppm; rye, grain at 0.1 ppm; rye, hay at 15 ppm; rye, straw at 10 ppm; soybean, seed at 0.07 ppm; soybean, forage at 15 ppm; soybean, hay at 50 ppm; vegetables, fruiting, crop group 8-10 at 0.8 ppm; vegetables, tuberous and corm subgroup 1C at 0.02 ppm; wheat, grain at 0.1 ppm; wheat, forage at 4 ppm; wheat, hay at 15 ppm; wheat, straw at 10 ppm; and at 0.01 ppm in or on the following animal commodities: cattle, goat, horse, and sheep fat, kidney, liver, meat, and meat byproducts; egg; hog, fat, liver, meat, and meat byproducts; milk; milk, fat; and poultry, byproducts, fat, liver, meat, and skin.

That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has modified the requested tolerances and levels for the reasons explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from

aggregate exposure to the pesticide chemical residue”

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for benzovindiflupyr including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with benzovindiflupyr follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Benzovindiflupyr has low acute toxicity by the dermal and inhalation routes, with moderate toxicity via the oral route. It is not a dermal sensitizer, but causes mild skin irritation and moderate eye irritation. The target organs for effects of benzovindiflupyr are the liver, thyroid, and kidneys.

Benzovindiflupyr produced effects in rat fetuses (*i.e.* decreased fetal weight and ossification) in developmental toxicity studies but only at maternally toxic doses. In the rabbit developmental study, there were no adverse effects in either the does or the fetuses at the highest dose tested. In reproduction studies, offspring effects occurred at doses higher than the doses causing parental effects; thus, there was no quantitative increase in sensitivity in rat

pups. There are indications of reproductive toxicity in rats such as decreased follicle counts, but these effects did not result in reduced fertility.

No evidence of specific neurotoxicity was observed in the acute neurotoxicity (ACN) or subchronic neurotoxicity (SCN) studies. Benzovindiflupyr caused decreased activity and decreased grip strength in the neurotoxicity studies; however, there were no supportive neurohistopathology in any toxicological study, even at the highest doses tested.

There was no evidence of immune system toxicity in a study conducted in the mouse, or in any other toxicity studies in the database.

Benzovindiflupyr caused tumors in the thyroid in the chronic rat study at the highest dose tested. In mice, no tumor formation was observed. Benzovindiflupyr was negative in all mutagenicity studies. Based on the fact that evidence of tumors were found in only one species at only the highest dose tested and lack of mutagenicity, the Agency has determined that using a non-linear approach (*i.e.*, RfD; reference dose) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to benzovindiflupyr.

Specific information on the studies received and the nature of the adverse effects caused by benzovindiflupyr as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document Benzovindiflupyr New Active Ingredient Human Health Risk Assessment to Support the Proposed Uses on Cereals (wheat, triticale, barley, rye, and oat), Blueberries (non-bearing), Corn (field, pop, and sweet), Peanuts, Turf, and Ornamentals; Crop Groups 8–

10, 9, and 11–10; Crop Subgroups 1C, 6C, 13–07F, 20A, and 20C; and Establishment of Tolerances on Imported Coffee and Sugarcane in docket ID number EPA–HQ–OPP–2013–0141.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>. A summary of the toxicological endpoints for benzovindiflupyr used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BENZOVINDIFLUPYR FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure	Uncertainty/FQPA safety factors	RfD, PAD, level of concern for risk assessment	Study and toxicological effects
Acute dietary (All populations, including infants and children).	NOAEL = 10 mg/kg/day.	UF _A = 10x UF _H = 10x FQPA SF= 1x	Acute RfD = 0.10 mg/kg/day. aPAD = 0.10 mg/kg/day	Acute neurotoxicity screening battery (rat). NOAEL = 10 mg/kg/day. LOAEL = 30 mg/kg/day based on multiple clinical observations, decreases in mean body temperature, decreases in locomotor activity parameters, reduced food consumption and/or decreases in mean grip strength.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BENZOVINDIFLUPYR FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure	Uncertainty/FQPA safety factors	RfD, PAD, level of concern for risk assessment	Study and toxicological effects
Chronic dietary (All populations).	Parental/Off-spring NOAEL = 8.2 (females) mg/kg/day.	UF _A = 10x UF _H = 10x FQPA SF= 1x	Chronic RfD = 0.082 mg/kg/day. cPAD = 0.082 mg/kg/day.	2-generation reproduction study (rat). Parental/Offspring NOAEL = 8.2 mg/kg/day (F). LOAEL = 19.4 mg/kg/day (F) based on decreased body weight and decreased food consumption in parental animals as well as increases in liver weights, centrilobular hepatocellular hypertrophy, increased incidence of cell hypertrophy in the pars distalis of the pituitary, reduced body weight, delayed preputial separation, and decreased spleen weights in the F1 and/or F2 offspring.
Incidental oral Short-term (1–30 days).	Parental/Off-spring NOAEL = 8.2 (females) mg/kg/day	UF _A = 10x UF _H = 10x FQPA SF= 1x	Residential LOC for MOE = 100.	2-generation reproduction toxicity study (rat). Parental/Offspring NOAEL = 8.2 mg/kg/day (F). LOAEL = 19.4 mg/kg/day (F) based on decreased body weight and decreased food consumption in parental animals as well as increases in liver weights, centrilobular hepatocellular hypertrophy, increased incidence of cell hypertrophy in the pars distalis of the pituitary, reduced body weight, delayed preputial separation, and decreased spleen weights in the F1 and/or F2 offspring.
Inhalation Short-term (1–30 days) and Intermediate-term (1–6 months).	Parental/Off-spring NOAEL: 8.2 mg/kg/day (F).	UF _A = 10x UF _H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	2-generation reproduction study (rat). Parental/Offspring NOAEL = 8.2 mg/kg/day (F). LOAEL = 19.4 mg/kg/day (F) based on decreased body weight and decreased food consumption in parental animals as well as increases in liver weights, centrilobular hepatocellular hypertrophy, increased incidence of cell hypertrophy in the pars distalis of the pituitary, reduced body weight, delayed preputial separation, and decreased spleen weights in the F1 and/or F2 offspring.
Cancer (oral, dermal, inhalation).	The Agency is using a non-linear (RfD) approach to assess carcinogenic potential; the RfD would be protective of non-carcinogenic and carcinogenic effects observed in the rat carcinogenicity study or mode of action studies conducted at higher doses.			

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to benzovindiflupyr, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from benzovindiflupyr in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for benzovindiflupyr. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA), Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a highly conservative

acute dietary risk assessment which used tolerance-level residues for food except for livestock commodities, anticipated residues (based on maximum theoretical diets) for livestock commodities, and 100% crop treated for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA, CSFII. As to residue levels in food, EPA conducted a highly conservative chronic dietary risk assessment which used tolerance-level residues for food, anticipated residues (based on maximum theoretical diets) for livestock commodities, and 100% crop treated for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach was appropriate for assessing cancer risk to benzovindiflupyr; therefore, a separate dietary exposure

assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Tolerance-level residues for food and anticipated residues (based on maximum theoretical diets) for livestock commodities were used and 100% CT was assumed for all commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under

FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for benzovindiflupyr in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of benzovindiflupyr. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of benzovindiflupyr for acute exposures are estimated to be 8.4 parts per billion (ppb) for surface water and 0.14 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 5.4 ppb for surface water and <0.14 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 8.4 parts per billion (ppb) for surface water was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.4 ppb for surface water was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Benzovindiflupyr is proposed for registration for the following uses that could result in residential exposures: turf (e.g. golf courses, recreational parks, home lawns, and sod farms) and ornamentals (residential landscape areas). EPA assessed residential exposure using the following assumptions. The proposed uses of benzovindiflupyr on turf and ornamentals in a residential setting by homeowners may result in residential handler (adults who are involved in the pesticide application process) exposure.

Residential handler exposure is expected to be short-term (ST) in duration. Intermediate-term (IT) exposures are not likely because of the intermittent nature of applications by homeowners. In addition, since the

toxicity endpoints and PODs are the same for all durations, the ST assessment will be protective of any longer term exposures that may result from residential uses. Since no dermal hazard was identified for benzovindiflupyr in the toxicological database, only inhalation exposure assessments were conducted for residential handlers.

There is the potential for post-application exposure to individuals (adults and children) as a result of being in an environment that has been previously treated with benzovindiflupyr. Post-application inhalation exposures while performing activities in previously treated turf or ornamentals are not expected and were not assessed primarily due to the very low vapor pressure and the expected dilution in outdoor air after an application has occurred. In addition, no dermal hazard was identified in the toxicity database for benzovindiflupyr and, therefore, a quantitative residential post-application dermal risk assessment is not required and was not completed. However, incidental oral exposures to children contacting treated turf have been assessed. Residential post-application exposures are generally considered to be intermittent and short-term in duration. Since the benzovindiflupyr toxicity endpoints and PODs are the same regardless of duration, the short-term assessment is protective of any longer term exposures that may occur from the residential uses of benzovindiflupyr. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has not found benzovindiflupyr to share a common mechanism of toxicity with any other substances, and benzovindiflupyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that benzovindiflupyr does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate

the cumulative effects of such chemicals, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Benzovindiflupyr produced effects in rat fetuses (i.e. decreased fetal weight and delayed ossification) in developmental toxicity studies at maternally toxic doses (i.e., ataxia, hunched posture, and decreased activity); the Agency does not consider the fetal effects to be evidence of increased qualitative susceptibility since ossification is not considered to be a malformation and is reversible (based on the reproduction study), and maternal effects are fairly severe at the same dose levels. In the rabbit developmental study, there were no adverse effects in either the dose or the fetuses at the highest dose tested. In rat reproduction studies, offspring effects occurred at higher doses higher than those causing parental effects, thus there was no quantitative increase in sensitivity in rat pups. There were no single-dose developmental effects identified in the developmental toxicity studies in rats and rabbits. Although decreases in growing follicle counts were noted in the reproduction toxicity study, this effect did not result in reduced functional fertility in the rat. Furthermore, the antral follicle counts at a later stage in development were not decreased, so the decreased growing follicle count effect is not considered adverse.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for benzovindiflupyr is complete.
- ii. There is no indication that benzovindiflupyr is a neurotoxic

chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that benzovindiflupyr results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to benzovindiflupyr in drinking water. EPA also made conservative assumptions for dietary food exposures (residues on food and feed crops based on tolerance level residues, assuming 100% crop treated) resulting in high-end estimates of dietary food. EPA used similarly conservative assumptions based on conservative default (non-chemical specific) assumptions to assess postapplication exposure of children, including incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by benzovindiflupyr.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to benzovindiflupyr will occupy 30% of the aPAD for children 1–2 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to benzovindiflupyr from food and water will utilize 14% of the cPAD for children 1–2 years old. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of benzovindiflupyr is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background

exposure level). Benzovindiflupyr is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to benzovindiflupyr. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of $\geq 180,000$ for all scenarios. Because EPA's level of concern for benzovindiflupyr is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners and the likely short-term duration of exposures.

5. *Aggregate cancer risk for U.S. population.* Based on the results of the chronic risk assessment, the Agency does not expect benzovindiflupyr to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to benzovindiflupyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (A Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) multi-residue method (EN15662:2009)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture

Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for benzovindiflupyr.

C. Response to Comments

EPA received a comment to the notice of filing, which requested that the Agency reconsider the acceptable residue levels of toxic chemicals on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Benzovindiflupyr was evaluated by undergoing a global joint review between the EPA, the Pest Management Regulatory Agency (PMRA) of Canada, and the Federal Commission for the Protection against Sanitary Risk (COFEPRIS) of Mexico. Based upon review of the data supporting the petition and calculation procedures for tolerance determination, several tolerances modifications were required. Specifically, commodity definitions were modified for pea, hay; pea, vine; peanut, nutmeat; raisin; and potato, processed waste to reflect the current nomenclature used by the Agency. Several tolerance levels were adjusted to account for differences in the input data used for the calculation procedures for tolerance determination. For example, several trials considered to be independent trials by the petitioner were determined by the Agency to be replicate (not independent) trials and, as such, these data are inputted differently than data from independent trials. Based on this discrepancy, the Agency is establishing tolerances for the following commodities that are different

from what the petitioner requested: Cattle, fat; cattle, liver; coffee, green bean; fruit, pome, group 11–10; goat, fat; goat, liver; horse, fat; horse, liver; milk, fat; pea and bean, dried shelled, except soybean, subgroup 6C; potato, processed waste; rye, straw; sheep, fat; sheep, liver; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; wheat, grain; and wheat, straw. Also, based on the Agency's calculation, the available data supports reducing the raisin tolerance (from 4 ppm to 3 ppm) and increasing the aspirated grain fractions tolerance (from 7 ppm to 15 ppm).

A tolerance was recommended for lowbush variety of blueberry in non-cropping years following a 365-day PHI. However, no tolerance will be established on the basis that it would cover non-bearing blueberries which are considered to be a non-food use. Also, the petitioner did not include this use in their notice filing. Although the petitioner did not request a separate tolerance for tomato, dried, tomato processing study data show that residues concentrate in dried tomatoes (7.8X). To cover the higher residues and to harmonize with Canada, EPA is establishing a tolerance for tomato, dried at 4 ppm. Finally, the applicant requested tolerances for apple, wet pomace. As a fruit, pome, group 11–10 tolerance of 0.2 ppm will cover any potential residues in processed apple, a separate tolerance is not needed.

V. Conclusion

Therefore, tolerances are established for residues of benzovindiflupyr, in or on barley, grain at 1.5 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm; cattle, fat at 0.02 ppm; cattle, liver at 0.06 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts, except liver at 0.01 ppm; coffee, green bean at 0.09 ppm; corn, field, forage at 3.0 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 15 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 15 ppm; corn, sweet, forage at 4.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 5.0 ppm; cottonseed, subgroup 20C at 0.15 ppm; cotton, gin byproducts at 3.0 ppm; fruit, pome, group 11–10 at 0.20 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1 ppm; goat, fat at 0.02 ppm; goat, liver at 0.06 ppm; goat, meat at 0.01 ppm; goat, meat byproducts, except liver at 0.01 ppm; grain, aspirated fractions at 15 ppm; horse, fat at 0.02 ppm; horse, liver at 0.06 ppm; horse, meat at 0.01 ppm; horse, meat byproducts, except liver at 0.01 ppm; milk at 0.01 ppm; milk, fat at 0.02 ppm; oat, grain at 1.5 ppm; oat, hay at 15

ppm; oat, straw at 15 ppm; pea and bean, dried shelled, except soybean, subgroup 6C at 0.20 ppm; pea, field, hay at 7.0 ppm; pea, field, vine at 1.5 ppm; peanut at 0.01 ppm; peanut, hay at 15 ppm; potato, processed potato waste at 0.10 ppm; grape, raisin at 3.0 ppm; rapeseed, subgroup 20A at 0.15 ppm; rye, grain at 0.1 ppm; rye, hay at 15 ppm; rye, straw at 15 ppm; sheep, fat at 0.02 ppm; sheep, liver at 0.06 ppm; sheep, meat at 0.01 ppm; sheep meat byproducts, except liver at 0.01 ppm; soybean, forage at 15 ppm; soybean, hay at 50 ppm; soybean, hulls at 0.20 ppm; soybean, seed at 0.07 ppm; sugarcane, cane at 0.04 ppm; tomato, dried at 4.0 ppm; vegetable, cucurbit, group 9 at 0.30 ppm; vegetable, fruiting, group 8–10 at 1.5 ppm; vegetable, tuberous and corm, subgroup 1C at 0.02 ppm; wheat, forage at 4 ppm; wheat, grain at 0.10 ppm; wheat, hay at 15 ppm; and wheat, straw at 15 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does

this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2015.

Jack E. Housenger,
Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.686 to subpart C to read as follows:

§ 180.686 Benzovindiflupyr; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide benzovindiflupyr, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only benzovindiflupyr (*N*-[9-(dichloromethylene)-1,2,3,4-tetrahydro-1,4-methanonaphthalen-5-yl]-3-(difluoromethyl)-1-methyl-1*H*-pyrazole-4-carboxamide) in or on the commodity.

Commodity	Parts per million
Barley, grain	1.5
Barley, hay	15.0
Barley, straw	15.0
Cattle, fat	0.02
Cattle, liver	0.06
Cattle, meat	0.01
Cattle, meat byproducts, except liver	0.01
Coffee, green bean ¹	0.09
Corn, field, forage	3.0
Corn, field, grain	0.02
Corn, field, stover	15.0
Corn, pop, grain	0.02
Corn, pop, stover	15.0
Corn, sweet, forage	4.0
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	5.0
Cottonseed, subgroup 20C	0.15
Cotton, gin byproducts	3.0
Fruit, pome, group 11–10	0.20
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	1.0
Goat, fat	0.02
Goat, liver	0.06
Goat, meat	0.01
Goat, meat byproducts, except liver	0.01
Grain, aspirated fractions	15.0
Grape, raisin	3.0
Horse, fat	0.02
Horse, liver	0.06
Horse, meat	0.01
Horse, meat byproducts, except liver	0.01
Milk	0.01
Milk, fat	0.02
Oat, grain	1.5
Oat, hay	15.0
Oat, straw	15.0
Pea and bean, dried shelled, except soybean, subgroup 6C	0.20
Pea, field, hay	7.0
Pea, field, vine	1.5
Peanut	0.01
Peanut, hay	15.0
Potato, processed potato waste	0.10
Rapeseed, subgroup 20A	0.15
Rye, grain	0.1
Rye, hay	15.0
Rye, straw	15.0
Sheep, fat	0.02
Sheep, liver	0.06
Sheep, meat	0.01

Commodity	Parts per million
Sheep meat byproducts, except liver	0.01
Soybean, forage	15.0
Soybean, hay	50.0
Soybean, hulls	0.20
Soybean, seed	0.07
Sugarcane, cane ¹	0.04
Tomato, dried	4.0
Vegetable, cucurbit, group 9	0.30
Vegetable, fruiting, group 8–10	1.5
Vegetable, tuberos and corm, subgroup 1C	0.02
Wheat, forage	4.0
Wheat, grain	0.10
Wheat, hay	15.0
Wheat, straw	15.0

¹ There is no U.S. registration for use of benzovindiflupyr.

(b) *Section 18 emergency exemptions.*

[Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.*

[Reserved]

[FR Doc. 2015–24467 Filed 10–1–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[LLES9120000 L14400000.PN0000]

RIN 1004–AE43

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States East of the Mississippi River

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the BLM Eastern States Office of the Bureau of Land Management (BLM). All filings and other documents relating to public lands in the States of Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi River must be filed at the new address of the State Office.

DATES: This rule is effective October 2, 2015.

ADDRESSES: You may send inquiries or suggestions to Deputy State Director for

Communications, BLM Eastern States Office, 20 M Street SE., Suite 950, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Bob Gillcash, (202) 912–7712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Matters

I. Background

This final rule reflects the administrative action of changing the street address of the Eastern States office of the BLM. This rule changes both the postal and street address for the personal filing of documents relating to public lands in Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River, but makes no other changes in filing requirements. The BLM has determined that the rule has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds that under 5 U.S.C. 553(b)(B) and 553(d)(3) notice and public comment procedures are unnecessary and that the rule may take effect immediately.

II. Procedural Matters

Regulatory Planning and Review
(Executive Order 12866)

This final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The rule imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

National Environmental Policy Act

The BLM has found that this final rule is of a procedural nature and thus is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.210(i). In addition, this final rule does not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to 43 CFR 46.205 and the Council on Environmental Quality regulations at 40 CFR 1508.4, the term “categorical exclusion” means a category or kind of action that has no

significant individual or cumulative effect on the human environment and therefore requires neither an environmental assessment nor an environmental impact statement.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. This final rule is a purely administrative regulatory action having no effect upon the public or the environment and it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule will not have an annual effect on the economy of \$100 million or more. This rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995 because the rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Further, this final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that this rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the Eastern States

Office. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

This final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This final rule is a purely administrative regulatory action having no effects upon the public. It will not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that this rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updates the Eastern States Office address included in the Code of Federal Regulations.

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

In accordance with Executive Order 13211, the BLM has determined that this final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: September 19, 2015.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 in paragraph (a) by revising the entry for the Eastern States Office to read as follows:

§ 1821.10 Where are BLM offices located? (a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Eastern States Office, 20 M Street SE., Suite 950, Washington, DC 20003—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

* * * * *

[FR Doc. 2015–25027 Filed 10–1–15; 8:45 am]

BILLING CODE 4310-GJ-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15–71; FCC 15–111]

Television Market Modification; Statutory Implementation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts satellite television market modification rules to implement section 102 of the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act of 2014. The STELAR gives the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights. In this document, the Commission revises the current cable market modification rule

to apply also to satellite carriage, while adding provisions to address the unique nature of satellite television service. The document also makes conforming and other minor changes to the cable market modification rules.

DATES: Effective November 2, 2015, except §§ 76.59(a) and (b) which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing when OMB approval for this information collection has been received and these rules will take effect.

FOR FURTHER INFORMATION CONTACT:

Evan Baranoff, Evan.Baranoff@fcc.gov, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 15–111, adopted and released on September 2, 2015. The full text of this document is available electronically via the FCC's Electronic Comment Filing System (ECFS) Web site at <http://fjallfoss.fcc.gov/ecfs2/> or via the FCC's Electronic Document Management System (EDOCS) Web site at http://fjallfoss.fcc.gov/edocs_public/. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC, 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. In this Report and Order, the Commission adopts rules to enable commercial television stations, satellite carriers and cable operators to better serve the interests of their local communities. These rules implement an important provision in the Satellite Television Extension and Localism Act Reauthorization Act of 2014

(“STELAR”) to promote carriage of in-state and other relevant local television programming. Specifically, in the STELAR, Congress recognized that satellite subscribers in some communities across the country are not able to access broadcast stations in their own states via the local television packages offered by satellite carriers. This problem results from the way TV stations are defined as “local” for purposes of satellite carriage. In some cases, subscribers may be included in a local television programming market that is served exclusively, or almost exclusively, by television stations in a neighboring state. As a result, these subscribers are not receiving news, politics, sports, emergency information and other television programming relevant to their home state. The STELAR seeks to address this problem by changing the laws to provide for “market modifications” that add flexibility to the current definition of a local television programming market. Market modifications allow the Commission, upon request, to modify the local market assignment of a station to include such neighboring communities that are located in the same state as the station. As required by the STELAR, the Commission determines whether to grant a market modification based on consideration of five statutory factors that allow petitioners to demonstrate that they provide local service to the community. Significantly, in the STELAR, Congress included a factor requiring consideration of access to television stations that are located in the same state as the community considered for modification. Congress also added this factor to the existing market modification statutory factors applicable to cable operators. Our rules implement the STELAR to achieve the goal of better service for consumers. Finally, Congress recognized that satellite carriage of additional stations might be technically or economically infeasible in some circumstances. Accordingly, our rules implement this exception to the carriage requirements that would otherwise apply for modified markets. We recognize that the ability of the market modification rules to successfully address the problem of consumer access to in-state stations will depend in large part on broadcasters' willingness to grant retransmission consent to be carried in the new community and satellite carriers' technical ability to provide the in-state stations in the new community. Therefore, we strongly urge broadcasters and satellite carriers to work together to provide relief to

consumers and achieve the goals of the STELAR (to promote access to in-state programming) in cases where carriage is technically feasible.

2. In this Report and Order, we adopt satellite television market modification rules to implement section 102 of the STELAR.¹ The STELAR amended the Communications Act (“Act”) and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market for purposes of satellite carriage rights.² The Commission previously had such authority to modify markets only in the cable carriage context.³ With section 102 of the STELAR, Congress provides regulatory parity in this regard in order to promote consumer access to in-state and other relevant television programming.⁴

3. Section 102 of the STELAR, and the Commission's actions in this Report and

¹ The STELAR Reauthorization Act of 2014 (STELAR), sec. 102, Pub. L. 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). This proceeding implements STELAR section 102 (titled “Modification of television markets to further consumer access to relevant television programming”), 128 Stat. at 2060–62, and the related statutory copyright license provisions in STELAR sec. 204 (titled “Market determinations”), 128 Stat. at 2067 (codified at 17 U.S.C. 122(j)(2)(E)).

² STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067. STELAR section 102(a) amends section 338 of the Act by adding a new paragraph (l), titled “Market Determinations.” 47 U.S.C. 338(l). STELAR section 102(b) also makes conforming amendments to the cable market modification provision at 47 U.S.C. 534(h)(1)(C). STELAR sec. 204 amends the statutory copyright license for satellite carriage of “local” stations in 17 U.S.C. 122 to cover market modifications in accordance with 47 U.S.C. 338(l). 17 U.S.C. 122(j)(2)(E). We note that, like the existing cable provision, the STELAR provision pertains only to “commercial” stations, thus excluding noncommercial stations from seeking market modification. See 47 U.S.C. 338(l)(1).

³ See 47 U.S.C. 534(h)(1)(C). This section was added to the Act by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1460 (1992), as part of the cable must-carry/retransmission consent regime for carriage of local television stations. See also 47 CFR 76.59.

⁴ See title of STELAR section 102, “Modification of Television Markets to Further Consumer Access to Relevant Television Programming.” See also 47 U.S.C. 534(h)(1)(C)(ii)(III) (directing the Commission to consider whether a market modification would “promote consumers' access to television broadcast station signals that originate in their State of residence”). There was no final Report issued to accompany the final version of the STELAR bill (H. R. 5728, 113th Cong.) as it was enacted. Because section 102 of the STELAR was added from the Senate predecessor bill (S. 2799, the Satellite Television Access and Viewer Rights Act (STAVRA)), we therefore look to the Senate Report No. 113–322 (dated December 12, 2014) accompanying this predecessor bill for the relevant legislative history for this provision. See Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113–322 (2014) (“Senate Commerce Committee Report”).

Order, seek to establish a market modification process for the satellite carriage context and, to the extent possible, address satellite subscribers' inability to receive in-state programming in certain areas, sometimes called "orphan counties."⁵ In this Report and Order, consistent with Congress' intent that the Commission model the satellite market modification process on the current cable market modification process, we implement section 102 of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.⁶ In addition to authorizing satellite market modifications, section 102 of the STELAR makes certain conforming amendments to the cable market modification statutory provision⁷ and also directs the Commission to consider whether to make other changes to the cable market modification rules.⁸ Accordingly, as part of our implementation of the

STELAR, we make conforming and other minor changes to the cable market modification rules.

4. The following are among the key conclusions adopted in this Report and Order:

- We amend the cable market modification rule, section 76.59 of our rules, to apply also to satellite market modifications, and amend the rule to reflect the STELAR provisions that uniquely apply to satellite carriers, such as an exception if the resulting carriage is "not technically and economically feasible."

- We conclude that the involved commercial broadcast station, satellite carrier, and county government have standing to file a satellite market modification petition. Petitions must be filed in accordance with the procedures for filing Special Relief petitions in section 76.7 of our rules.

- We conclude that the new in-state factor,⁹ when applicable, favors any market modification that would promote consumers' access to an in-state station. When applicable, this in-state factor serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner.

- We conclude that the evidentiary requirements for cable market modifications will apply to satellite market modifications. In addition, to satisfy the new in-state factor when applicable, we require a petitioner to make a statement in its petition that the station is licensed to a community within the same state as the new community.

- We conclude that market modifications will be considered separately in the cable and satellite contexts and that, in the satellite context, market modifications will apply only to the specific stations, satellite carriers, and communities addressed in a particular market modification petition.

- We conclude that prior cable market modification determinations will not automatically apply in the satellite context, nor will such prior decisions be afforded a presumption; however, we note that we are required to consider historic carriage under the first statutory factor.

- We conclude that a television broadcast station that becomes eligible for mandatory satellite carriage by operation of a market modification may elect retransmission consent or

mandatory carriage with respect to a satellite carrier within 30 days after the market determination. We conclude that a satellite carrier must commence carriage within 90 days after receiving the station's request for carriage.

- We conclude that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community that is outside of the relevant spot beam on which that station is currently carried.

- We conclude that, if a satellite carrier can provide the station at issue in a market modification request to only part of a new community, then it must do so.

- We conclude that the satellite carrier has the burden to demonstrate that the resulting carriage from a market modification is technically and economically infeasible.

- We will allow satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed certification under penalty of perjury.

- We conclude that a satellite carrier must raise any technical or economic impediments either in the market modification proceeding or prior to such proceeding in response to a prospective petitioner's inquiry about feasibility of carriage resulting from a contemplated market modification.

- We establish a process that will allow a prospective petitioner to obtain a certification from a satellite carrier about whether or not (and to what extent) it is technically and economically feasible for the carrier to provide the station to a new community. We will not grant a market modification petition if such grant could not create a new carriage obligation for the carrier at that time due to a finding of technical or economic infeasibility.

- We recognize that there may be other bases than spot beam coverage for a carrier to assert that carriage would be technically or economically infeasible and will review these assertions on a case-by-case basis.

- We define a "satellite community" as a county for purposes of a satellite market modification. We retain our existing definition of a "cable community" for purposes of a cable market modification.

II. Background

5. The STELAR, enacted December 4, 2014, is the latest in a series of statutes that have amended the Communications Act and Copyright Act to set the parameters for the satellite carriage of television broadcast stations. The 1988 Satellite Home Viewer Act (SHVA) first established a "distant" statutory copyright license to enable satellite

⁵ The Commission has sometimes referred to the situation in which a county in one state is assigned to a neighboring state's local television market and, therefore, satellite subscribers residing in such county cannot receive some or any broadcast stations that originate in-state as the "orphan county" problem. See, e.g., *Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA)*, MB Docket No. 10-148, Report and Order and Order on Reconsideration, FCC 10-193, para. 48, 75 FR 72968, Nov. 29, 2010 (*STELA Significantly Viewed Report and Order*). The inability of satellite subscribers located in "orphan counties" to access in-state programming has been the subject of some congressional interest. See, e.g., Orphan County Telecommunications Rights Act, H.R. 4635, 113th Cong. (2014); Colorado News, Emergency, Weather, and Sports Act, S. 2375, 113th Cong. (2014); Four Corners Television Access Act, H.R. 4469, 112th Cong. (2012); Letting Our Communities Access Local Television Act, S. 3894, 111th Cong. (2010); Local Television Freedom Act, H.R. 3216, 111th Cong. (2009).

⁶ See 47 CFR 76.59. As discussed herein, we revise section 76.59 of our rules to apply to both cable systems and satellite carriers. See Final Rules. We note Congress' intent that the process established by the Commission under the section 102 of the STELAR be "modeled" on the current cable market modification process. See *Senate Commerce Committee Report* at 10. However, the STELAR recognizes the inherent difference between cable and satellite television service with provisions specific to satellite. See 47 U.S.C. 338(l)(3)(A), (5).

⁷ See STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

⁸ STELAR section 102(d) directs the Commission to consider as part of this rulemaking whether the "procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section, and update what it considers to be a community for purposes of a modification of a market under section 338(l) or 614(h)(1)(C) of the Communications Act of 1934."

⁹ 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(iii)(III) ("whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence").

carriers to offer subscribers who could not receive the over-the-air signal of a broadcast station access to broadcast programming via satellite.¹⁰ The 1999 Satellite Home Viewer Improvement Act (SHVIA) established a “local” statutory copyright license and expanded satellite carriers’ ability to offer broadcast television signals directly to subscribers by permitting carriers to offer “local” broadcast signals.¹¹ The 2004 Satellite Home Viewer Extension and Reauthorization Act (SHVERA) reauthorized the distant signal statutory copyright license until December 31, 2009 and expanded that license to allow satellite carriers to carry “significantly viewed” stations.¹² The 2010 Satellite Television Extension and Localism Act (STELA) extended the distant signal statutory copyright license through December 31, 2014,¹³ moved the

significantly viewed station copyright provisions to the local statutory copyright license (which does not expire), and revised the “significantly viewed” provisions to facilitate satellite carrier use of that option.¹⁴ With the STELAR, Congress extended the distant signal statutory copyright license for another five years, through December 31, 2019, and, among other things, authorized market modification in the satellite carriage context and revised the market modification provisions for cable to promote parity for satellite and cable subscribers and competition between satellite and cable operators.¹⁵

6. Section 338 of the Communications Act authorizes satellite carriage of local broadcast stations into their local markets, which is called “local-into-local” service.¹⁶ Specifically, a satellite carrier provides “local-into-local” service when it retransmits a local television signal back into the local market of that television station for reception by subscribers.¹⁷ Generally, a television station’s “local market” is defined by the Designated Market Area (DMA) in which it is located, as determined by the Nielsen Company

(Nielsen).¹⁸ DMAs describe each television market in terms of a group of counties and are defined by Nielsen based on measured viewing patterns.¹⁹ The United States is divided into 210 DMAs.²⁰ Unlike cable operators, satellite carriers are not required to carry local broadcast television stations. However, if a satellite carrier chooses to carry a local station in a particular DMA in reliance on the statutory copyright license, it generally must carry any qualified local station in the same DMA that makes a timely election for retransmission consent or mandatory carriage.²¹ This is commonly referred to as the “carry one, carry all” requirement. If a broadcaster elects retransmission consent, the satellite carrier and broadcaster negotiate the terms of a retransmission consent agreement. With respect to those stations electing mandatory carriage, satellite carriers are generally not required to carry a station if the station’s programming “substantially duplicates”²² that of another station

¹⁰ Satellite Home Viewer Act of 1988 (SHVA), Public Law 100–667, 102 Stat. 3935, Title II (1988); 17 U.S.C. 119 (distant statutory copyright license). In addition to allowing satellite carriers to retransmit television signals of distant network stations to “unserved” subscriber households, the SHVA also permitted satellite carriers to retransmit distant superstations (non-network stations) to any subscriber household. See 17 U.S.C. 119(d)(2) (defining “network station”), (d)(9) (defining “non-network station,” previously “superstation”) and (d)(10) (defining “unserved household”). The 1994 Satellite Home Viewer Act reauthorized the distant statutory copyright license for five years and made other changes to the distant statutory copyright license but did not amend the Communications Act or otherwise alter satellite carriage rights. Satellite Home Viewer Act of 1994, Public Law 103–369, 108 Stat. 3477 (1994). Each successive statute in the SHVA progeny has reauthorized the distant statutory copyright license.

¹¹ Satellite Home Viewer Improvement Act of 1999 (SHVIA), Public Law 106–113, 113 Stat. 1501 (1999); 17 U.S.C. 122 (local statutory copyright license). The local statutory copyright license makes no distinction between network and non-network signals or served or unserved households. See *id.* Local stations may elect mandatory carriage or carriage pursuant to retransmission consent. 47 U.S.C. 325, 338. See 47 CFR 76.66(c). Unlike the distant license, the local statutory copyright license does not expire.

¹² Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Public Law 108–447, 118 Stat. 2809 (2004). Significantly viewed stations are television broadcast stations that the Commission has determined have sufficient over-the-air (*i.e.*, non-cable and non-satellite) viewing to be treated as local stations with respect to a particular satellite community in another market, thus, allowing them to be carried by the satellite carrier in that community in the other market. For copyright purposes, significantly viewed status entitles satellite carriers to carry the out-of-market but significantly viewed station with the reduced copyright payment obligations applicable to local (in-market) stations. See 17 U.S.C. 122(a)(2). Satellite carriers are not required to carry out-of-market significantly viewed stations. If they do carry such significantly viewed stations, retransmission consent is required. See 47 U.S.C. 340(d).

¹³ The Satellite Television Extension and Localism Act of 2010 (STELA), Public Law 111–175, 124 Stat. 1218, 1245 (2010). Congress passed four short-term extensions of the distant signal

statutory copyright license (on December 19, 2009, March 2, March 26 and April 15, 2010) before passing the STELA to reauthorize the distant signal statutory copyright license for a full five years, until December 31, 2014. STELA sec. 107(a). See Department of Defense Appropriations Act, 2010, sec. 1003(b), Public Law 111–118, 123 Stat. 3409, 3469 (2009) (extending distant license until February 28, 2010); Temporary Extension Act of 2010, sec. 10, Public Law 111–144, 124 Stat. 42, 47 (2010) (extending license until March 28, 2010); Satellite Television Extension Act of 2010, Public Law 111–151, 124 Stat. 1027 (2010) (extending license until April 30, 2010); Continuing Extension Act of 2010, sec. 9, Public Law 111–157, 124 Stat. 1116 (2010) (extending license until May 31, 2010).

¹⁴ As noted, the STELA reauthorized the statutory copyright license for satellite carriage of significantly viewed signals and moved that license from the distant signal statutory copyright license provisions in 17 U.S.C. 119(a)(3) to the local signal statutory copyright license provisions in 17 U.S.C. 122(a)(2). STELA sec. 103. By doing so, Congress defined significantly viewed signals as another type of local signal, rather than as an exception to distant signal status. The move to the local license also meant that the significantly viewed signal license would not expire. STELA sec. 107(a). In the *STELA Significantly Viewed Report and Order*, the Commission revised its satellite television significantly viewed rules to facilitate satellite carriage of significantly viewed stations and thereby provide satellite subscribers with greater choice of programming and to improve parity and competition between satellite and cable carriage of broadcast stations. *STELA Significantly Viewed Report and Order*, para. 55.

¹⁵ In section 102 of the STELAR, Congress intended to “create a television market modification process for satellite carriers similar to the one already used for cable operators.” *Senate Commerce Committee Report* at 6. The STELAR also makes a variety of reforms to the video programming distribution laws and regulations that are not relevant to our implementation here of this section.

¹⁶ See 47 U.S.C. 338(a)(1).

¹⁷ 47 CFR 76.66(a)(6).

¹⁸ See 17 U.S.C. 122(j)(2); 47 CFR 76.66(e) (defining a television broadcast station’s local market for purposes of satellite carriage as the DMA in which the station is located). We note that a commercial television broadcast station’s local market for purposes of cable carriage is also generally defined as the DMA in which the station is located. See 47 U.S.C. 534(h)(1)(C); 47 CFR 76.55(e)(2).

¹⁹ The Nielsen Company delineates television markets by assigning each U.S. county (except for certain counties in Alaska) to one market based on measured viewing patterns both off-air and via MVPD distribution. Generally, each U.S. county is assigned exclusively to the market whose stations receive the preponderance of the audience in that county. However, in a few cases where a county is large and viewing patterns differ significantly between parts of the county, a portion of the county is assigned to one television market and another portion of the county is assigned to another market. Several counties in Alaska are not assigned to any DMA. *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 2005 WL 2206070, at para. 53, n.177 (Sept. 8, 2005) (*SHVERA Report*); see also Nielsen Media Research, Glossary of Media Terms, at <http://www.nielsenmedia.com/glossary/>.

²⁰ DMAs frequently cross state lines and thus may include counties from multiple states.

²¹ See 17 U.S.C. 122; 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1). DISH Network currently provides local service to all 210 DMAs, and DIRECTV currently provides local service to 198 DMAs, according to the most recent Local Network Channel Broadcast Reports filed by these satellite carriers. 47 U.S.C.A. 338 Note. These annual reports were initially required for five years by section 305 of the STELA and were continued to be required for another five years by section 108 of the STELAR.

²² “A commercial television station substantially duplicates the programming of another commercial television station if it simultaneously broadcasts the identical programming of another station for more than 50 percent of the broadcast week.” 47 CFR 76.66(h)(6). “A noncommercial television station substantially duplicates the programming of another noncommercial station if it simultaneously broadcasts the same programming as another

carried by the satellite carrier in the DMA,²³ and satellite carriers are not required to carry more than one affiliate station of a particular network in a DMA (even if the affiliates do not substantially duplicate their programming), unless the stations are licensed to communities in different states.²⁴ Satellite carriers are also not required to carry an otherwise qualified station if the station fails to provide a good quality signal to the satellite carrier's local receive facility.²⁵

7. STELAR section 102, which adds section 338(l) of the Act, creates a satellite market modification regime very similar to that in place for cable, while adding provisions to address the unique nature of satellite television service.²⁶ Market modification, which has been available in the cable carriage context since 1992,²⁷ will allow the Commission to modify the local television market of a commercial television broadcast station to enable those broadcasters and satellite carriers to better serve the interests of local communities.²⁸ Market modification

noncommercial station for more than 50 percent of prime time, as defined by [47 CFR] 76.5(n), and more than 50 percent outside of prime time over a three month period, provided, however, that after three noncommercial television stations are carried, the test of duplication shall be whether more than 50 percent of prime time programming and more than 50 percent outside of prime time programming is duplicative on a non-simultaneous basis." 47 CFR 76.66(h)(7).

²³ 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1). "A satellite carrier may select which duplicating signal in a market it shall carry." 47 CFR 76.66(h)(2).

²⁴ 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1). "A satellite carrier may select which network affiliate in a market it shall carry." 47 CFR 76.66(h)(3). However, a satellite carrier must carry network affiliated television stations licensed to different states, but located in the same market, even if the stations meet the definition of substantial duplication under the Commission's rules. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 00–96 and 99–363, Report and Order, FCC 00–417, para. 80, 66 FR 7410, Jan. 23, 2001 (*DBS Broadcast Carriage Report and Order*). If two stations located in different states (but within the same local market) duplicate each other, but are not network affiliates, the satellite carrier only has to carry one. *Id.*

²⁵ 47 U.S.C. 338(b)(1); 47 CFR 76.66(g)(1). A television station asserting its right to carriage is required to bear the costs associated with delivering a good quality signal to the designated local-receive-facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market. *Id.*

²⁶ See 47 U.S.C. 338(l), 534(h)(1)(C).

²⁷ See 47 CFR 76.59.

²⁸ See *In-State Broadcast Programming: Report to Congress Pursuant to Section 304 of the Satellite Television Extension and Localism Act of 2010*, MB Docket No. 10–238, Report, DA 11–1454, paras. 55–59 (MB rel. Aug. 29, 2011) (*In-State Programming Report*) (stating that "market modifications could potentially address special situations in underserved areas and facilitate greater access to

provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming.²⁹ To better reflect market realities and effectuate these purposes, section 338(l), like the corresponding cable provision in section 614(h)(1)(C), permits the Commission to add communities to, or delete communities from, a station's local television market following a written request.³⁰ Furthermore, as in the cable carriage context, the Commission may determine that particular communities are part of more than one television market.³¹ As in the cable carriage context, when the Commission modifies a station's market to add a community for purposes of carriage rights, the station is considered local and is covered by the local statutory copyright license and may assert mandatory carriage (or pursue retransmission consent) by the applicable satellite carrier in the local market.³² Conversely, if the Commission modifies a station's market to delete a community, the station is considered "distant" and loses its right to assert mandatory carriage (or retransmission consent) on the applicable satellite carrier in the local market.³³ We note that, in the cable carriage context, market modifications pertain to individual stations in specific cable communities and apply only to the particular cable system named in the petition.³⁴

local information"). See also *Broadcast Localism*, MB Docket No. 04–233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07–218, paras. 49–50, 73 FR 8255, Feb. 13, 2008 (*Broadcast Localism Report*).

²⁹ *Broadcast Localism Report*, para. 50. The Commission has observed that, in some cases, general reliance on DMAs to define a station's market may not provide viewers with the most local programming. *Id.* at paras. 49–50. Certain DMAs cross state borders and, in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station. *Id.* The Commission has observed that such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance—particularly local weather and other emergency information and local news and electoral and public affairs—from a station located in the state in which they live. *Id.*

³⁰ 47 U.S.C. 338(l)(1), 534(h)(1)(C).

³¹ 47 U.S.C. 338(l)(2)(A).

³² Section 204 of the STELAR amends the local statutory copyright license in 17 U.S.C. 122 to the effect that when the Commission modifies a station's market for purposes of satellite carriage rights, the station is considered local and is covered by the local statutory copyright license. See 17 U.S.C. 122(j)(2)(E) (as amended by STELAR sec. 204); 47 U.S.C. 338. See also 17 U.S.C. 111(f)(4) (defining "local service area of a primary transmitter" for cable carriage copyright purposes); 47 U.S.C. 534(h)(1)(C).

³³ See *id.*

³⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*,

8. Section 338(l) states that, in ruling on requests for market modifications for purposes of satellite carriage, the Commission must afford particular attention to the value of localism by taking into account the following five factors:

(1) Whether the station, or other stations located in the same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community;

(2) Whether the television station provides coverage or other local service to such community;

(3) Whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence;

(4) Whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(5) Evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community.³⁵

These statutory factors largely mirror those originally set forth for cable in section 614(h)(1)(C)(ii) of the Act. To the extent the factors differ from the previous factors applicable to cable, the STELAR section 102 makes conforming changes to the cable factors.³⁶ These include adding a fifth factor (inserted as factor number three) to section 614(h)(1)(C)(ii) to "promote consumers' access to television broadcast station signals that originate in their State of residence."³⁷ Thus, STELAR creates parallel factors for satellite and cable.³⁸

Broadcast Signal Carriage Issues, MM Docket No. 92–259, Report and Order, FCC 93–144, para. 47, 58 FR 17350, April 2, 1993 (*Must Carry Order*) (stating that "the statute is intended to permit the modification of a station's market to reflect its individual situation"); 47 CFR 76.59.

³⁵ 47 U.S.C. 338(l)(2)(B)(i) through (v) (discussed in section III.B. below).

³⁶ See 47 U.S.C. 534(h)(1)(C)(ii), as amended by STELAR sec. 102(b).

³⁷ See 47 U.S.C. 534(h)(1)(C)(ii)(III) ("whether modifying the market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence").

³⁸ Shortly after our final rules are published in the *Federal Register*, we will implement section 102(c)

Continued

9. The STELAR, however, provides a unique exception applicable only in the satellite context, providing that a market modification:

shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.³⁹

Also unique to satellite, the STELAR provides that a market modification will not have “any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339 [of the Act].”⁴⁰ Like the cable provision, section 338(l) gives the Commission 120 days to act on a request for market modification and does not allow a carrier to delete from carriage the signal of a commercial television station during the pendency of any market modification proceeding.⁴¹

10. On March 26, 2015, we began this proceeding by issuing a Notice of Proposed Rulemaking (NPRM).⁴² We received 12 comments and five reply comments in response. With this Report and Order, we satisfy the STELAR’s mandate that the Commission adopt final rules in this proceeding on or before September 4, 2015.⁴³

III. Discussion

11. Consistent with the STELAR’s goal of regulatory parity, we largely model the satellite market modification process on the existing process for cable and adopt our proposal to amend

of the STELAR by creating a consumer guide that will explain the market modification rules and procedures as revised and adopted in this proceeding, and by posting the guide on the Commission’s Web site. Section 102(c) requires the Commission to “make information available to consumers on its Web site that explains the market modification process.” STELAR 102(c); 47 U.S.C.A. 338 Note. Such information must include: “(1) who may petition to include additional communities within, or exclude communities from, a—(A) local market (as defined in section 122(j) of title 17, United States Code); or (B) television market (as determined under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C))); and (2) the factors that the Commission takes into account when responding to a petition described in paragraph (1).” See 47 U.S.C. 338(l)(2)(B)(i) through (v); 47 U.S.C. 534(h)(1)(C)(ii)(I) through (V).

³⁹ 47 U.S.C. 338(l)(3)(A) (discussed in section III.D. below).

⁴⁰ 47 U.S.C. 338(l)(5) (discussed in section III.E. below). Section 339 of the Act provides for the satellite carriage of distant stations under certain conditions. See 47 U.S.C. 339.

⁴¹ 47 U.S.C. 338(l)(3)(B), (4).

⁴² *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15–71, Notice of Proposed Rulemaking, FCC 15–34, 80 FR 19594, Apr. 13, 2015 (NPRM).

⁴³ STELAR sec. 102(d)(1).

section 76.59 of our rules—the current cable market modification rule—to apply in both the cable and satellite contexts.⁴⁴ We also adopt our proposal to amend section 76.59 to reflect the STELAR provisions that apply uniquely to satellite carriers, such as affording carriers with an exception if the resulting carriage is “not technically and economically feasible.” Finally, we define a “satellite community” for purposes of market modification and retain our existing definition of a “cable community.”

A. Standing and Procedures To Request Market Modification

12. We conclude that the involved broadcaster, satellite carrier and county government may file a satellite market modification petition.⁴⁵ We choose a slightly modified alternative to the procedure proposed in the NPRM,⁴⁶ and deviate from the cable rule which allows only the involved broadcaster and cable operator to file cable petitions, in order to more fully effectuate the core purpose of this provision of the STELAR to promote consumer access to in-state and other relevant programming.

13. Section 338(l)(1) of the Act permits the Commission to modify a local television market “following a written request,” but does not specify the appropriate party to make such requests.⁴⁷ The corresponding cable statutory provision in section 614(h)(1)(C)(i) of the Act contains nearly identical language in this regard.⁴⁸ In interpreting the cable provision, the Commission concluded that the involved broadcaster and cable operator are the only appropriate parties to file market modification requests.⁴⁹ Section

⁴⁴ See 47 CFR 76.59.

⁴⁵ See 47 CFR 76.59(a).

⁴⁶ NPRM, para. 8.

⁴⁷ 47 U.S.C. 338(l)(1).

⁴⁸ 47 U.S.C. 338(l)(1) (“Following a written request, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its local market or exclude communities from such station’s local market to better effectuate the purposes of this section.”) See 47 U.S.C. 534(h)(1)(C)(i) (“For purposes of this section, a broadcasting station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market to better effectuate the purposes of this section. . . .”).

⁴⁹ See *Must Carry Order*, para. 46; *John Wiegand v. Post Newsweek Pacifica Cable, Inc.*, CSR 4179–M, Memorandum Opinion and Order, FCC 01–239 (rel. Aug. 24, 2001) (*Wiegand v. Post Newsweek*) (limiting standing in the must carry and market modification contexts to the affected broadcaster or

102(d) of the STELAR, however, directs the Commission to ensure in both the cable and satellite contexts that “procedures for the filing and consideration of a written request . . . fully effectuate the purposes of the amendments made by this section.”⁵⁰ In the NPRM, consistent with the cable rule, we proposed to allow only the involved commercial broadcast station or the satellite carrier to file a satellite market modification request because only these entities have carriage rights or obligations at stake.⁵¹ The NPRM sought comment on any alternative approaches and observed that some local governments had previously sought the ability to petition for market modifications on behalf of their citizens.⁵² The NPRM tentatively concluded to limit the participation of local governments and individuals to filing comments in support of, or in opposition to, particular market modification requests and sought comment on this tentative conclusion.⁵³ Broadcasters and the satellite carriers supported the NPRM’s proposal, asserting that only the involved station or satellite carrier “have rights or obligations that are directly affected by a market modification” and therefore only such entities should have standing to file requests to modify these rights or obligations.⁵⁴ Some commenters, however, advocate that county governments should be allowed to

cable operator). The Commission reasoned that “the fact that Congress made must carry an elective choice for broadcasters diminishes the argument that third parties have standing to demand carriage of a broadcast station on a cable system. A subscriber’s ability to receive the benefits provided from must carry is predicated upon a station’s election to exercise its rights under the statute. No statute or Commission rule requires a broadcaster to allow its signal to be carried on a local cable system because another party wishes to view it. Instead, broadcasters are given a choice whether to demand carriage under must carry, to negotiate carriage under the retransmission consent provisions, or not to be carried on a particular cable system at all.” See *Wiegand v. Post Newsweek*, para. 10.

⁵⁰ STELAR sec. 102(d)(2) directs the Commission to consider as part of this rulemaking whether the “procedures for the filing and consideration of a written request under sections 338(l) and 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 338(l); 534(h)(1)(C)) fully effectuate the purposes of the amendments made by this section.” See 47 U.S.C.A. 338 Note.

⁵¹ NPRM, para. 8.

⁵² NPRM, para. 9. See *In-State Programming Report*, para. 58.

⁵³ *Id.* The NPRM also asked “how else satellite subscribers or their representatives can meaningfully advocate for the receipt of in-state programming via satellite.” *Id.*

⁵⁴ DIRECTV Comments at 7, n.20; DISH Comments at 3; NAB Comments at 3–4. See NPRM, para. 8.

petition for market modifications on behalf of their citizens.⁵⁵

14. Upon further consideration pursuant to section 102(d) of the STELAR, we conclude that we will better effectuate the purposes of the STELAR (to promote consumer access to in-state programming) by also permitting a county governmental entity (such as a county board, council, commission or other equivalent subdivision) to file a satellite market modification petition, as advocated by some commenters.⁵⁶ Allowing a county government to petition for market modification for its community is appropriate given our decision to define a satellite community on a county basis.⁵⁷ We also are mindful of the record in the *In-State Programming Report* proceeding, which reflects numerous examples of counties in which consumers have little or no access to in-state broadcast stations.⁵⁸

⁵⁵ See Letter from Michael F. Bennet, U.S. Senator, Colo.; Cory Gardner, U.S. Senator, Colo.; and Scott Tipton, U.S. Representative, Colo. to Tom Wheeler, Chairman, FCC, dated April 14, 2015 at (“Sen. Bennet *et al.* Letter”). See also Letter from Mike D. Rogers, U.S. Representative, Ala.; Robert Aderholt, U.S. Representative, Ala. to Tom Wheeler, Chairman, FCC dated May 12, 2015 at 1 (“Rep. Rogers *et al.* Letter”) (seeking role in market modification process for Counties, Parishes or the equivalent political subdivisions). Although no local government comments were filed in this docket, commenters in the docket relating to the STELA *In-State Programming Report* advocated to allow consumer concerns to be addressed more directly by permitting local governments to petition for market modifications on behalf of their citizens. See *In-State Programming Report*, para. 58.

⁵⁶ See *id.*

⁵⁷ See *infra* section III.F. (Definition of Community). We note that a county (or its political equivalent) was the only jurisdictional definition for which commenters in this proceeding sought the ability to file market modification petitions.

⁵⁸ See *In-State Programming Report*, at App. F (Case Studies) (discussing 35 counties in 13 DMAs with little or no access to in-state broadcast stations via satellite service). The *In-State Programming Report*, also described the impact on consumers in these orphan counties. See *id.* at para. 18 (“Because the DMA may include one or more counties located in a different state from that of the DMA’s principal city or cities where most of the local television stations originate, some consumers through their MVPD, may receive only out-of-state stations and thereby lack access to in-state programming, including political and election coverage, public affairs programming, and weather and other emergency information. Consumers from disparate areas throughout the nation comment that they are deprived of vital information that is overwhelmingly available to other households across the country. Consumers in affected areas typically do not have access to programming content from in-state local television stations that cover the issues emanating from their state capitals and, as a result, believe they are less well served by the broadcast programming they are able to receive. Without such state-focused information and programming content, consumers express frustration at their inability to make informed election and other civic decisions. Additionally, some consumers indicate that they would prefer television advertising that supports their state

We acknowledge that station carriage relies in part on business decisions involving broadcasters and satellite carriers and that without the willing participation of the affected broadcaster, modifying the market of a particular television station, in itself, would not result in consumer access to that station.⁵⁹ However, by allowing a county government to file a satellite market modification on behalf of its residents, we seek to empower orphan counties to eliminate certain legal barriers which may have deprived local residents of the cultural, sports, political and local news relevant to the state in which they reside.⁶⁰ We recognize that

economies rather than the out-of-state advertisements that air on the in-market stations they receive. Commenters opine that their inability to access in-state advertising has a continuing negative impact on their communities through the loss of revenue.”). We also note that consumers have raised similar concerns in the record for the Commission’s pending Report to Congress on DMAs required by section 109 of the STELAR. See, e.g., Leroy Axtell Comments (seeking in-state stations for Fairfield County, CT); Spencer Karter Comments (seeking in-state stations for Greenville County, SC); Richard Bolt Comments in MB Docket No. 15–43 (filed May 15, 2015) (seeking in-state stations for Garrett County, MD); Kyle Ramie Comments in MB Docket No. 15–43 (filed May 6, 2015); Timothy Brastow Comments in MB Docket No. 15–43 (filed Mar. 24, 2015) and Jerome Gibbs Comments in MB Docket No. 15–43 (filed Jun. 2, 2015) (each seeking in-state stations for Bristol County, MA).

⁵⁹ *NPRM*, para. 9. See *Wiegand v. Post Newsweek*, para. 11 (“[t]he granting of a request to expand the market of a television station merely allows a broadcaster the option to seek must carry status on cable systems added to its market. A broadcaster is not required to seek carriage of its signal on all of the cable systems in its market.”). Likewise, in the satellite context, the granting of a request to expand the market of a television station merely allows a broadcaster the option to seek mandatory carriage with respect to the new community, but does not require the broadcaster grant retransmission consent for it to be carried in the new community. Thus, our decision here about standing to file a satellite market modification should not be construed as affording a county government a right to demand carriage of a particular station via satellite in its county. Notwithstanding the grant of a petition to modify a market, a local broadcast station that elects retransmission consent with respect to the new community may not be carried without its express written consent. See 47 U.S.C. 325(b)(1) (“No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except (A) with the express authority of the originating station”); 47 CFR 76.66.

⁶⁰ See Sen. Bennet *et al.* Letter at 1 (seeking to “facilitate the ability of a community to voice its own opinion about the local television content that it would prefer to access”). We also note that local government and consumer comments in a market modification proceeding can help demonstrate a station’s nexus to the community at issue. See Sen. Bennet *et al.* Letter at 1; Rep. Rogers *et al.* Letter at 1 (seeking to “allow Counties, Parishes or the equivalent political subdivisions to make public comments about the television content their community prefers.”). For example, the Commission can consider consumer comments pursuant to the second statutory factor relating to a station’s local service to a community. See 47 U.S.C. 338(l)(2)(B)(ii), 534(h)(1)(C)(ii)(II); *Tennessee*

our rules require petitioners to provide specific evidence to demonstrate the five statutory factors and that much of this information may not be easily obtained by county governments.⁶¹ To avoid dismissal based on a failure to meet our specific evidentiary requirements, we strongly encourage county government petitioners to enlist the aid and cooperation of the station they wish to bring to their county. Moreover, to the extent the involved station opposes carriage in the county, a county government may not want to go through the time and expense of filing a petition to expand such station’s market to include its county.

15. We acknowledge that we are implementing a procedural aspect of section 338(l)(1) in a manner that differs from our implementation of section 614(h)(1)(C)(i), despite the nearly identical language of the two provisions.⁶² We find that a different procedure is appropriate to implement STELAR’s directive in section 102(d) for purposes of filing a market modification petition in the satellite context. Significantly, the record and case studies in the 2011 *In-State Programming Report* show that the problem of subscriber access to in-state stations disproportionately affects satellite subscribers.⁶³ Notably, the Commission frequently receives satellite consumer calls about this problem and other complaints about not receiving the consumers’ desired local station via satellite, while cable consumers rarely complain about this issue.⁶⁴ This may be a product of the localized nature of cable systems as opposed to the national

Broadcasting Partners, CSR 7596–A, Memorandum Opinion and Order, DA 08–542, paras. 22–37 (MB rel. Mar. 10, 2008) (considering statements made by local officials).

⁶¹ See *infra* at para. 20 (Evidentiary Requirements). For example, a petitioner must provide contour maps and published audience data for the involved broadcast station.

⁶² See 47 U.S.C. 338(l)(1); 47 U.S.C. 534(h)(1)(C)(i).

⁶³ See *In-State Programming Report*, at App. F (Case Studies) (discussing 35 counties in 13 DMAs with little or no access to in-state broadcast stations via satellite service). The BIA/Kelsey study submitted by NAB in the *In-State Programming Report* docket also illustrates this point, estimating that 0.1 percent of cable subscribers do not receive at least one in-state television station, while 2.2 percent of DISH subscribers do not receive at least one in-state television station and 6.1 percent of DIRECTV subscribers do not receive at least one in-state TV station. *In-State Programming Report*, para. 44.

⁶⁴ According to staff review, at least 165 consumers have called the Commission’s call center in 2015 to complain that their satellite carrier does not carry a particular station. See also, e.g., Leroy Axtell Comments at 1 (Fairfield County, Connecticut resident explaining that “Comcast and Frontier cable carry New York and Hartford/New Haven television channels,” while “Directv and Dish can presently carry only New York channels.”)

nature of satellite service.⁶⁵ The remote geographic location of orphan counties also contributes to the disproportionate impact on satellite subscribers. In the *In-State Programming Report* record, DIRECTV observed that “[b]ecause many orphan counties tend to be isolated, their residents tend to rely more on satellite than on cable for access to television programming.”⁶⁶ We also observe that the cable market modification process has worked well for more than 20 years and there is nothing in the record to suggest that changing the cable petition process to include local governments is necessary to effectuate the goals of the STELAR (to promote access to in-state programming) at this time.

16. We adopt our proposal to require petitioners (*i.e.*, broadcast stations, satellite carriers and county governments) to file market modification requests for satellite carriage purposes in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.⁶⁷ Commenters on this issue generally support our proposal.⁶⁸ Consistent with section 76.7, a petitioner must serve a copy of its market modification request on any MVPD operator, station licensee, permittee, or applicant, or other interested party who is likely to be directly affected if the relief requested is granted, and we amend section 76.7(a)(3), accordingly, to reference “any MVPD operator.”⁶⁹ The NPRM sought comment on whether franchising authorities or certain local government entities (such as cities, counties, or towns) that may represent subscribers and local viewers in affected communities should be considered “interested parties” and served with market modification petitions.⁷⁰

⁶⁵ See *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, MB Docket No. 05–49, Report and Order, FCC 05–187, para. 44, 70 FR 76504, December 27, 2005 (2005) (*SHVERA Significantly Viewed Report and Order*).

⁶⁶ DIRECTV Comments in MB Docket No. 10–238 (filed Jan. 24, 2011) at 3–4, n.8.

⁶⁷ NPRM, para. 10. See 47 CFR 76.59(b). A fee is generally required for the filing of Special Relief petitions; 47 CFR 1.1104, 1.1117, 76.7. We remind filers that Special Relief petitions must be submitted electronically using the Commission’s Electronic Comment Filing System (ECFS). See *Media Bureau Announces Commencement of Mandatory Electronic Filing for Cable Special Relief Petitions and Cable Show Cause Petitions Via the Electronic Comment Filing System*, Public Notice, DA 11–2095 (MB rel. Dec. 30, 2011). Petitions must be initially filed in MB Docket No. 12–1. *Id.*

⁶⁸ NAB Comments at 3.

⁶⁹ See 47 CFR 76.7(a)(3).

⁷⁰ See NPRM, para. 10. No parties filed comments advocating that cable franchise authorities be served with satellite market modification requests.

Consistent with our decision above to permit a county government to file a petition, we find that the relevant county government is an “interested party” that must also be served with a satellite market modification petition.⁷¹

B. Statutory Factors and Evidentiary Requirements

17. As discussed above, the purpose of market modification is to permit adjustments to a particular station’s local television market (which is initially defined by the DMA in which it is located) to better serve the value of localism by ensuring that satellite subscribers receive the broadcast stations most relevant to them.⁷² To this end, the STELAR requires the Commission to consider five statutory factors when evaluating market modification requests.⁷³ As noted, the STELAR added a fifth factor (inserted as the new third statutory factor) for both cable and satellite to “promote consumers’ access to television broadcast station signals that originate in their State of residence.”⁷⁴ In the NPRM, we tentatively concluded that this new third statutory factor is intended to favor a market modification to add a new community⁷⁵ if doing so would increase consumer access to in-state programming.⁷⁶ In the record, NAB and DISH appear to support this general conclusion; however, DISH states that we should consider under this factor whether the new community lacks any (or an adequate number of) in-state

We decline to require such notifications, given that cable franchising authorities have no role in satellite regulation. See DIRECTV Comments at 7, n.20; UCC Comments at 8.

⁷¹ If after due diligence, a petitioner is unable to identify the appropriate county government on which to serve its petition, the petitioner should request Commission staff assistance in this regard.

⁷² See 47 U.S.C. 338(l)(2)(B), 534(h)(1)(C)(ii) (requiring the Commission to “afford particular attention to the value of localism” by taking into account the five statutory factors).

⁷³ See *supra* para. 8. The Commission must also consider other relevant information to develop a result that is designed to “better effectuate the purposes” of the law. See 47 U.S.C. 338(l)(1); *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, CS Docket No. 95–178, Order on Reconsideration and Second Report and Order, FCC 99–116, para. 53, 64 FR 33788, Jun. 24, 1999 (*Cable Market Modification Second Report and Order*).

⁷⁴ 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(ii)(III). We will refer to this new third statutory factor as the “in-state factor.”

⁷⁵ For purposes of our discussion, by “new community” we refer to a new community to be added to a station’s local television market by grant of the prospective market modification.

⁷⁶ NPRM, para. 11. The NPRM also asked if we should “require the petitioner to show that the station at issue is licensed to a community within the state in which the modification is requested and that the DMA at issue lacks any (or an adequate number of) in-state stations?” NPRM, para. 13.

stations, while NAB states that the statutory language imposes no such requirement.⁷⁷ In addition, NCTA expresses concerns about how we may evaluate market modification petitions under this new in-state factor, particularly in situations that would grant cable carriage rights to previously uncarried in-state stations.⁷⁸

18. We conclude that the in-state factor favors any market modification that would promote consumers’ access to an in-state station.⁷⁹ The language of this new statutory factor speaks clearly in this regard.⁸⁰ Therefore, a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as the new community.⁸¹ We disagree with those commenters that sought a requirement for more substantial showings, such as the lack of in-state stations in the new community, in order to get credit for satisfying this factor.⁸² We find that such additional showings are not necessary to satisfy this factor. We read the statutory language—in requiring the Commission to consider whether the prospective modification would “promote” consumers’ access to television broadcast station “signals” that originate in their state of residence—as applying to any situation that would increase access to in-state stations, regardless of whether there are other in-state stations present in the new community.⁸³ However, we find that such additional showings can increase the weight afforded to this factor. For example, this factor may be found to weigh more heavily in favor of modification if the petitioner shows the involved station provides programming specifically related to subscribers’ state of residence, and may be given even more weight if such subscribers in the new community had little (or no) access

⁷⁷ See DISH Comments at 3–4; NAB Comments at 5.

⁷⁸ See NCTA Reply at 2–4.

⁷⁹ See 47 U.S.C. 338(l)(2)(B)(iii) (“whether modifying the market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence”).

⁸⁰ See *id.* See also NAB Comments at 5.

⁸¹ See *infra* at para. 20 (Evidentiary Requirements).

⁸² See DISH Comments at 4 (stating “a petitioner should have to ‘show . . . that the DMA at issue lacks any (or an adequate number of) in-state stations’”); NCTA Comments at 3 (stating “the Commission should assess whether cable customers already receive television stations that provide in-state coverage”).

⁸³ See NAB Comments at 5 (“The statute does not suggest that the Commission should take into account only those in-state market modification requests that would help to remedy a complete absence—or some minimum number—of in-state broadcast stations.”).

to such in-state programming.⁸⁴ We find that this interpretation of the factor will better effectuate its purpose, observing that the legislative history expresses Congress' concern that "many consumers, particularly those who reside in DMAs that cross State lines or cover vast geographic distances," may "lack access to local television programming that is relevant to their everyday lives" and indicates Congress' intent that the Commission "consider the plight of these consumers when judging the merits of a [market modification] petition . . . , even if granting such modification would pose an economic challenge to various local television broadcast stations."⁸⁵ We clarify, however, that this new factor is not universally more important than any of the other factors and its relative importance will vary depending on the circumstances in a given case.⁸⁶ In sum, in market modification petitions involving the addition of an in-state broadcaster, the in-state factor does not serve as a trump card negating the other four statutory factors. Instead, where

⁸⁴ See NAB at 5 ("Consideration of the 'in-state signal' statutory factor also could involve an evaluation of programming or advertising on that station.") We note that our analysis of the in-state nature of the programming would be similar to our analysis of the local nature of the programming under the second statutory factor and would consider whether the television station provides programming specifically related to the subscribers' state of residence. For example, under factor two, we consider whether the station has aired programming, such as news, politics, sports, weather and other emergency information, specifically targeted to the community at issue (e.g., town council meeting, news or weather event that occurred in the community, local emergencies, etc.). Under factor three, we would consider whether the station has aired programming, such as news, politics, sports, emergency information, specifically related to the state in which the community is located (e.g., coverage of state politics and legislative matters, state sports team coverage, state emergency information, etc.).

⁸⁵ Senate Commerce Committee Report at 11.

⁸⁶ See *Cable Market Modification Second Report and Order*, para. 59 (stating that "it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case"). See also, e.g., NCTA Reply at 2 (stating that "[w]hile promoting access to in-state programming is one factor in the market modification process, Congress preserved the other four factors as well. In evaluating any market modification petitions going forward, therefore, the Commission must consider all of the factors."); UCC Comments at 6 (stating that "the laudable goal of providing satellite subscribers with access to the signals of some television stations licensed to communities within the same state should not trump the value of local coverage provided by stations that happen to be licensed to communities in a different state so as to deprive satellite customers of access to the signals of those stations that are more truly 'local' than the more distant same-state stations.").

applicable, we believe the in-state factor serves as an enhancement, the particular weight of which depends on the strength of showing by the petitioner. Ultimately, each petition for market modification will turn on the unique facts of the case.⁸⁷

19. We adopt our tentative conclusion that the new in-state factor is not intended to bar a market modification simply because it would not result in increased consumer access to an in-state station's programming.⁸⁸ In such cases, we find that this new in-state factor would be inapplicable and the modification request would be evaluated based on the other statutory factors.⁸⁹ Commenters on this issue support these tentative conclusions.⁹⁰ We agree with commenters that the statute intended to promote access to in-state programming, but did not intend to disfavor other market modification requests.⁹¹

⁸⁷ For example, we agree with NCTA that we should consider the potential disruption to customers if grant of the modification request would displace service from a long-established network station. See NCTA Comments at 3–4 (stating "the Commission should consider the potential disruption to cable customers that could be caused by wholesale changes to markets. Market changes that would require operators to delete one group of broadcast stations in favor of another could upset long-established cable customer viewing patterns."). The Bureau has previously considered, in the cable context, whether grant of the market modification would "upset the economic marketplace expectations underlying the network-affiliate relationship." See, e.g., *Broad Street Television, L.P.*, CSR-3868-A, Memorandum Opinion and Order, DA 95-1106, para. 12 (CSB rel. May 25, 1995); *Guy Gannett Communications, Inc.*, CSR-5289-A, Memorandum Opinion and Order, DA 98-2464, para. 21 (CSB rel. Dec. 4, 1998), *aff'd*, Order on Reconsideration, DA 00-1325 (CSB rel. Jun. 19, 2000); *Pacific & Southern Co., Inc.*, CSR-5326-A, Memorandum Opinion and Order, DA 99-628, para. 25 (CSB rel. Apr. 2, 1999); *Harron Communications Corp.*, CSR-5325-A, Memorandum Opinion and Order, DA 99-627, para. 26 (CSB rel. Apr. 2, 1999); *Free State Communications, LLC*, CSR-8121-A, Memorandum Opinion and Order, DA 09-1206, para. 22 (MB rel. May 28, 2009). We note that, for must carry purposes, although cable operators are not required to carry duplicating stations or more than one local station affiliated with a particular network, if a cable system declines to carry duplicating stations, it must carry the station closest to the principal headend of the cable system, even if that station is from another state. See 47 CFR 76.56(b)(5). By contrast, in the satellite carriage context, a satellite carrier must carry two stations affiliated with the same network if they are from different states, see 47 U.S.C. 338(c)(1); 47 CFR 76.66(h)(1), and otherwise may select which duplicating station or network affiliate in a market it will carry. See 47 CFR 76.66(h)(2) through (3). Thus, the potential for market disruption is lower in the satellite context.

⁸⁸ *NPRM*, para. 11.

⁸⁹ *Id.*

⁹⁰ See UCC Comments at 6–7; WVIR-TV Comments at 4; Tracy Comments at 1.

⁹¹ See UCC Comments at 6–7 ("STELAR did not intend to forestall market modification requests that would not have the effect of supplying in-state programming to residents of 'orphan counties.'");

20. *Evidentiary Requirements.* We adopt our proposal to apply the evidentiary requirements for cable market modifications to satellite market modifications.⁹² Commenters on this issue support this proposal.⁹³ We find it appropriate, and that it promotes parity, to apply the same evidentiary requirements in both contexts, particularly given the same language is used in both the cable and satellite statutory factors and the record provides no basis for adopting a different interpretation in the satellite versus cable context.⁹⁴ In addition, to implement our decision (above) that the in-state factor favors any market modification that would promote consumers' access to an in-state station, we require the petitioner to make a statement in its petition whether or not the station is licensed to a community within the same state as the new community.⁹⁵ We find this sufficient evidence to show that a station's petition satisfies this factor.

Accordingly, market modification requests for both satellite carriers and cable system operators must include the following evidence:⁹⁶

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market;

(2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations)

WVIR-TV Comments at 4 (asking Commission "not to confine any new rules to situations where a subscriber's community or county is assigned to an out-of-state DMA by Nielsen"); Tracy Comments at 1.

⁹² *NPRM*, para. 12.

⁹³ See NAB Comments at 4–5; DISH Comments at 3–4.

⁹⁴ 47 U.S.C. 338(l)(2)(B)(i) through (v), 534(h)(1)(C)(ii)(I) through (V).

⁹⁵ See 47 CFR 76.59(b)(7). As noted above (see *supra* para. 18), to better effectuate the purpose of the law, we will consider (but not require) additional evidence showing the relevance of the in-state programming (including advertising) to the new community, as well as the absence of other in-state stations in the new community, to evaluate the strength afforded to this factor.

⁹⁶ See 47 CFR 76.59(b)(1) through (7). To make section 76.59(b)(6) consistent with the language of the STELAR, we are also updating the rule to reflect the change from "evidence of viewing patterns in cable and noncable households . . ." to "evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors" in the fifth statutory factor (*emphasis added*). See 47 U.S.C. 338(l)(2)(B)(v), 534(h)(1)(C)(ii)(V).

delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

As discussed above, DISH and NCTA sought additional evidentiary requirements for a petitioner to satisfy the in-state factor.⁹⁷ Because we decide that the in-state factor generally favors any market modification that would promote consumers' access to an in-state station, we reject the suggestions by DISH and NCTA to require more evidence in this regard. As explained above, however, a petitioner may offer evidence concerning whether the television station provides programming specifically related to the subscribers' state of residence, as well as the lack of other in-state stations providing service to subscribers in the new community, to demonstrate that the in-state factor should be afforded even greater weight.⁹⁸

21. In addition, we adopt our proposal to revise section 76.59(b)(2) of the rules to add a reference to the digital noise-

limited service contour (NLSC), which is the relevant service contour for a full-power station's digital signal.⁹⁹ NAB, the only commenter on this issue, supports our proposal.¹⁰⁰ Section 76.59(b)(2) requires petitioners seeking a market modification to provide Grade B contour maps delineating the station's technical service area;¹⁰¹ however the Grade B contour defines an analog television station's service area.¹⁰² Since the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations and, therefore, the Commission uses the NLSC set forth in 47 CFR 73.622(e),¹⁰³ in place of the analog Grade B contour set forth in 47 CFR 73.683(a), to describe a full power station's technical service area.¹⁰⁴ Since the DTV transition, the Media Bureau has required full power stations to provide NLSC maps, in place of Grade B contour maps, for purposes of cable market modifications.¹⁰⁵ Therefore, we adopt our tentative conclusion that

⁹⁹ *NPRM*, para. 14; 47 CFR 76.59(b)(2).

¹⁰⁰ NAB Comments at 4.

¹⁰¹ 47 CFR 76.59(b)(2).

¹⁰² See 47 CFR 73.683(a).

¹⁰³ As set forth in section 73.622(e), a full-power station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level. See 47 CFR 73.622(e).

¹⁰⁴ See *STELA Significantly Viewed Report and Order*, para. 51 (stating that the digital NLSC is "the appropriate service contour relevant for a station's digital signal"); *2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09–182, Notice of Inquiry, FCC 10–92, para. 103, 75 FR 33227, June 11, 2010 (stating that the Commission developed the digital NLSC to approximate the same probability of service as the Grade B contour and has stated that the two are roughly equivalent); Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures; ET Docket No. 05–182, FCC 05–199, para. 111 (rel. Dec. 9, 2005). Since the DTV transition, the Media Bureau has used the digital NLSC in place of the analog Grade B contour in the cable context. See, e.g., *KXAN, Inc.*, CSR–7825–N, Memorandum Opinion and Order, DA 10–589, para. 8 n.32 (MB rel. Apr. 1, 2010) (using the NLSC in place of the Grade B contour for purposes of the cable network non-duplication and syndicated program exclusivity rules). Congress has also acted on the presumption that the two standards are roughly equivalent, by adopting parallel definitions for households that are "unserved" by analog (measured by Grade B) or digital (measured by NLSC) broadcasters in the STELA legislation enacted after the DTV transition. See 17 U.S.C. 119(d)(10)(A)(i).

¹⁰⁵ See, e.g., *Tennessee Broadcasting Partners*, CSR–7596–A, Order on Reconsideration, DA 10–824, para. 6, n.14 (MB rel. May 12, 2010) (stating, in a market modification order, that the Commission has treated a digital station's NLSC as the functional equivalent of an analog station's Grade B contour); *Lenfest Broadcasting, LLC*, CSR–6278–A, Memorandum Opinion and Order, DA 04–1414, para. 7, n.27 (MB rel. May 20, 2004).

section 76.59(b)(2) should be updated for purposes of market modifications in both the cable and satellite contexts. We also delete the reference in the rule to the Grade B contour because that reference has no relevance in the absence of full-power analog stations. We observe that, in the rare situation in which a Class A or LPTV station might seek a market modification, the relevant service contour for such stations would be its "protected contour."¹⁰⁶ Accordingly, we revise our rule to reflect this contour.

22. Consistent with the cable carriage rule, we adopt our proposals that satellite market modification requests that do not include the required evidence be dismissed without prejudice and that they may be supplemented and re-filed at a later date with the appropriate filing fee.¹⁰⁷ In addition, consistent with the cable carriage rule, we adopt our proposal that, during the pendency of a market modification petition before the Commission, satellite carriers will be required to maintain the status quo with regard to signal carriage and must not delete from carriage the signal of an affected commercial television station.¹⁰⁸ NAB, the only commenter on these issues, supports our proposals.¹⁰⁹ We adopt our proposals, which create regulatory parity with cable.

C. Market Determinations

23. We adopt our tentative conclusion that market modifications in the satellite

¹⁰⁶ The relevant technical service area for Class A and LPTV stations is defined by their protected contour, as defined in sections 73.6010 (Class A), 74.707 (analog LPTV) and 74.792 (digital LPTV) of the rules; 47 CFR 73.6010, 74.707, 74.792. Although LPTV stations are not entitled to mandatory satellite carriage, see 47 U.S.C. 338(a)(3), LPTV stations may be entitled to mandatory cable carriage, but only in limited circumstances. Both the Communications Act and the Commission's rules mandate that only a minimum number of qualified low power stations must be carried by cable systems, see 47 U.S.C. 534(c)(1); 47 CFR 76.56(b)(3), and, in order to qualify, such stations must meet several criteria. See 47 U.S.C. 534(h)(2)(A) through (F); 47 CFR 76.55(d)(1) through (6). Class A stations have the same limited must carry rights as LPTV stations; in other words, they are "low power stations" for mandatory carriage purposes. See *Establishment of a Class A Television Service*, MM Docket No. 00–10, Memorandum Opinion and Order on Reconsideration, FCC 01–123, paras. 40–42, 66 FR 21681, May 1, 2001. Finally, we note that the Media Bureau recently suspended the September 1, 2015 digital transition deadline for LPTV stations. (The Bureau's action did not affect the September 1, 2015 digital transition deadline for Class A stations.) See *Suspension of September 1, 2015 Digital Transition Date for Low Power Television and TV Translator Stations*, MB Docket No. 03–185, Public Notice, DA 15–486, 80 FR 27862, May 15, 2015.

¹⁰⁷ *NPRM*, para. 15. See 47 CFR 76.59(c).

¹⁰⁸ *NPRM*, para. 15. See 47 CFR 76.59(d). See also 47 U.S.C. 338(l)(3)(B), 534(h)(1)(C)(iii); *Must Carry Order*, para. 46.

¹⁰⁹ NAB Comments at 4.

⁹⁷ See DISH Comments at 4 (suggesting that petitioners be required to "submit evidence to demonstrate that a substantial portion of the population in the geographic area covered by the request supports the change"); NCTA Reply at 3 (suggesting that petitioning broadcasters "should demonstrate a historical pattern of providing significant in-state programming that is not otherwise available on the local DMA broadcast stations (or on any other station already carried on the system)"). WVIR–TV opposed the DISH proposal, stating "DISH's suggestion that a broadcaster seeking to be added to a market provide evidence of popular demand by viewers goes far beyond what is required in the cable context and should not be adopted." WVIR–TV Reply at 5.

⁹⁸ See *supra* para. 18.

carriage context will apply only to the specific stations and communities addressed in a particular market modification petition.¹¹⁰ NAB, the only commenter on this issue, supports our conclusion.¹¹¹ Our conclusion is consistent with the cable carriage rules¹¹² and is based on the statute's language granting authority to modify markets "with respect to a particular commercial television broadcast station."¹¹³ It is also reasonable because market modification determinations are highly fact-specific and turn on whether a particular commercial television broadcast station serves the needs of a specific community.

24. We also adopt our tentative conclusion that we will consider market modification requests separately in the cable and satellite contexts.¹¹⁴ NAB and DISH, the only commenters on this issue, support our conclusion.¹¹⁵ We find this preferable given the differences in service area and community sizes between cable systems and satellite carriers.¹¹⁶ In contrast to the cable context, we must also consider the technical and economic capability of the satellite carriers at issue to effectuate a satellite market modification.¹¹⁷

25. Finally, we adopt our tentative conclusion that market modification requests will apply only to the satellite carrier or carriers named in the request.¹¹⁸ NAB and DISH support our conclusion,¹¹⁹ although DIRECTV believes this is unnecessary if we allow

each satellite carrier to carry a station based on its respective spot beam coverage.¹²⁰ We disagree with DIRECTV that this is unnecessary. Instead, we find that a modification may not always appropriately apply to both carriers. For example, the carriers' spot beams may be different, even though they are serving the same market, and thus one may have an infeasibility defense while the other may not.

26. *Prior Determinations.* We adopt our tentative conclusion that prior cable market modification determinations will not automatically apply in the satellite context.¹²¹ We also decline to establish a presumption that prior cable determinations should apply to satellite markets.¹²² DISH, NAB, and DIRECTV support these conclusions,¹²³ while Gray proposes that we establish a presumption that prior cable market modification determinations should apply to satellite markets.¹²⁴ We find the same reasoning that requires us to consider market modification requests separately in the cable and satellite contexts also makes it inadvisable to apply prior cable market determinations to satellite markets. As discussed above, market modifications are specific to the stations, operators/carriers, and communities addressed in a particular market modification petition, as of the time of the petition. Given the differences in service areas and community sizes between cable systems and satellite carriers, and changes that may have occurred since the time of the cable petition, we conclude that it would not be reasonable to automatically apply prior cable market determinations to satellite carriers or establish a rebuttable presumption. We note that Gray's proposal would have us establish a presumption for an entire county based on a finding with respect to a single cable community or several cable communities within a county.¹²⁵

Moreover, we note that satellite carriers did not have the opportunity to participate in these prior market modification proceedings.¹²⁶ We also agree with DIRECTV that establishing a presumption would be inconsistent with our statutory obligation to evaluate modifications based on the statutory factors.¹²⁷ However, as noted in the NPRM, historic carriage is one of the five factors the Commission must consider in evaluating market modification requests and would carry weight in a market modification determination in the satellite context.¹²⁸ We agree with NAB that consideration of this factor will give sufficient weight to prior decisions without the need to establish a presumption.¹²⁹

27. *Carriage after a market modification.* We adopt our tentative conclusion that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to section 76.66 of the rules) by virtue of a change in the market definition (by operation of a market modification pursuant to section 76.59 of the rules) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier.¹³⁰ This is consistent with the cable rule.¹³¹ NAB and Gray support this conclusion,¹³² while DISH expresses concern that, as a result of a market modification (and an existing retransmission consent agreement with the involved station), it could have to carry and pay retransmission consent fees to two stations from different states but that are affiliated with the same network.¹³³ DISH proposes that a station's election with respect to the communities added by a market modification should be limited to must-carry for the remainder of the carriage election cycle.¹³⁴ NAB responds that

assignment of additional communities to a television station's cable carriage market, the FCC should presume that the county or counties in which those communities are located should be added to the station's DBS market."

¹²⁶ DIRECTV correctly observes that there is no official list of previously-granted modifications. DIRECTV *ex parte* (dated June 11, 2015) at 2.

¹²⁷ DIRECTV Reply at 9.

¹²⁸ See 47 U.S.C. 338(l)(2)(B)(i)(I) (whether the station, or other stations located in the same area—"have been historically carried on the cable system or systems within such community").

¹²⁹ NAB Comments at 6.

¹³⁰ NPRM, para. 18. See 47 CFR 76.66(d)(6).

¹³¹ See 47 CFR 76.64(f)(5).

¹³² NAB Comments at 6; Gray Comments at 8; NAB Reply at 3.

¹³³ See DISH Comments at 9–10.

¹³⁴ See DISH *ex parte* (dated June 11, 2015) at 2. We note that DISH initially agreed that a station should elect either retransmission consent or must-

Continued

¹¹⁰ NPRM, para. 16.

¹¹¹ NAB Comments at 5.

¹¹² See *Must Carry Order*, para. 47 n.139 (stating that "the statute is intended to permit the modification of a station's market to reflect its individual situation"); 47 CFR 76.59. We note that this is also consistent with the Commission's previous determination that stations may make a different retransmission consent/mandatory carriage election in the satellite context from that made in the cable context. See *DBS Broadcast Carriage Report and Order*, para. 23.

¹¹³ 47 U.S.C. 338(l)(1).

¹¹⁴ NPRM, para. 16. This is consistent with our conclusion below that *prior* cable market modification determinations will not automatically apply in the satellite context; see *infra* para. 26.

¹¹⁵ DISH at Comments 4; NAB Comments at 5–6.

¹¹⁶ See DISH Comments at 4. See also *infra* section III.F. (deciding that a "satellite community" for market modification purposes can be defined by a county).

¹¹⁷ See DISH Comments at 4–5.

¹¹⁸ NPRM, para. 16. This is also consistent with the satellite carriage election process. See *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, CS Docket No. 00–96, Order on Reconsideration, FCC 01–249, para. 62, 66 FR 49124, Sept. 26., 2001 (*DBS Must Carry Reconsideration Order*) ("where there is more than one satellite carrier in a local market area, a television station can elect retransmission consent for one satellite carrier and elect must carry for another satellite carrier").

¹¹⁹ DISH at Comments 5; NAB Comments at 5.

¹²⁰ DIRECTV Comments at 9.

¹²¹ NPRM, para. 17.

¹²² NPRM, para. 17.

¹²³ See DISH Comments at 4–5; NAB at 5–6; DIRECTV Reply at 9–10. See also DIRECTV *ex parte* (dated June 11, 2015) at 2; DISH *ex parte* (dated June 11, 2015) at 2.

¹²⁴ Gray Comments at 4–5 ("When a satellite market modification is requested for a county or counties where a previous cable market modification has been granted, the FCC should require only that a petitioner file a simple request that the station's satellite market be modified to include the counties that include the communities associated with the earlier modification. Any party opposing the modification would have the burden of demonstrating that, notwithstanding the outcome of the earlier proceeding, the statutory factors do not support a market modification in the satellite context.")

¹²⁵ Gray Comments at 4–6 ("If a previous market modification proceeding has resulted in the

“[s]atellite carriers cannot lawfully obtain a ‘free pass’ to carry retransmission consent stations without negotiating the prices, terms and conditions of such consent in any geographic area.”¹³⁵ Alternatively, DISH asks the Commission to “clarify that notwithstanding any retransmission consent agreements that would automatically entitle the station to carriage in additional geographic areas due to a market modification, the station must negotiate a new retransmission consent agreement for the new areas.”¹³⁶ NAB responds that “DISH and other satellite carriers must abide by provisions of the Communications Act and FCC rules governing retransmission consent and must-carry within a station’s market, including areas affected by a market modification.”¹³⁷

28. We reject DISH’s proposal to mandate a must-carry election for the remainder of the current election cycle because it directly contravenes section 325 of the Act and would be inconsistent with our satellite carriage rules.¹³⁸ As with any other election for satellite carriage, we find that when a station’s market is modified for purposes of satellite carriage, then the station is entitled to elect either retransmission consent pursuant to section 325 or mandatory carriage pursuant to section 338 with respect to the new community or communities added to its market by the modification.¹³⁹ This is also consistent with the cable market modification process¹⁴⁰ and, moreover, is required by application of sections 325 and 338 of the Act.¹⁴¹ Section 338(a)(1) requires that a satellite carrier must carry upon

request all local television stations seeking carriage in any market in which the carrier provides local-into-local service, subject to section 325(b) of the Act.¹⁴² Section 325(b)(1) prohibits an MVPD from retransmitting the signal of a broadcast station except “with the express authority of the originating station.”¹⁴³ The statute provides for no exception in the market modification context to the retransmission consent requirement. Thus, we reject DISH’s argument that the silence of section 102 of the STELAR with respect to retransmission consent means that Congress could not have intended retransmission consent to apply to the carriage of stations in communities added by market modification.¹⁴⁴ To the contrary, considering the provisions together in context, we believe the better reading of the statute is that the retransmission consent requirement applies in this context given the absence of an express indication otherwise in either section 102 of STELAR or the retransmission consent provisions.¹⁴⁵ We note that, while the network programming may be the same, the two stations would likely be providing very different local programming (e.g., different news, sports, advertising and political programming), each of which may be of interest to the new community, because the stations are licensed to different communities and particularly if the stations are located in different states. Finally, with respect to DISH’s proposal that we prevent application of an existing retransmission consent agreement containing a provision requiring carriage pursuant to its terms in the event the Commission modifies a given

market, DISH provides no reasoning that persuades us to abrogate a bargained-for and agreed-to contractual provision between a broadcaster and a satellite carrier that expressly contemplates the addition of communities through the market modification process.¹⁴⁶ We note, however, that the very purpose of this provision of the STELAR is to provide consumers with access to news, politics, sports, emergency and other programming specifically related to their home state.¹⁴⁷ Accordingly, we expect broadcasters and satellite carriers alike will make the needs and expectations of orphan county consumers the priority in negotiating retransmission consent following a successful modification petition.¹⁴⁸ We will monitor this situation closely and will take further action if such monitoring indicates that the purpose of this provision is not being effectuated.

29. We also adopt our tentative conclusion that a satellite carrier must commence carriage within 90 days of receiving the request for carriage from the television broadcast station.¹⁴⁹ In the record, NAB and Gray support the 90-day deadline,¹⁵⁰ while DISH asks for 120 days.¹⁵¹ The 90-day deadline is consistent with our cable rules,¹⁵² as well as with existing carriage procedures involving the addition of a new station to a carrier’s lineup¹⁵³ and we see no reason to deviate from the 90-day deadlines in these similar contexts.¹⁵⁴ Thus, we conclude that 90

carry with the applicable satellite carriers for the new geographic area within 30 days of the market modification order. DISH Comments at 5.

¹³⁵ NAB Reply at 2.

¹³⁶ DISH *ex parte* (dated June 11, 2015) at 2. DISH’s proposal recognizes that its concern is a short-term problem that would last for the length of any existing retransmission consent agreement. *Id.* In DISH’s scenario, after expiration of the existing agreements with the two same-network affiliates, we expect the marketplace would resolve this concern.

¹³⁷ NAB Reply at 1, 3–5. See also 47 U.S.C. 325, 338 and 47 CFR 76.64 through 76.66.

¹³⁸ See 47 U.S.C. 325(b) and 47 CFR 76.66.

¹³⁹ See 47 CFR 76.66(c) (“In television markets where a satellite carrier is providing local-into-local service, a commercial television broadcast station may elect either retransmission consent, pursuant to section 325 of title 47 United States Code, or mandatory carriage, pursuant to section 338, title 47 United States Code.”). We thus agree with NAB that “a station electing retransmission consent with regard to a community or communities that become part of its defined market following a modification request is the same as any other station making a retransmission consent election.” NAB Reply at 3.

¹⁴⁰ See 47 CFR 76.64(f)(5).

¹⁴¹ See 47 U.S.C. 325, 338.

¹⁴² 47 U.S.C. 338(a)(1).

¹⁴³ 47 U.S.C. 325(b)(1).

¹⁴⁴ See DISH Comments at 9–10. DISH also appears to argue that, because STELAR provides that a market modification could operate both to add communities to, and delete communities from, a station’s local market, the Commission could delete the community at issue from the existing network affiliate’s local market at the same time that it adds the new community to the local market of the same-network station seeking the market modification. *Id.* at 10. Under current rules, however, to delete the community at issue from the existing network station’s local market, DISH would have to file a separate petition to modify that station’s local market, based on the statutory factors. There is nothing in the record that persuades us to alter the existing process.

¹⁴⁵ See STELAR section 102. See also 47 U.S.C. 325(b), 338(c)(1). We also disagree with Gray’s argument that the “substantial duplication” exceptions to the satellite mandatory carriage rules should not apply to stations in communities that have been added to their markets via the market modification process. Gray Comments at 8. Section 338(c)(1) speaks clearly on this point in permitting but not requiring a satellite carrier to carry more than one network affiliate licensed to the same state. 47 U.S.C. 338(c)(1).

¹⁴⁶ See DISH *ex parte* (dated June 11, 2015) at 2 (stating that “[m]any retransmission consent contracts require DBS providers to carry a station’s signal throughout its local market, even if that local market’s boundary is changed by FCC action—meaning the DBS provider could be obligated to pay retransmission consent fees to two network-affiliated stations in a given area pursuant to a market modification, even if these stations duplicate one another.”). See also NAB Reply at 3 (opposing DISH’s various proposals to avoid paying retransmission consent fees).

¹⁴⁷ See *Senate Commerce Committee Report* at 11.

¹⁴⁸ See *supra* note 59 (describing the impact on consumers of residing in orphan counties) and note 65 (noting Commission receipt of at least 165 consumer complaints in 2015 that their satellite carrier does not carry a particular station).

¹⁴⁹ NPRM, para. 18.

¹⁵⁰ NAB Comments at 6; Gray Comments at 8; NAB Reply at 3.

¹⁵¹ DISH Comments at 5–6. We note that 120 days is inconsistent with DISH’s proposal that requests for carriage use the procedures governing carriage of new stations. DISH Comments at 5.

¹⁵² See 47 CFR 76.64(f)(5).

¹⁵³ See 47 CFR 76.66(d)(3). We note that DISH’s proposal for 120 days to commence carriage is inconsistent with DISH’s proposal that requests for carriage use the procedures governing carriage of new stations. See DISH Comments at 5.

¹⁵⁴ DISH speculates that “there may be time-consuming technical or billing changes, among other things, necessary for the satellite carrier to undertake” in order to effectuate carriage of a market modification. DISH Comments at 5–6. We

days is an appropriate amount of, time for satellite carriers to commence carriage. We note that, as is the case in the cable context, the filing of a petition for reconsideration or application for review does not automatically stay the effect of a Bureau order to *add* a station to a new community; however, based on the directive in section 338(l)(3)(B)—the satellite counterpart to cable's section 614(h)(1)(C)(iii)—a petition for reconsideration or application for review would automatically stay a Bureau order to *delete* a station in a community.¹⁵⁵ Finally, we adopt our tentative conclusion that the carriage election must be made in accordance with the procedures set forth in section 76.66(d)(1).¹⁵⁶

see no evidence in the record to suggest that commencement of carriage after a market modification is more difficult or complicated in the satellite context or more difficult or complicated than adding a new station to a carrier's lineup.

¹⁵⁵ See NAB Comments at 6–7 (seeking clarification that “the filing of a petition for reconsideration or application for review does not relieve a cable or satellite provider of its obligation to commence carriage pursuant to a broadcaster’s must carry election or begin retransmission consent negotiations consistent with good faith requirements”). In the *Cable Market Modification Second Report and Order*, paras. 63–64, the Commission found that section 614(h)(1)(C)(iii)—the cable counterpart to section 338(l)(3)(B)—“prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions. Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.” See *Cablevision Systems Corporation*, CSR–3873–A, Memorandum Opinion and Order, DA 96–1231, para. 11 (CSB, rel. Aug. 2, 1996) (explaining that “if we were to accept the general arguments for granting the stay raised by Time Warner and Cablevision, every initial market modification decision adverse to any cable operator would be postponed while either the Bureau or Commission acts on the petition for reconsideration or application for review. Such a result would unduly delay qualified television stations from realizing their statutory cable carriage rights.”). See also *Dynamic Cablevision of Florida Ltd., et al.*, CSR–4722–A, CSR–4707–A, Memorandum Opinion and Order, FCC 97–191, para. 20 (rel. Jul. 1, 1997) (“hold[ing] that a commercial television station may not be deleted from a cable system until the Commission has completed all administrative proceedings pertaining to a particular market redefinition There can be no question that Commission reconsideration or review of a Bureau market redefinition ruling is a ‘proceeding’ pursuant to the market re-definition section.”).

¹⁵⁶ *NPRM*, para. 18. Section 76.66(d)(1) requires that an election request made by a television station must be in writing and sent to the satellite carrier’s principal place of business, by certified mail, return receipt requested. 47 CFR 76.66(d)(1)(ii). The rule requires that a television station’s written notification shall include the following information: (1) Station’s call sign; (2) Name of the appropriate station contact person; (3) Station’s address for

D. Technical or Economic Infeasibility Exception for Satellite Carriers

30. We adopt our proposal to codify the language of section 338(l)(3), which provides that “[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”¹⁵⁷ In enacting this provision, Congress recognized that the unique nature of satellite television service may make a particular market modification difficult for a satellite carrier to effectuate and, thus, exempted the carrier from the resulting carriage obligation.¹⁵⁸ According to the record, spot beam coverage and capacity constraints (discussed below) are the primary technical and economic impediments to carriage facing both satellite carriers. Based on the constraints described in the record, we conclude that it is *per se* not technically and economically feasible for a satellite carrier to provide a station to a new community¹⁵⁹ that is, or to the extent to which it is,¹⁶⁰ outside the relevant spot beam¹⁶¹ on which that station is

purposes of receiving official correspondence; (4) Station’s community of license; (5) Station’s DMA assignment; and (6) Station’s election of mandatory carriage or retransmission consent. 47 CFR 76.66(d)(1)(iii). The rule also requires that, within 30 days of receiving the request for carriage from the television broadcast station, a satellite carrier must notify the station in writing that it will not carry the station, along with the reasons for such decision, or that it intends to carry the station. 47 CFR 76.66(d)(1)(iv). DISH proposes that requests for carriage follow the procedures outlined in 47 CFR 76.66(d)(3), which governs written requests for carriage by new stations. DISH Comments at 5. However the carriage election procedures outlined in 47 CFR 76.66(d)(3) expressly refer to the procedures set forth in 47 CFR 76.66(d)(1). See 47 CFR 76.66(d)(1)(ii) through (iii) and (d)(3)(ii). The only difference is timing and even DISH agrees with the filing of an election within 30 days of the market modification order which is consistent with the 30 days in 47 CFR 76.66(d)(1).

¹⁵⁷ 47 U.S.C. 338(l)(3). See 47 CFR 76.59(e).

¹⁵⁸ *Senate Commerce Committee Report* at 11 (recognizing “that there are technical and operational differences that may make a particular television market modification difficult for a satellite carrier to effectuate.”).

¹⁵⁹ For purposes of our discussion, by “new community” we refer to a new community to be added to a station’s local television market by grant of the prospective market modification. As discussed below in section III.F., a “community” for purposes of a satellite market modification is defined as a county.

¹⁶⁰ This *per se* exemption is limited to areas outside the carrier’s spot beam. Thus, a satellite carrier will be required to carry the station to those areas inside the relevant spot beam even if part of the new community (*i.e.*, county) is outside the relevant spot beam, in the absence of additional evidence of infeasibility. See *infra* paras. 34–35 (Partial Spot Beam Coverage).

¹⁶¹ Satellite carriers use spot beams to offer local broadcast stations. DIRECTV Comments at 2.

currently carried.¹⁶² We adopt our tentative conclusion that the satellite carrier has the burden to demonstrate that the resulting carriage from a market modification “is not technically and economically feasible . . . by means of [a carrier’s] satellites in operation.”¹⁶³ In this regard, we will allow satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification, under penalty of perjury (as described herein).¹⁶⁴ In addition, with respect to other possible bases for a carrier to assert that carriage would be technically or economically infeasible, such as costs associated with changes to customer satellite dishes to accommodate reception from different orbital locations, we will review these assertions on a case-by-case basis. To avoid unnecessary burdens on broadcasters, satellite carriers, county governments and the Commission, we establish a process for prospective petitioners to obtain information from a satellite carrier regarding feasibility of carriage by the carrier prior to the filing of a market modification petition. We require satellite carriers to respond to broadcaster and county government requests for information about the feasibility of prospective market modifications with certifications and afford prospective petitioners with a process for Commission review of such certifications before filing a market modification petition. The Commission

DIRECTV explains that “[s]pot-beam technology divides up a portion of the bandwidth available to a satellite into beams that cover limited geographic areas. Doing so allows particular sets of frequencies to be reused many times. This spectral efficiency unlocked the potential for satellite carriers to offer local broadcast signals in the late 1990s, and it enables satellite carriers to offer local service today.” *Id.*

¹⁶² See DIRECTV Comments at 9 (asking the Commission to find that “it is *per se* technically and economically infeasible for a satellite carrier to provide a station to subscribers who live in an area outside of the spot beam on which that station is currently carried.”). For purposes of our discussion, we will refer to the spot beam on which the station is currently carried as the “relevant spot beam.”

¹⁶³ *NPRM*, para. 19. See 47 U.S.C. 338(l)(3). The legislative history also indicates “that claims of the existence of such difficulties should be well substantiated and carefully examined by the [Commission] as part of the petition consideration process.” *Senate Commerce Committee Report* at 11.

¹⁶⁴ We will refer to this as the “detailed certification.” See *infra* at section III.D.2. We base our proposal on DIRECTV’s suggested certification, which we find would meet the carrier’s burden to demonstrate spot beam coverage infeasibility. See DIRECTV *ex parte* (dated Jul. 9, 2015) at 3–4. To ensure the ongoing accuracy and veracity of the spot beam coverage infeasibility certification process, we may, in particular cases, require a satellite carrier to provide us with supporting documentation for the certification. 47 U.S.C. 154(i), 154(j), 308(b), 403.

will not proceed to evaluate the five factors for a market modification with respect to a particular satellite carrier where it is shown that the resulting carriage obligation would not be technically and economically feasible at the time of the market determination.

1. Technical or Economic Impediments to Carriage

31. The NPRM sought comment on the types of technical or economic impediments contemplated by section 338(l)(3) that would make satellite carriage infeasible in a new community.¹⁶⁵ The NPRM also sought comment on any objective criteria by which the Commission could determine technical or economic infeasibility, such as spot beam coverage constraints.¹⁶⁶ In response, we received very few comments on potential impediments except infeasibility due to insufficient spot beam coverage and due to costs of making changes to customer satellite dishes. DIRECTV described spot beam coverage and capacity constraints as being the key technical and economic impediments to carriage.¹⁶⁷ DIRECTV asserted, and DISH agreed, that carriage should be considered *per se* infeasible if the new community is outside the coverage of the spot beam that carries the station.¹⁶⁸ The carriers explain that if the spot beam on which a station is being carried does not cover the new community, a satellite carrier “has no good [carriage] options available to it.”¹⁶⁹ Even if the spot beam on which a station is being carried covers the new community, DISH adds that carriage of the station may be infeasible if the station is carried on a different satellite at a different orbital position than the satellite providing the existing local

broadcast stations to the market.¹⁷⁰ DISH explains that “it is possible” that this situation could require DISH to make equipment changes at “all or most households” in the new community.¹⁷¹ The broadcast comments do not substantively refute spot beam coverage and capacity constraints as legitimate technical or economic impediments, except to say that such constraints must be appropriately demonstrated, consistent with the statute and legislative history.¹⁷²

32. We are persuaded by the satellite carriers that if the relevant spot beam does not cover the new community, then it is not technically and economically feasible for the carrier to provide the station to such new community.¹⁷³ In such a scenario, the only available options would be to place the station on the satellite carrier’s CONUS beam¹⁷⁴ to reach subscribers in the new community, redirect each and every spot beam on the satellite in order to enable the relevant spot beam to cover the new community,¹⁷⁵ or place

the station on a second, neighboring spot beam that does cover the new community, if such a beam exists and has capacity. DIRECTV argues that it would be an “inefficient use of resources to devote a CONUS beam, which can be seen throughout the United States, to provide coverage to a single or handful of communities.”¹⁷⁶ Next, DIRECTV argues that, if the new community is covered by a different, neighboring spot beam than the one on which the station is carried, it would almost always lack space on such neighboring spot beam.¹⁷⁷ Moreover, DIRECTV explains that, even if there were space, it “would have to reserve capacity on the entire ‘neighboring’ spot beam—capacity that could otherwise be used for a new station or a multicast signal carried throughout the neighboring market.”¹⁷⁸ Thus, it would be inefficient for the carrier to use that space on the neighboring spot beam for a station that could only be received by subscribers in a small part of the local market served by such spot beam.¹⁷⁹

¹⁷⁰ See DISH *ex parte* (dated Jun. 11, 2015) at 3; DISH *ex parte* (dated Jul. 8, 2015) at 1.

¹⁷¹ DISH *ex parte* (dated Jun. 11, 2015) at 3; DISH *ex parte* (dated Jul. 8, 2015) at 1 (explaining that “DISH offers local broadcast stations on spot beams on several satellites at a variety of different orbital locations. Therefore, it is possible that households in a given local market might be unable to receive a new broadcast station that was assigned by Nielsen to a different market unless the households, among other things, have a second satellite dish installed, have an existing satellite dish replaced, or have an existing satellite dish repositioned. Where this is the case, it is possible that all or most households in the geographic area impacted by a market modification would require a DISH technician to visit their home to make these equipment changes, which would be technically and economically infeasible.”). (DIRECTV does not indicate that it would have this same problem.)

¹⁷² See Gray Comments at 6–7 (“Gray understands and appreciates the technical burdens that satellite operators face in adding signals to their satellite systems, but . . . Satellite operators therefore should be permitted to claim this exemption only in limited circumstances”); NAB Comments at 9 (“NAB urges the Commission to require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community”); NAB Reply at 2–3 (saying that claims of infeasibility must be “well substantiated and carefully examined”); WVIR-TV Reply at 2, para. 2 (asserting that the purpose of STELAR would be defeated if satellite operators do not “bear the burden of proving the validity of an assertion of infeasibility”); WVIR-TV *ex parte* (dated Jul. 2, 2015) at 2 (same).

¹⁷³ See DIRECTV Reply at 7; DISH *ex parte* (dated Jun. 11, 2015) at 3.

¹⁷⁴ DIRECTV carries all of its national programming on satellite beams that cover the entire contiguous United States (“CONUS”). DIRECTV Comments at 2. “DIRECTV carries New York and Los Angeles stations on CONUS beams, but only because those stations are offered throughout the country as distant signals pursuant to 17 U.S.C. 119 and 47 U.S.C. 339.” DIRECTV Comments at 2, n.3.

¹⁷⁵ See DIRECTV Comments at 6–7, n.16.

¹⁷⁶ DIRECTV Reply at 7; DIRECTV Comments at 8. The Commission has previously recognized that “to carry a local channel on a transponder designated for CONUS would be particularly inefficient as that channel could only be permissibly viewed in a single DMA.” *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, CS Docket No. 00–96, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, FCC 08–86, para. 11, 73 FR 24502, May 5, 2008 (*Satellite DTV Carriage Order*). We note, however, that if the station seeking the market modification was already being carried on a CONUS satellite (e.g., the New York or Los Angeles stations), then carriage of such station would not be *per se* infeasible in a new community.

¹⁷⁷ DIRECTV explains that it “has designed its spot beams to carry only the primary signals of stations within the local markets they cover. The vast majority of its spot beams are now currently full. In most cases, DIRECTV could not add a station to a ‘neighboring’ spot beam without removing one of the stations already on that beam.” DIRECTV Comments at 8, n.24.

¹⁷⁸ DIRECTV Comments at 9 (explaining that “[r]eserving spot-beam capacity for a station that could only be received in at most a handful of communities would represent a significant waste of spectral resources.”); DIRECTV Reply at 8 (explaining that devoting capacity to the station on a neighboring spot beam “could preclude DIRECTV from carrying a new station that later commences service” and also “would certainly preclude DIRECTV from using the capacity in question to benefit viewers throughout the [local television market at issue],” such as by adding a multicast feed from a local station.).

¹⁷⁹ We thus disagree with NAB that a satellite carrier should be required to show that the station could not be added to a spot beam different than the one on which the station is currently carried that does cover the new community. NAB *ex parte* (dated Jul. 15, 2015) at 3 (arguing that “the DBS carrier should be required to certify that the spot beam that does serve the affected communities does not have the capacity to carry the station unless

¹⁶⁵ In particular, the NPRM sought comment on whether spot beam contour diagrams should be required to demonstrate spot beam coverage limitations. NPRM, para. 20 (“Should we require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community?”).

¹⁶⁶ NPRM, para. 20 (asking “Are there any objective criteria by which the Commission could determine technical or economic infeasibility? For example, the Commission has recognized that spot beam coverage limitations, in the provision of local-into-local service context, may be a legitimate technical impediment. Under what circumstances would the limitations or coverage of a spot beam be a sufficient basis for a satellite carrier to prove that carriage of a station in the community at issue is not technically and economically feasible?”).

¹⁶⁷ See DIRECTV Comments at 3–4, 8–9. In its comments, DISH generally observed that a satellite carrier may be unable as a technical or financial matter to comply with a market modification. DISH Comments at 7.

¹⁶⁸ See DIRECTV Reply at 7; DISH *ex parte* (dated Jun. 11, 2015) at 3.

¹⁶⁹ DISH *ex parte* (dated Jun. 11, 2015) at 3.

Finally, DIRECTV argues that redirecting the entire array of spot beams on the satellite, would cause unacceptable consequences to existing local service.¹⁸⁰ We agree with these points and conclude that each of these options are *per se* technically and economically infeasible.¹⁸¹ Accordingly, we conclude that “it is *per se* technically and economically infeasible for a satellite carrier to provide a station to subscribers who live in an area outside of the spot beam on which that station is currently carried.”¹⁸² This conclusion is consistent with the Commission’s past recognition and acceptance of the service constraints associated with the use of spot beams.¹⁸³ This means that, if a carrier shows that the relevant spot beam does not provide coverage to the new community, then that is a *per se* demonstration of infeasibility. Thus, for example, a carrier would not need to show that there is no space on a neighboring spot beam or that it cannot reconfigure a spot beam to effectuate carriage.

33. We recognize that there may be other technical or economic

another channel is deleted (or other technical or economic reason”). We find that the financial and opportunity costs associated with requiring a carrier to use scarce capacity on a second spot beam for a station that could only be received by subscribers in a small part of the local market served by such spot beam makes carriage on such spot beam *per se* infeasible. See DIRECTV Reply at 9.

¹⁸⁰ See DIRECTV Comments at 6–7, n.16 (explaining that it generally cannot “move” spot beams on a satellite—except for SPACEWAY satellites which are being replaced—and that it could “slightly adjust the entire array of spot beams on the satellite simultaneously,” but this would affect the local service provided by all of the spot beams on the satellite, thus “disrupt[ing] [local] service across dozens of markets and negat[ing] DIRECTV’s efforts to optimize population coverage.”); DIRECTV Reply at 7 (“moving the entire array of spot beams means subscribers in portions of the [local television market at issue] and many other markets would lose all the local stations they now receive.”).

¹⁸¹ See DIRECTV Reply at 7–9; DISH *ex parte* (dated Jun. 11, 2015) at 3.

¹⁸² DIRECTV Comments at 9; DISH *ex parte* (dated Jun. 11, 2015) at 3.

¹⁸³ In the *DBS Broadcast Carriage Report and Order*, the Commission allowed satellite carriers to use spot beam technology to provide local-into-local service, even if the spot beam did not cover the entire market. *DBS Broadcast Carriage Report and Order*, para. 42. The Commission “observe[d] that section 338 does not require a satellite carrier to serve each and every county in a television market. Rather, it requires that in the areas it does provide local-into-local service, it must carry all local television stations subject to carriage under the statute.” *Id.* The Commission “recognize[d] that there are some markets, such as the Denver DMA encompassing counties in four states, that are geographically expansive” and that “[a] spot beam may not be able to cover the entire DMA in these instances, and to make the satellite carrier reconfigure its spot beam may deprive it of capacity to serve additional markets with local-into-local coverage.” *Id.*

impediments to carriage that could qualify for the infeasibility exception. For example, DISH explains that it provides local broadcast stations from spot beams on several satellites at a variety of different orbital locations and that each subscriber’s satellite dish must be pointed and configured to receive signals from a particular orbital location.¹⁸⁴ Therefore, even if the station is on a spot beam that covers the new community, carriage of the station in the new community could still be infeasible if the station is carried on a different satellite at a different orbital location than the satellite providing local service to that community, because such carriage would require DISH to install a second satellite dish, replace an existing satellite dish, or reposition an existing satellite dish, at “all or most households” in the new community.¹⁸⁵ We do not have sufficient information in the record to determine that the costs of customer equipment changes to accommodate reception from different orbital positions should be treated as *per se* infeasible. We will therefore consider assertions of this and other types of infeasibility on a case-by-case basis.

34. *Partial Spot Beam Coverage.* The NPRM sought comment on how to handle a situation in which only part of a community could be served with the relevant spot beam.¹⁸⁶ The satellite carriers oppose having to serve part of a community if the entire community is not covered by the spot beam,¹⁸⁷ but DIRECTV says it determines spot-beam coverage based on zip codes and asserts that it would be able to serve a

¹⁸⁴ DISH *ex parte* (dated Jul. 8, 2015) at 1; DISH *ex parte* (dated Jun. 11, 2015) at 3.

¹⁸⁵ See DISH *ex parte* (dated Jul. 8, 2015) at 1; DISH *ex parte* (dated Jun. 11, 2015) at 3 (arguing such situation “would impose very significant costs” and should constitute economic infeasibility). In this presumably rare situation, the station at issue is on a spot beam that covers the new community, but this spot beam is different than the spot beam providing local service to the new community. (In other words, there are two spot beams that cover, to some extent, the new community at issue.) In addition, the two spot beams are on different satellites located at different orbital positions and, therefore, subscribers in the new community will need two satellite dishes pointed in different directions to get both the original local stations from one spot beam and the new local station from the second spot beam.

¹⁸⁶ NPRM, para. 20 (“To the extent that a satellite carrier can provide the station at issue to some, but not all, subscribers in the community, should we allow or require the carrier to deliver the station to subscribers in the community who are capable of receiving the signal?”).

¹⁸⁷ See DISH Comments at 8–9 (arguing that “any finding of technical or economic infeasibility should excuse a satellite carrier entirely from accommodating a market modification request, even if the satellite carrier can provide the station at issue to some, but not all, relevant subscribers”); DIRECTV Reply at 11, n.36 (agreeing with DISH).

community defined as a county based on those zip codes within the county.¹⁸⁸ NAB argues, however, that if carriage is viable within portions of a community that is the subject of a market modification request, then satellite carriers should be required to carry the station in those areas.¹⁸⁹ We conclude that, if a satellite carrier can provide the station to only part of a new community, then it must do so.

35. As discussed above, the statute requires a satellite carrier to carry a station pursuant to a market modification, unless it is not technically and economically feasible for the carrier to do so. Given the relatively large size of many counties, we conclude that it would be a disservice to consumers, and would not fully effectuate the mandate of the satellite market modification provisions of the STELAR, to presume that partial carriage to a county-defined community is *per se* infeasible. We are not persuaded by DISH that requiring such partial coverage of a county would necessarily “be burdensome and cause customer confusion for a satellite carrier to target the carriage of a station down to such a granular level, for example by providing a different local broadcast station to a subset of subscribers.”¹⁹⁰ DISH provides no evidence of the burdens associated with partial carriage. Any “confusion” is outweighed by the benefits of providing the added station to the customers who can receive it, consistent with Congressional intent in expanding market modification to satellite carriage. On a case-by-case basis, we will consider whether the area of a new community in which service is feasible is so *de minimis* that addition of that community to the station’s market is effectively infeasible. We also disagree with DIRECTV to the extent that it claims that “there is no underlying requirement to provide service in any particular area to begin with,” and therefore “the Commission need not ‘excuse’ any particular [market modification].”¹⁹¹ Pursuant to the “carry one, carry all” statutory requirement, a satellite carrier must carry, on request, all local television broadcast stations’ signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license.¹⁹²

¹⁸⁸ See DIRECTV Reply at 11–12.

¹⁸⁹ See NAB Comments at 9.

¹⁹⁰ DISH Comments at 8–9.

¹⁹¹ DIRECTV Reply at 11, n.36.

¹⁹² See 47 U.S.C. 338. This requirement is subject to exceptions for duplicating stations and lack of good quality signal, as specified by statute and

Furthermore, the statutory language of the infeasibility exception in section 338(l)(3) contemplates that a carriage obligation would result from a market modification.¹⁹³ If carriage were merely discretionary for the carrier, then there would be no need for the infeasibility exception to relieve the carrier of a carriage obligation. Therefore, if the carrier is providing local television broadcast stations to the new community pursuant to the local statutory copyright license, then it must also provide a station that becomes eligible for carriage as a local station in the new community by operation of the market modification.¹⁹⁴

2. Demonstrating Infeasibility

36. Based on the record, we expect the vast majority of satellite carrier claims of infeasibility will be related to insufficient spot beam coverage. Because of the technical complexities involved in demonstrating spot beam coverage infeasibility, including the use of proprietary confidential information, we establish a streamlined process for carriers to demonstrate spot beam coverage infeasibility through the use of detailed certifications under penalty of perjury, based on a proposal by DIRECTV. Because of the limited record with respect to other possible claims of infeasibility, and our expectation that such other claims will be relatively rare, we do not at this time establish a detailed certification process for demonstrating other types of infeasibility. Instead, carriers will be required to demonstrate other types of infeasibility through the submission of evidence specifically demonstrating the technical or economic reason that carriage is infeasible. Although prospective petitioners will have two options for seeking a Commission

determination about the carrier's claim of infeasibility (*i.e.*, filing a market modification petition or filing a separate petition beforehand solely with respect to the infeasibility issue), the requirements for demonstrating infeasibility are the same for both options.

37. The NPRM tentatively concluded that the satellite carrier has the burden to demonstrate technical or economic infeasibility and invited comment on the type of evidence needed to prove such infeasibility claims.¹⁹⁵ Most commenters, including the broadcasters and DISH, agree that the statute places the burden on satellite carriers to demonstrate infeasibility;¹⁹⁶ however, satellite carriers contend that a certification should be sufficient to meet its burden,¹⁹⁷ while broadcasters say an "unverifiable" certification would be inadequate to meet their burden under the statute and that a carrier should be required to provide documentation that demonstrates infeasibility.¹⁹⁸

38. We adopt our tentative conclusion that the statute places the burden on satellite carriers to demonstrate infeasibility if they assert that carriage of a station in a new community would be technically or economically infeasible. Our conclusion is consistent with the legislative history that claims of infeasibility be "well substantiated and carefully examined by the [Commission]."¹⁹⁹ Moreover, we agree with commenters that, as a practical

matter, only the satellite carriers have the specific information necessary to determine if the carriage contemplated in a market modification would not be technically and economically feasible by operation of their satellites.²⁰⁰

39. We adopt a certification process for carriers to demonstrate spot beam coverage infeasibility that should avoid imposing undue expense on, or compromising the confidential business information of, the satellite carriers while also providing the Commission with an appropriate basis for making market modification determinations. We conclude that a detailed certification submitted under penalty of perjury would satisfy the carrier's burden under the statute to substantiate their claims of insufficient spot beam coverage and allow us to carefully examine such claims of infeasibility.²⁰¹ Broadcasters argue that "the mere 'certification' proposed by satellite carriers would not comport with the legislative intent of the technical and economic infeasibility provision" and that "an approach that involves only an unverifiable certification would be inadequate."²⁰² Instead, broadcasters argue that satellite carriers should be required to make detailed technical showings related to spot-beam coverage.²⁰³ NAB argues that if the Commission chooses to use a certification approach, then we should at least require certain supporting documentation be provided with the certification or in the event of a Commission audit of a certification.²⁰⁴

regulation. See 47 U.S.C. 338(b)(1), (c)(1); 47 CFR 76.66(g)(1), (h)(1) through (2).

¹⁹³ See 47 U.S.C. 338(l)(3) ("[a] market determination . . . shall not create additional carriage obligations . . . if carriage "is not technically and economically feasible. . .").

¹⁹⁴ See 47 U.S.C. 338(a). We note that, by operation of the market modification, the station will be afforded "carry one, carry all" carriage rights in the area of the new community in which a carrier provides the other local broadcast stations to the extent the spot beam on which it is carried covers such area of the new community. See *id.* If the spot beam on which the new local station is carried is different than the one providing local-into-local service to the new community, and therefore the spot beam coverage for the two beams will be different, there may be an area in the new community that had not been receiving local-into-local service, but could receive the new local station. In this situation, the new station by operation of the market modification would be eligible for carriage as a local station in such area of the new community, pursuant to 47 U.S.C. 338(a) ("carry one, carry all").

¹⁹⁵ NPRM, paras. 19–20.

¹⁹⁶ DISH Comments at 7; Gray Comments at 6–7; NAB Comments at 7; WVIR-TV Reply at 1.

¹⁹⁷ DIRECTV *ex parte* (dated Jun. 11, 2015) at 1 (stating that its proposed detailed certification would "easily satisfy any requirement that satellite carriers 'substantiate' and the Commission 'examine' the technical and economic infeasibility of spot-beam carriage in these areas, even though no such requirement appears in the statute itself."); DISH Comments at 7 ("the Commission should limit the required showing to a certification from the satellite carrier that it has analyzed the proposed market modification and has determined that it is not technically and economically feasible for such carrier to accomplish such carriage. A certification should be sufficient, because the types of evidence that the Commission might request could be technically or competitively sensitive, such as spot beam contour maps, cost of equipment upgrades, and subscriber numbers in a given geographic area.").

¹⁹⁸ See NAB Reply at 2 (quoting legislative history that "Congress intended satellite carrier claims of technical and economic infeasibility 'should be well substantiated and carefully examined by the [Commission]' as part of the petition consideration process."); WVIR-TV Reply at 2 (arguing that the purpose of STELAR is frustrated if satellite carriers are not required to actually prove infeasibility). See also NAB Reply at 3 ("an approach that involves only an unverifiable certification would be inadequate"); Gray Comments at 6 (arguing that satellite carrier claims of infeasibility must be "conclusively demonstrated").

¹⁹⁹ Senate Commerce Committee Report at 11.

²⁰⁰ See DISH Comments at 7; WVIR-TV Reply at 1.

²⁰¹ DIRECTV *ex parte* (dated Jun. 11, 2015) at 1.

²⁰² NAB Reply at 2. See also WVIR-TV Reply at 2 (opposing DISH's proposal to "self-certify" without providing supporting documentation). WVIR-TV explains that "[s]ince information about feasibility is entirely within the possession of the DBS operator, the DBS operator should bear the burden of proving the validity of an assertion of infeasibility. Otherwise, broadcasters will be completely at the mercy of DBS operators who oppose market modifications, largely defeating the purpose of the STELAR statute, if not rendering it a nullity." *Id.* NAB also argues that a certification approach "would also be inconsistent with the Commission's longstanding approach to market modification requests in the cable context, which involve a substantial evidentiary showing." NAB Reply at 2–3. The issue of infeasibility, however, is separate from our analysis of the merits of modifying a market under the statutory factors.

²⁰³ See NAB Comments at 9 (asking the Commission "to require satellite carriers claiming infeasibility due to insufficient spot beam coverage to provide spot beam contour diagrams to show whether a particular spot beam can be used to cover a particular community" and "to document that reconfiguring a spot beam, or adding a station to another spot beam that does cover an affected community would be technically or economically infeasible"); Gray Comments at 6 (arguing that satellite carriers should "be required to conclusively demonstrate technical infeasibility").

²⁰⁴ See NAB *ex parte* (dated Jul. 15, 2015) at 1–2.

We agree that a simple certification would not be appropriate, but we also agree with DIRECTV that it would be anomalous to require compendious and detailed evidentiary showings for spot beam coverage of *modified* local markets when such showings are not (and have never been) required for the provision of local service to *unmodified* local markets.²⁰⁵ Therefore, we adopt a certification process that requires satellite carriers to evaluate the feasibility of providing the station to the new community in the same manner that it currently uses to determine where in the relevant DMA it can provide the current local broadcast stations.²⁰⁶ These “detailed certifications” about spot beam coverage infeasibility must contain sufficient detail to ensure that the analysis performed by the carrier was appropriate and valid, and they will be subject to penalties for perjury to ensure its reliability. The Commission’s review of the detailed certification will generally be limited to determining whether it satisfies the procedural and content requirements described herein.²⁰⁷ Although we will not require carriers to provide supporting documentation as part of their certification, as an additional check the Commission may decide to look behind any certification and require supporting documentation when we deem it appropriate, such as when there is evidence that the certification may be inaccurate.²⁰⁸

40. *Supporting Documentation.* In the event that we require supporting documentation, we will require a satellite carrier to provide its “satellite

link budget” calculations that were created for the new community. DIRECTV explains that a “satellite link budget is a calculation that accounts for certain factors that affect a radio signal as it travels from an uplink earth station to a space station and back down through the atmosphere to the customer’s earth station receiver” and that this technical document “generally takes the form of a table, with entries that include (among other things) transmit power from the uplink earth station and from the satellite, antenna gains, system noise, intersystem interference, and atmospheric attenuation including the effects of ‘rain fade.’”²⁰⁹ DIRECTV states that the net result of this satellite link budget calculation “is an estimation of end-to-end satellite link performance.”²¹⁰ DIRECTV pointed out that the supporting materials suggested by NAB are in fact inputs for “link budgets.”²¹¹ We agree with DIRECTV and NAB that it would be appropriate to require a carrier to submit satellite link budget information if the Commission were to determine in a given case that supporting documentation should be provided to support a detailed certification.²¹² Thus, we require satellite carriers to retain such supporting documentation in the event that the Commission determines further review by the Commission is necessary. Satellite carriers must retain such supporting documentation throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition.²¹³ We find this retention

period will provide parties with a reasonable amount of time to challenge certifications. If satellite carriers have concerns about providing proprietary and confidential information underlying their analysis, they may request confidentiality.²¹⁴

41. *Content of Spot Beam Coverage Infeasibility Detailed Certification.* Based on DIRECTV’s proposed detailed certification,²¹⁵ a satellite carrier’s certification of infeasibility due to insufficient spot beam coverage must contain the following elements in order to be used and relied upon as evidence to demonstrate carrier claims of technical and economic infeasibility. First, the detailed certification must explain why carriage is not technically and economically feasible, including a detailed explanation of the “process by which a satellite carrier has determined whether or not the spot beam in question covers the geographic area at issue.”²¹⁶ Second, to ensure equal treatment to all stations, the detailed certification must state that the satellite carrier “has conducted this analysis in substantially the same manner and using substantially the same parameters used to determine the geographic area in which it currently offers stations carried on the spot beam.”²¹⁷ Finally, the satellite carrier must support its detailed certification with an affidavit or declaration under penalty of perjury, as contemplated under section 1.16 of the Commission’s rules and 28 U.S.C. 1746,²¹⁸ signed and dated by an authorized officer of the satellite carrier with personal knowledge of the representations provided in the certification, verifying the truth and accuracy of the information therein.²¹⁹

42. We will consider on a case-by-case basis other claims of technical or economic infeasibility, such as DISH’s

²⁰⁵ DIRECTV *ex parte* (dated Jun. 11, 2015) at 1. In other words, because a carrier does not normally have to demonstrate insufficient spot beam coverage with respect to the provision of local service to a local television market (*i.e.*, a carrier provides local service in the areas of the market covered by the relevant spot beam), it would be inconsistent to require a carrier to make a detailed demonstration of insufficient spot beam coverage with respect to the provision of local service to a new community added to such market. See *DBS Broadcast Carriage Report and Order*, para. 42 (allowing satellite carriers to use spot beam technology to provide local-into-local service, even if the spot beam did not cover the entire market).

²⁰⁶ We note that this certification process will be explained in the consumer guide that we create to comply with the STELAR section 102(c).

²⁰⁷ See *infra* at para. 41 (Content of Spot Beam Coverage Infeasibility Detailed Certification).

²⁰⁸ 47 U.S.C. 154(j), 154(j), 308(b), 403. If we find that a satellite carrier is claiming infeasibility with respect to a significant number of requests, we may decide to start routinely requiring that carrier to provide supporting documentation with its certification. See *infra* at para. 40 (Supporting Documentation). See also NAB *ex parte* (dated Jul. 15, 2015) at 2 (urging the Commission to require carriers to file certain materials supporting certifications).

²⁰⁹ DIRECTV *ex parte* (dated Jul. 23, 2015) at 1.
²¹⁰ *Id.*

²¹¹ *Id.* NAB stated that detailed certifications provided by the carrier to demonstrate spot beam coverage infeasibility should be supported by the following documentation: “(1) the latitude and longitude of the calculation point used for each zip code in analyzing (a) the measured performance of the spot beam covering station’s local market; (b) the estimated atmospheric effects for reception of the signal; and (c) the estimated levels of interference; (2) predicted clear-sky signal level based on actual spot beam performance; (3) rain fade statistics and predicted reductions in signal level; (4) predicted levels of inter-system interference; and (5) determination of service or “no service” at the calculation point (in map form with county boundaries shown).” See NAB *ex parte* (dated Jul. 15, 2015) at 2.

²¹² See NAB *ex parte* (dated Jul. 15, 2015) at 2; DIRECTV *ex parte* (dated Jul. 23, 2015) at 1 (“if a satellite carrier were to certify that it could not serve some or all of a proposed modified area, and Commission staff were to find a genuine dispute of fact related to such certification, the Commission could require the satellite carrier to submit a representative link budget for the area in question for staff review on a confidential basis.”).

²¹³ See NAB *ex parte* (dated Jul. 15, 2015) at 2 (seeking carrier retention of supporting material “for a period of either: (i) Two years; or (ii)

throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition, whichever is longer”); DIRECTV *ex parte* (dated Jul. 23, 2015) at 2. (“Satellite carriers could be required to preserve records sufficient to generate such a representative link budget, presumably during the pendency of any market modification proceeding.”).

²¹⁴ See 47 CFR 0.457, 0.459, 76.9.

²¹⁵ See DIRECTV *ex parte* (dated Jul. 9, 2015) at 3–4. We find that DIRECTV’s proposed detailed certification would meet a satellite carrier’s burden to demonstrate spot beam coverage infeasibility.

²¹⁶ DIRECTV *ex parte* (dated Jun. 23, 2015) at 1.

²¹⁷ DIRECTV *ex parte* (dated Jul. 9, 2015) at 4.

²¹⁸ 47 CFR 1.16 (Declarations under penalty of perjury in lieu of affidavits). See 28 U.S.C. 1746.

²¹⁹ We further note that willful false statements in a certification are punishable by fine and/or imprisonment pursuant to 18 U.S.C. 1001, may result in loss of a satellite carrier’s licenses and authorizations (47 U.S.C. 312), and may subject the satellite carrier to forfeiture (47 U.S.C. 503). See also 47 CFR 1.17. See NAB *ex parte* (dated Jul. 15, 2015) at 2–3.

claim of infeasibility due to the costs associated with changing customer satellite dishes to accommodate reception from different orbital locations. In addition, there may be circumstances of technical and economic infeasibility not yet contemplated. As discussed above, a satellite carrier bears the burden of demonstrating that the carriage contemplated in a market modification would not be technically and economically feasible by operation of its satellites. To demonstrate such infeasibility, a carrier must provide detailed technical or economic information to substantiate its claim of infeasibility.

3. Infeasibility Determinations

43. We will resolve disputes about carrier claims of infeasibility either in the context of a market modification proceeding or, at a prospective petitioner's option, in a separate proceeding before a market modification petition is filed. Thus, a prospective petitioner has two options. First, a prospective petitioner may file its market modification petition. In such cases, a satellite carrier would raise any claim of infeasibility in response to the petition and we would make a determination about the validity of such claim (and would not further process a petition for which the resulting carriage is infeasible). We recognize that prospective petitioners may want to know about carrier's claims of infeasibility, and may want a Commission determination about the validity of such claim, before filing a market modification petition. Therefore, a prospective petitioner's second option is to initiate the pre-filing coordination process (described below). Through this process, a prospective petitioner would request information from a carrier about infeasibility and a carrier would raise any claim of infeasibility in response to this request in the form of a certification. A carrier claiming spot beam coverage infeasibility must provide the detailed certification (described above). For all other claims of infeasibility, the certification provided for here is for the purpose of a carrier to notify the prospective petitioner about the carrier's claim of infeasibility prior to a petition being filed. The prospective petitioner can then decide whether it would like to file a special relief petition to obtain a Commission determination about the validity of the carrier's claim of infeasibility.²²⁰

²²⁰ As discussed above, in cases other than spot beam coverage infeasibility, a carrier will be

44. The NPRM tentatively concluded that a satellite carrier must raise any technical or economic impediments in the market modification proceeding.²²¹ The NPRM sought comment on whether the Commission, in the case of satellite market modifications, should require or encourage stations seeking market modifications to contact a satellite carrier before filing a market modification request in order to get an initial determination of whether the carrier considers the request technically and economically feasible.²²² The NPRM observed that such an initial inquiry might save some broadcasters the time and expense of compiling the standardized evidence for a modification that is not technically and economically feasible by alerting them to the technical or economic issue, which they could then take into account in deciding whether to file the request.²²³

45. Most commenters support addressing satellite carrier claims of infeasibility before a broadcaster files a prospective market modification petition;²²⁴ however, NAB argues that a satellite carrier's claim of infeasibility should not preclude the filing of a market modification petition.²²⁵ Commenters seem to agree that satellite carriers generally must raise claims of technical and economic infeasibility during, if not before, the market modification proceeding.²²⁶

required to provide evidence to support its claim of infeasibility. In the case of a claim of spot beam coverage infeasibility, the Commission's review of the certification will generally be limited to determining whether it meets with the requirements for a "detailed certification." See *supra* section III.D.2.

²²¹ NPRM, para. 19. The NPRM further considered whether the satellite carrier should be deemed to have waived technical or economic infeasibility arguments if not raised in response to the market modification request (and, thus, be prohibited from raising such a claim after a market determination, such as in response to a station's request for carriage). *Id.*

²²² NPRM, para. 21.

²²³ NPRM, para. 21.

²²⁴ DIRECTV Comments at 11; Gray Comments at 6; WVIR-TV Reply at 2 n.1.

²²⁵ NAB Comments at 9–10.

²²⁶ See NAB Comments at 7 (stating that "the statute requires satellite carriers to raise any technical or economic impediments in the context of the market modification proceeding"); Gray Comments at 6 (stating "the rules should require satellite providers to assert technical infeasibility before broadcasters go through the trouble and expense of preparing a market modification petition"); DIRECTV Comments at 11 (stating that it would be willing to provide a certification to broadcasters about "whether DIRECTV's spot beam covers the communities they would like to add to their local markets" before a broadcaster seeks a prospective market modification because "[s]uch information . . . would prove of most value to stations before they undergo the time and effort of filing a market modification petition.").

Broadcasters, however, argue that a satellite carrier should be deemed to have waived technical and economic infeasibility claims if not raised in or before a market modification proceeding,²²⁷ while DIRECTV argues that satellite carriers should not be precluded from raising future claims of infeasibility, such as technical infeasibility due to reduced spot beam coverage.²²⁸

46. We conclude that it is most efficient and practical for stakeholders to consider and resolve satellite carrier claims of technical or economic infeasibility before petitioners go through the time and expense of seeking a prospective market modification and before the Commission uses administrative resources to evaluate the merits of a prospective market modification petition under the five statutory factors. Therefore, we slightly modify our tentative conclusion and proposal.²²⁹ We conclude that a satellite carrier must raise any technical or economic impediments either in the market modification proceeding or prior to the market modification proceeding in response to a broadcaster or county government inquiry about feasibility of carriage resulting from a prospective market modification.²³⁰

47. *Pre-Filing Coordination Process.* We establish a process that will allow a prospective petitioner (broadcaster or county government), at its option, to obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a market modification petition.²³¹ To initiate this

²²⁷ NAB Comments at 7 (stating that "that a satellite carrier be deemed to have waived technical and economic infeasibility arguments if they are not raised during a market modification proceeding"); Gray at 6 (asserting that "[f]ailure to assert 'technical infeasibility' at this stage of the process would foreclose the satellite provider from later claiming technical infeasibility.").

²²⁸ DIRECTV Comments at 10 n.28 ("The possibility of technical problems reducing spot-beam coverage serves as yet another reason why satellite carriers should not lose 'rights' to assert feasibility issues if they do not raise them during a market modification proceeding").

²²⁹ NPRM, para. 19.

²³⁰ In the event that a previously feasible market modification were to later become infeasible (*e.g.*, due to reduction of spot beam coverage), the satellite carrier must file a petition for market modification to delete the previously added new community from the station's local market and provide evidence of infeasibility (*e.g.*, spot beam infeasibility certification). See DIRECTV Comments at 10 n.28.

²³¹ See Gray Comments at 7 (stating "there should be a procedure for resolving disputes over technical

process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner. A satellite carrier must also file a copy of the correspondence²³² and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS²³³ so that the Media Bureau can track these certifications and monitor carrier response time. If the carrier is claiming spot beam coverage infeasibility, then the certification provided by the carrier must be the same type of detailed certification that would be required in response to a market modification petition (discussed above).²³⁴ For any other claim of infeasibility, the carrier's feasibility certification must explain in detail the basis of such infeasibility²³⁵ and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to seek a Commission determination about the validity of the carrier's claim. If carriage is feasible, a statement to that effect must be provided in the certification. To obtain a Commission determination about the validity of the carrier's claim of infeasibility, a prospective petitioner

infeasibility before broadcasters invest in making the necessary market modification showing"); DIRECTV Comments at 11 ("the most efficient process regarding feasibility would be for a station that is considering filing a market modification petition to first ask the two satellite carriers if they can provide the station in the communities proposed"). Although we encourage prospective petitioners to utilize the optional procedure for obtaining information and, if necessary, Commission determinations regarding carrier claims of infeasibility, we decline to require this preliminary procedure in order to provide petitioners with flexibility to decide which procedure is best suited for their situation.

²³² Correspondence would include, for example, a brief cover letter and the prospective petitioner's initiating request for the feasibility certification provided.

²³³ A satellite carrier must file the correspondence and feasibility certification electronically into this docket through the Commission's Electronic Comment Filing System ("ECFS") using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. The filing must be clearly designated as a "STELAR feasibility certification" and must clearly reference this proceeding and docket number (MB Docket No. 15–71).

²³⁴ See *supra* at paras. 39–41. NAB *ex parte* (dated Jul. 15, 2015) at 2 (with respect to a "pre-filing process," stating that "the satellite carrier should be required to undertake the same steps and make the same certification that would be involved in connection with an actual petition").

²³⁵ The carrier must state in its certification that the new community is covered by the relevant spot beam, but carriage is nevertheless infeasible and explain why.

must either file a (separate) petition for special relief²³⁶ or its market modification petition.²³⁷

48. For purposes of determining a reasonable amount of time for a carrier to respond to a request for a feasibility certification, we find a carrier should generally respond within 45 days of receipt of a prospective petitioner's written request;²³⁸ however, we find that it would be reasonable for the carrier to respond in 90 days if the carrier has to process several requests at the same time.²³⁹ If the response is after 45 days, the carrier must provide an explanation for the longer time period in its certification (e.g., having to respond to multiple simultaneous requests).²⁴⁰ With this process, we are trying to balance the need to provide broadcasters' with as fast a response as possible, while recognizing that satellite carriers may have difficulty responding to numerous requests at once.

49. The NPRM proposed that a meritorious market modification request would be granted even if such grant would not create a new carriage obligation at that time, for example, due to a finding of technical or economic infeasibility.²⁴¹ The NPRM explained that this would ensure that, if there is a change in circumstances such that it later becomes technically and economically feasible for the satellite

carrier to carry the station, then the station could assert its carriage rights pursuant to the earlier market modification.²⁴² The NPRM also sought comment on whether to impose a reporting requirement on satellite carriers to notify the affected broadcaster if circumstances change at a later time making it technically and economically feasible for the carrier to carry the station.²⁴³ NAB supports the proposal to grant a meritorious market modification request, even if the grant would not create a new carriage obligation at that time because of a finding of technical or economic infeasibility.²⁴⁴ Commenters split regarding whether to require satellite carriers to provide notice if and when carriage later becomes feasible. Broadcasters support such a requirement,²⁴⁵ while satellite carriers oppose it.²⁴⁶

50. We conclude that we will not grant a market modification petition that could not create a new carriage obligation at that time due to a finding of technical or economic infeasibility. We find that our conclusion is more consistent with the statute's requirement that a market modification "shall not create additional carriage obligations for a satellite carrier" if it is infeasible "at the time of the determination."²⁴⁷ We also note that

²³⁶ See 47 CFR 76.7.

²³⁷ The Bureau may on its own motion review the adequacy of a certification filed in the docket, but generally a prospective petitioner must request such review by filing a petition for special relief; 47 CFR 76.7. See Gray Comments at 7 (stating "[i]f a broadcaster wishes to challenge the satellite operator's showing, it should be permitted to do so either before filing a market modification petition or concurrent with a petition as part of the market modification proceeding."); NAB *ex parte* (dated Jul. 15, 2015) at 2 (stating that "the satellite carrier's determination should be reviewable by the FCC and result in a final FCC action that could be the subject of a petition for reconsideration, applications for review (and ultimately, court review)").

²³⁸ See Gray Comments at 6 (stating that satellite carriers should be required to respond to requests about spot-beam coverage within a "specified period" such as 30 or 45 days).

²³⁹ DIRECTV explains that "while DIRECTV will endeavor to respond to any and all requests as soon as it can, it should not be required to do so in fewer than 90 days, particularly if required to respond to multiple simultaneous requests." DIRECTV Reply at 10.

²⁴⁰ If the Media Bureau finds that a carrier is routinely taking up to 90 days to respond or is not providing a reasonable explanation for when it takes 90 days to respond, the Bureau may order such carrier to respond to future requests in a shorter time period or may take other enforcement action.

²⁴¹ NPRM, para. 19. The NPRM noted that this is consistent with the cable carriage context, in which the Commission might grant a market modification, even if such grant would not result in a new carriage obligation at that time, for example, due to the station being a duplicating signal. See 47 CFR 76.56(b)(5).

²⁴² NPRM, para. 19. This concept is similar to the duplicating signals situation, in which a satellite carrier must add a television station to its channel line-up if such station no longer duplicates the programming of another local television station. See 47 CFR 76.66(h)(4). Alternatively, the NPRM sought comment on whether we should deny a market modification request that would not create a new carriage obligation at the time of the determination. NPRM, para. 19.

²⁴³ NPRM, para. 20. The NPRM asked "Would such changes in circumstances be sufficiently public so as to not necessitate the burden of such a reporting requirement? If not notified by the carrier, how else could a broadcaster find out about such a change in the feasibility of carriage?" *Id.*

²⁴⁴ NAB Comments at 7–8.

²⁴⁵ See Gray Comments at 7 ("Satellite operators likewise should be required to notify broadcasters and the FCC within sixty days of any change that results in previously infeasible carriage becoming feasible."); NAB Comments at 8; WVIR-TV Reply at 3. Gray suggests that this requirement include notice to the broadcaster and the Commission within sixty days of feasibility, as well as periodic reports affirming continued infeasibility. Gray Comments at 7.

²⁴⁶ See DISH Comments at 8 (arguing that "a [reporting] requirement would be unduly burdensome for the satellite carrier because it would require a carrier to constantly track and reevaluate an unknown number of market modification requests."); DIRECTV Comments at 10 ("the Commission should not require ongoing monitoring or reporting of spot beam issues. . . . [A]bsent technical problems reducing spot-beam coverage, spot beams remain static for the life of the satellite.").

²⁴⁷ See 47 U.S.C. 338(l)(3). See also Senate Commerce Committee Report at 11 (indicating an

claims of infeasibility related to a carrier's satellites are not likely to change for the life of a satellite, which can be as long as 15 years.²⁴⁸ Because we will not grant a market modification for which carriage would be infeasible, we find it unnecessary to require satellite carriers to provide notice if and when carriage later becomes feasible. Instead, a petitioner may re-initiate the process if at a later time a satellite carrier has deployed new satellites that could change this feasibility determination.

E. No Effect on Eligibility To Receive Distant Signals via Satellite

51. We adopt our proposal to codify the language of section 338(l)(5), which provides that “[n]o modification of a commercial television broadcast station’s local market pursuant to this subsection shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals pursuant to section 339, notwithstanding subsection (h)(1) of this section.”²⁴⁹ We also adopt our interpretation of this provision as an exception to the restrictions on a satellite subscriber’s eligibility to receive “distant” (out-of-market) signals.²⁵⁰ Commenters on this issue supported our proposal.²⁵¹

52. The Communications Act and copyright laws set out two key restrictions on a satellite subscriber’s eligibility to receive “distant” (out-of-market) signals.²⁵² First, subscribers are generally eligible to receive a distant station from a satellite carrier only if the subscriber is “unserved” over the air by a local station of the same network.²⁵³

expectation that “a petitioner may refile its petition if at a later time a satellite carrier has deployed new satellites that could change this feasibility determination”).

²⁴⁸ See DIRECTV Comments at 10 (“absent technical problems reducing spot-beam coverage, spot beams remain static for the life of the satellite”); DIRECTV *ex parte* (dated Jul. 9, 2015) at 2 (“While the figure varies for individual satellites, 15 years represents a good ‘rule of thumb’ for the life of a direct-to-home geostationary satellite.”). See also *Amendment of Commission’s Space Station Licensing Rules and Policies*, IB Docket No. 00–248, First Report and Order, FCC 02–45, para. 143, 67 FR 12485, Mar. 19, 2002.

²⁴⁹ 47 U.S.C. 338(l)(5); NPRM, para. 22. See 47 CFR 76.59(f).

²⁵⁰ NPRM, para. 22.

²⁵¹ See DIRECTV Comments at 8 n.21; DISH Comments at 6.

²⁵² See 17 U.S.C. 119; 47 U.S.C. 339. Generally, a station is considered “distant” with respect to a subscriber if such station originates from outside of the subscriber’s local television market (or DMA). See *id.*

²⁵³ The Copyright Act defines an “unserved household,” with respect to a particular television network, as “a household that cannot receive, through the use of an antenna, an over-the-air signal

Second, even if “unserved,” a subscriber is not eligible to receive a distant station from a satellite carrier if the carrier is making “available” to such subscriber a local station of the same network.²⁵⁴ We conclude that section 338(l)(5) is largely intended as an exception to these two subscriber eligibility requirements. In other words, we find that the addition of a new local station to a local television market by operation of a market modification (which might otherwise restrict a subscriber’s eligibility to receive a distant station) would not disqualify an otherwise eligible satellite subscriber from receiving a distant station of the same network. For example, a subscriber may be receiving a distant station because the subscriber resides in a “short market,”²⁵⁵ has obtained a waiver from the relevant network station,²⁵⁶ or is otherwise eligible to receive distant signals pursuant to section 339. That subscriber will continue to be eligible to receive the distant station after a market modification that adds a new local station of the same network.

53. The NPRM sought comment on whether section 338(l)(5) also means that the deletion of a local station from a local television market by operation of a market modification would not make otherwise ineligible subscribers now eligible to receive a distant station of the same network.²⁵⁷ We agree with DIRECTV that this provision “was meant to ensure that households would

containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household’s local market and affiliated with that network—(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or (ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time. 17 U.S.C. 119(d)(10)(A). An unserved household can also be one that is subject to one of four statutory waivers or exemptions. See 47 U.S.C. 119(d)(10)(B) through (E).

²⁵⁴ See 47 U.S.C. 339(a)(2); 17 U.S.C. 119(a)(3). This second restriction on eligibility is commonly referred to as the “no distant where local” rule. A satellite carrier makes “available” a local signal to a subscriber or person if the satellite carrier offers that local signal to other subscribers who reside in the same zip code as that subscriber or person. 47 U.S.C. 339(a)(2)(H). See also 17 U.S.C. 119(a)(3)(F).

²⁵⁵ See 47 U.S.C. 339(a)(2)(C); 17 U.S.C. 119(d)(10). By a “short market,” we refer to a market in which one of the four major television networks is not offered on the primary stream of a local broadcast station, thus permitting satellite carriers to deliver a distant station affiliated with that missing network to subscribers in that market.

²⁵⁶ See 47 U.S.C. 339(a)(2)(E).

²⁵⁷ NPRM, para. 22.

not lose eligibility for distant signals for which they were eligible prior to modification” and should not “be interpreted as denying distant signals to subscribers who newly become eligible for them because they have lost their local signals through market modification.”²⁵⁸ Thus, the deletion of a local network station from a community by operation of a market modification may allow a satellite carrier to import a distant station of the same network into such community, provided subscribers in such community would now satisfy the requirements for receipt of distant stations (pursuant to section 339).

F. Definition of Community

54. For purposes of a satellite market modification, we define a “satellite community” as a county, which is supported by all commenters on this issue.²⁵⁹ Consistent with the cable context, in a market modification request, the petitioner will define the satellite community (or communities) to be added or deleted from a particular station’s local television market. We also retain our existing definition of a “cable community” for purposes of a cable market modification, having received no comment on this issue.

55. In the NPRM, as directed by the STELAR,²⁶⁰ we sought comment on how to define a “community” for purposes of market modification in both the cable and satellite contexts.²⁶¹ The concept of a “community” is important in the market modification context because the term describes the geographic area that will be added to or deleted from a station’s local television market (based on the statutory factors), which in turn determines the stations that must be carried by a cable operator or a satellite carrier to subscribers in

²⁵⁸ DIRECTV Comments at 7–8, n.21.

²⁵⁹ See 47 CFR 76.5(gg)(2). See DISH Comments at 6; Gray Comments at 3; UCC Comments at 8; Sen. Bennet *et al.* Letter at 1. See also DIRECTV Reply at 11–12 (stating a county-based definition was acceptable, if certain conditions were met).

²⁶⁰ Section 102(d)(2) of the STELAR requires the Commission to “update what it considers to be a community for purposes of a modification of a market” in both the satellite and cable contexts. See STELAR sec. 102(d)(2); 47 U.S.C.A. 338 Note. The legislative history indicates Congress’ intent for the Commission “to consider alternative definitions for community that could make the market modification process more effective and useful.” *Senate Commerce Committee Report* at 12.

²⁶¹ See NPRM, para. 23. In considering how to define a “satellite community” for purposes of a satellite market modification, the NPRM sought comment on whether to use a cable community-based definition (as was done in the significantly viewed context; see 47 CFR 76.5(gg)), a zip code-based definition, and/or a county-based definition. See NPRM, para. 25.

that community.²⁶² Because of the localized nature of cable systems, cable communities are usually easily defined by the geographic boundaries of a given cable system, which are often, but not always, coincident with a municipal boundary and may vary as determined on a case-by-case basis.²⁶³ In the cable carriage context, the Commission considers market modification requests on a community-by-community basis²⁶⁴ and defines a community unit in terms of a “distinct community or municipal entity” where a cable system operates or will operate.²⁶⁵ A “satellite community,” however, is not as easily defined as a cable community. Unlike cable service, which reaches subscribers in a defined local area via local franchises, satellite carriers offer service on a national basis, with no connection to a particular local community or municipality. Moreover, satellite service is sometimes offered in areas of the country that do not have cable service, and thus cannot be defined by cable communities.

56. *Satellite Community.* We define a “satellite community” on a county basis. All commenters on this issue support this definition.²⁶⁶ DISH and Gray assert that the use of a county definition will better address the orphan county problem.²⁶⁷ In addition, UCC

observes that “[c]ounty-wide data is more easily available than community-specific data.”²⁶⁸ We agree. DIRECTV, who initially supported only zip codes, stated in its reply that it could support a county-based definition, as long as satellite carriers are not required to provide service to the parts of a modified market outside the market’s spot beam.²⁶⁹ We agree with commenters that a county definition is better suited for the national nature of satellite service and will most effectively promote access to in-state programming for subscribers in orphan counties. In addition, we agree that county-wide data will work effectively and is easily available. We also take note of the support for a county definition from both broadcasters and satellite carriers. Thus, we are persuaded that allowing satellite market modifications on a county basis would best effectuate the satellite market modification provision.

57. We find this approach preferable to defining a “satellite community” on a cable community²⁷⁰ or zip code basis. In the NPRM, we considered a cable community and/or a zip code as two possible definitions of a satellite community for purposes of market modification.²⁷¹ No commenters supported the cable community-based definition. We observed the Commission’s use of a cable community-based definition in the significantly viewed context.²⁷² As noted above, satellite carriers, unlike cable systems, have no connection to a particular local community or municipality. Given this fact, and based on the absence of any support for this definition, we reject a cable community-based definition for the satellite market modification context. DIRECTV

approach mirrors the existing statutory special exceptions in section 122 designed to address orphan counties, such as the provision allowing a satellite carrier to provide in-state local broadcast stations to two counties in Vermont that are assigned to out-of-state DMAs.” DISH Comments at 6 (citing 17 U.S.C. 122(a)(4)(B)).

²⁶⁸ UCC Comments at 8.

²⁶⁹ DIRECTV Reply at 11–12. DIRECTV initially conditioned its support for a county-based definition on our requiring broadcasters to provide the zip codes corresponding with the county in the market modification petition. *Id.* DIRECTV later clarified that “it should be a relatively easy task for either satellite carriers or broadcasters to associate zip codes with particular market modification requests.” DIRECTV *ex parte* (dated July 9, 2015) at 2.

²⁷⁰ The NPRM considered the “satellite community” definition in the significantly viewed context, which is based on the definition of a “cable community.” NPRM, para. 25. See 47 CFR 76.5(gg) (defining a “satellite community” for the significantly viewed context).

²⁷¹ See NPRM, para. 25.

²⁷² See 47 CFR 76.5(gg).

supports the use of zip codes, explaining it determines spot-beam coverage based on zip codes, but (as noted above) expressed qualified support for a county-based definition.²⁷³ DISH opposes the use of zip codes, explaining that its systems recognize DMA boundaries based on counties, and that it would be burdensome to do zip-code-based modifications.²⁷⁴ Given DIRECTV’s qualified support for a county-based definition and DISH’s difficulties associated with the use of zip codes, we reject a zip-code-based definition for the satellite market modification context.

58. *Definition of “Cable Community” for Cable Market Modifications.* We adopt our tentative conclusion to retain the existing definition of a “cable community.”²⁷⁵ No comments were filed on this issue. Section 76.5(dd) of the rules defines a “community unit” as “[a] cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).”²⁷⁶ We conclude that this definition has worked well in cable market modifications for more than 20 years and should not be changed. We find that retaining the cable definition best effectuates the cable market modification provision. Although (as discussed herein) we allow a satellite community to be defined on a county basis, we see no reason to change the definition to allow cable modifications on a county basis. Despite our objective of treating satellite market modifications and cable market modifications similarly where feasible, we find that practical differences justify different treatment on this issue.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

59. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁷⁷ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in this

²⁷³ DIRECTV Comments at 12; DIRECTV Reply at 11.

²⁷⁴ DISH *ex parte* (dated June 11, 2015) at 3.

²⁷⁵ See NPRM, para. 23.

²⁷⁶ 47 CFR 76.5(dd).

²⁷⁷ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²⁶² See NPRM, para. 24. See also 47 U.S.C. 338(a)(1); 47 CFR 76.66(b)(1).

²⁶³ See Amendment of Part 76 of the Commission’s Rules and Regulations with Respect to the Definition of a Cable Television System and the Creation of Classes of Cable Systems, Docket No. 20561, First Report and Order, FCC 77–205, para. 20 n.5, 42 FR 19329, Apr. 13, 1977 (1977 *Cable Order*) (citing Amendment of Parts 21, 74, and 91 to Adopt Rules and Regulations Relating to the Distribution of Television Broadcast Signals By Community Antenna Television Systems, and Related Matters, Docket Nos. 14895, 15233, 15971, Second Report and Order, FCC 66–220, para. 149, 31 FR 4540, Mar. 17, 1966 (“community” as used in the rules must be determined case-by-case depending on the circumstances involved)).

²⁶⁴ See 1977 *Cable Order*, para. 22 (explaining that the cable carriage rules apply “on a community-by-community basis”). See also 47 CFR 76.5(dd), 76.59.

²⁶⁵ See 47 CFR 76.5(dd). A cable system community is assigned a community unit identifier number (“CUID”) when registered with the Commission, pursuant to section 76.1801 of the rules. 47 CFR 76.1801.

²⁶⁶ See DISH Comments at 6; Gray Comments at 3; UCC Comments at 8; Sen. Bennet *et al.* Letter at 1. See also DIRECTV Reply at 11–12 (stating a county-based definition was acceptable, if certain conditions were met).

²⁶⁷ See DISH Comments at 6 (“a county-based definition will most effectively promote consumer access to in-state programming”); Gray Comments at 3 (“county-by-county approach would best carry out Congress’ intent to give the FCC the tools necessary to solve the ‘orphan county’ problem in appropriate cases”). Gray also states that “a county-by-county approach better suits the way that satellite providers actually provide service.” Gray Comments at 3–4. DISH also observes that “[t]his

proceeding.²⁷⁸ The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²⁷⁹

1. Need for, and Objectives of, the Rules

60. This Report and Order adopts rules to implement section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (“STELA Reauthorization Act” or “STELAR”).²⁸⁰ The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station’s local television market for purposes of satellite carriage rights.²⁸¹ The Commission previously had the authority to modify markets only in the cable carriage context.²⁸² With section 102 of the STELAR, Congress provides regulatory parity in this regard in order to promote consumer access to in-state and other relevant television programming. Significantly, the STELAR added a new factor for the Commission to consider when evaluating a market modification petition—“whether modifying the local market of the television station would promote consumers’ access to television broadcast station signals that originate in their State of residence.”²⁸³ Section 102 of the STELAR, and the Commission’s actions in this Report and Order, seek to establish a market modification process for the satellite carriage context and, to the extent possible, address satellite subscribers’ inability to receive in-state programming in certain areas. In this Report and Order, consistent with Congress’ intent that the Commission model the satellite market modification process on the current cable market modification process, the Commission adopts rules to implement section 102

of the STELAR by revising the current cable market modification rule, section 76.59, to apply also to satellite carriage, while adding provisions to the rules to address the unique nature of satellite television service.²⁸⁴ For example, the STELAR recognizes that satellite carriage of additional stations pursuant to a market modification might be technically and economically infeasible in some circumstances.²⁸⁵ In addition to establishing rules for satellite market modifications, section 102 of the STELAR directs the Commission to consider whether it should make changes to the current cable market modification rules,²⁸⁶ and it also makes certain conforming amendments to the cable market modification statutory provision.²⁸⁷ Accordingly, as part of the implementation of the STELAR, the Commission makes conforming and other minor changes to the cable market modification rules.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

61. No public comments were filed in response to the IRFA.

62. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.²⁸⁸ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

3. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

63. The RFA directs agencies to provide a description of and an estimate of the number of small entities to which the rules will apply.²⁸⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁹⁰ In addition, the term

“small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁹¹ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.²⁹² The rule changes adopted herein will directly affect small television broadcast stations, small MVPD systems, which include cable system operators and satellite carriers and small county governmental jurisdictions. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

64. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁹³ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.²⁹⁴ We estimate that, of this total, a substantial majority may qualify as “small governmental jurisdictions.”²⁹⁵ Thus,

²⁹¹ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 5 U.S.C. 601(3).

²⁹² 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

²⁹³ 5 U.S.C. 601(5).

²⁹⁴ U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007).

²⁹⁵ The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 local governments in 2007. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Table 428. The criterion by which the size of such local governments is determined to be small is a population of fewer than 50,000. 5 U.S.C. 601(5). However, since the Census Bureau, in compiling the cited data, does not state that it applies that criterion, it cannot be determined with precision how many such local governmental organizations are small. Nonetheless, the inference seems reasonable that a substantial number of these governmental organizations have a population of fewer than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many sub-entities that may well be small are included in the 89,476 local governmental organizations, e.g., county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of fewer than 50,000, many of the cited sub-entities in this category seem more likely

²⁷⁸ See *Amendment to the Commission’s Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014*; MB Docket No. 15–71, Notice of Proposed Rulemaking, FCC 15–34, 80 FR 19594, Apr. 13, 2015 (NPRM).

²⁷⁹ See 5 U.S.C. 604.

²⁸⁰ The STELA Reauthorization Act of 2014 (STELAR), sec. 102, Public Law 113–200, 128 Stat. 2059, 2060–62 (2014) (codified at 47 U.S.C. 338(l)). The STELAR was enacted on December 4, 2014 (H. R. 5728, 113th Cong.). See Report and Order, para. 1.

²⁸¹ STELAR secs. 102, 204, 128 Stat. at 2060–62, 2067.

²⁸² See 47 U.S.C. 534(h)(1)(C). See also 47 CFR 76.59.

²⁸³ See 47 U.S.C. 338(l)(2)(B)(iii), 534(h)(1)(C)(iii).

²⁸⁴ See 47 CFR 76.59. The Commission revises section 76.59 of the rules to apply to both cable systems and satellite carriers.

²⁸⁵ 47 U.S.C. 338(l)(3) (stating that “[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.”).

²⁸⁶ STELAR sec. 102(d).

²⁸⁷ See STELAR sec. 102(b) (amending 47 U.S.C. 534(h)(1)(C)(ii)).

²⁸⁸ See 5 U.S.C. 604(a)(3).

²⁸⁹ 5 U.S.C. 604(a)(4).

²⁹⁰ 5 U.S.C. 601(6).

we estimate that most governmental jurisdictions are small.

65. *Wired Telecommunications Carriers*. The North American Industry Classification System ("NAICS") defines "Wired Telecommunications Carriers" as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."²⁹⁶ The SBA has developed a small business size standard for wireline firms for the broad economic census category of "Wired Telecommunications Carriers." Under this category, a wireline business is small if it has 1,500 or fewer employees.²⁹⁷ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.²⁹⁸ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.²⁹⁹ Therefore, under

than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority are small.

²⁹⁶ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

²⁹⁷ 13 CFR 121.201; NAICS code 517110.

²⁹⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Etab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

²⁹⁹ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

this size standard, we estimate that the majority of businesses can be considered small entities.

66. *Cable Television Distribution Services*. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above.³⁰⁰ The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.³⁰¹ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³⁰² Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³⁰³ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

67. *Cable Companies and Systems*. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.³⁰⁴ According to the Television and Cable Factbook, there are 856 cable operators.³⁰⁵ Of this total, all but 10 incumbent cable companies are small under this size standard.³⁰⁶ In

³⁰⁰ See also U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁰¹ 13 CFR 121.201; NAICS code 517110.

³⁰² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Etab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁰³ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³⁰⁴ 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 92–266, MM Docket No. 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95–196, 60 FR 35854, July 12, 1995.

³⁰⁵ See Warren Communications News, "Television and Cable Factbook 2015", Cable Volume 2, at D–1073–D–1120. We note that, according to NCTA, there are 660 cable systems. See NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited Aug. 6, 2015). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12–203, Fifteenth Report, FCC 13–99, para. 24 (rel. July 22, 2013) (15th Annual Competition Report).

³⁰⁶ SNL Kagan, U.S. Multichannel Top Cable MSOs, <http://www.snl.com/interactivex/>

addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.³⁰⁷ Current Commission records show 4,562 cable systems nationwide.³⁰⁸ Of this total, 4,000 cable systems have fewer than 20,000 subscribers, and 562 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

68. *Cable System Operators* (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."³⁰⁹ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.³¹⁰ Based on available data, we find that all but 10 incumbent cable operators are small under this size

TopCableMSOs.aspx (visited June 26, 2014). We note that when this size standard (*i.e.*, 400,000 or fewer subscribers) is applied to all MVPD operators, all but 14 MVPD operators would be considered small. 15th Annual Competition Report, paras. 27–28 (subscriber data for DBS and Telephone MVPDs). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11–93, Report and Order, FCC 11–182, para. 37, 77 FR 40276, July 9, 2012 (CALM Act Report and Order) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

³⁰⁷ 47 CFR 76.901(c).

³⁰⁸ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 6, 2015. A cable system is a physical system integrated to a principal headend. We note that, according to NCTA, there are 5,208 cable systems. See NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited Aug. 6, 2015).

³⁰⁹ 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1–3.

³¹⁰ 47 CFR 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (CSB, rel. Jan. 24, 2001) (establishing the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers and stating that this threshold will remain in effect for purposes of section 76.901(f) until the Commission issues a superseding public notice). We note that current industry data indicates that there are approximately 54 million incumbent cable video subscribers in the United States today and that this updated number may be considered in developing size standards in a context different than section 76.901(f). NCTA, Industry Data, Cable's Customer Base (June 2014), <https://www.ncta.com/industry-data> (visited June 25, 2014).

standard.³¹¹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.³¹² Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable to estimate with greater precision the number of cable system operators that would qualify as small cable operators under this definition.

69. *Satellite Carriers.* The term “satellite carrier” means an entity that uses the facilities of a satellite or satellite service licensed under Part 25 of the Commission’s rules to operate in the Direct Broadcast Satellite (DBS) service or Fixed-Satellite Service (FSS) frequencies.³¹³ As a general practice (not mandated by any regulation), DBS licensees usually own and operate their own satellite facilities as well as package the programming they offer to their subscribers. In contrast, satellite carriers using FSS facilities often lease capacity from another entity that is licensed to operate the satellite used to provide service to subscribers. These entities package their own programming and may or may not be Commission licensees themselves. In addition, a third situation may include an entity using a non-U.S. licensed satellite to provide programming to subscribers in the United States pursuant to a blanket earth station license.³¹⁴ The Commission has concluded that the definition of “satellite carrier” includes all three of these types of entities.³¹⁵

³¹¹ See SNL Kagan, U.S. Multichannel Top Cable MSOs, <http://www.snl.com/interactivex/TopCableMSOs.aspx> (visited June 26, 2014).

³¹² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to [47 CFR] 76.901(f) of the Commission’s rules. See 47 CFR 76.901(f).

³¹³ The Communications Act defines the term “satellite carrier” by reference to the definition in the copyright laws in title 17. See 47 U.S.C. 340(i)(1) and 338(k)(3); 17 U.S.C. 119(d)(6). Part 100 of the Commission’s rules was eliminated in 2002 and now both FSS and DBS satellite facilities are licensed under Part 25 of the rules. *Policies and Rules for the Direct Broadcast Satellite Service*, FCC 02–110, 67 FR 51110, August 7, 2002; 47 CFR 25.148.

³¹⁴ See, e.g., Application Of DIRECTV Enterprises, LLC, Request For Special Temporary Authority for the DIRECTV 5 Satellite; Application Of DIRECTV Enterprises, LLC, Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location, Order and Authorization, DA 04–2526 (Sat. Div. rel. Aug. 13, 2004).

³¹⁵ SHVERA Significantly Viewed Report and Order, FCC 05–187, paras. 59–60.

70. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS, by exception, is now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,³¹⁶ which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³¹⁷ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³¹⁸ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³¹⁹ Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled “Cable and Other Program Distribution.” The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.³²⁰ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.³²¹ Each currently offers subscription services. DIRECTV and DISH Network each reports annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial

³¹⁶ This category of Wired Telecommunications Carriers is defined above (“By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”). U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³¹⁷ 13 CFR 121.201; NAICS code 517110.

³¹⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³¹⁹ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³²⁰ 13 CFR 121.201; NAICS code 517510 (2002).

³²¹ See 15th Annual Competition Report, at para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at paras. 27, 110–11.

wherewithal to become a DBS service provider.

71. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA’s broad economic census category, Wired Telecommunications Carriers,³²² which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³²³ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³²⁴ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³²⁵ Therefore, under this size standard, the majority of such businesses can be considered small.

72. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired

³²² This category of Wired Telecommunications Carriers is defined above (“By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”). U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³²³ 13 CFR 121.201; NAICS code 517110.

³²⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³²⁵ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

Telecommunications Carriers.³²⁶ The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.³²⁷ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³²⁸ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³²⁹ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

73. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.³³⁰ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,³³¹ OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers.³³² The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.³³³ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³³⁴ Of this total, 3,144 firms

had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³³⁵ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.³³⁶ Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.³³⁷ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

74. *Wireless cable systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS)³³⁸ and Educational Broadband Service (EBS)³³⁹ to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.³⁴⁰ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are

considered small entities.³⁴¹ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.³⁴² The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.³⁴³ Auction 86 concluded in 2009 with the sale of 61 licenses.³⁴⁴ Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

75. In addition, the SBA’s placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers,³⁴⁵

³²⁶ This category of Wired Telecommunications Carriers is defined above (“By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”). U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³²⁷ 13 CFR 121.201; NAICS code 517110.

³²⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³²⁹ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³³⁰ 47 U.S.C. 571(a)(3) through (4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06–189, Thirteenth Annual Report, FCC 07–206, para. 135, 74 FR 11102, March 16, 2009 (2009) (“Thirteenth Annual Cable Competition Report”).

³³¹ See 47 U.S.C. 573.

³³² This category of Wired Telecommunications Carriers is defined above. See also U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³³³ 13 CFR 121.201; NAICS code 517110.

³³⁴ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

³³⁵ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³³⁶ A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

³³⁷ See *Thirteenth Annual Cable Competition Report*, para. 135. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

³³⁸ BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). See *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94–131, PP Docket No. 93–253, Report and Order, FCC 95–230, para. 7, 60 FR 36524, Jul. 17, 1995.

³³⁹ EBS was previously referred to as the Instructional Television Fixed Service (ITFS). See *id.*

³⁴⁰ 47 CFR 21.961(b)(1).

³⁴¹ 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.

³⁴² *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, AU Docket No. 09–56, Public Notice, DA 09–1376 (WTB rel. Jun. 26, 2009).

³⁴³ *Id.*

³⁴⁴ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, DA 09–2378 (WTB rel. Nov. 6, 2009).

³⁴⁵ This category of Wired Telecommunications Carriers is defined above. See also U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

which was developed for small wireline businesses. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees.³⁴⁶ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³⁴⁷ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees.³⁴⁸ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that as of September 2012, there are 2,241 active EBS licenses.³⁴⁹ The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.³⁵⁰

76. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers.³⁵¹ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³⁵² Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³⁵³ Of this total, 3,144 firms had fewer than 1,000 employees, and 44

firms had 1,000 or more employees.³⁵⁴ Therefore, under this size standard, the majority of such businesses can be considered small.

77. Small Incumbent Local Exchange Carriers. We have included small incumbent local exchange carriers in this present RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."³⁵⁵ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.³⁵⁶ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

78. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers.³⁵⁷ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.³⁵⁸ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.³⁵⁹ Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had

1,000 or more employees.³⁶⁰ Therefore, under this size standard, the majority of such businesses can be considered small.

79. Television Broadcasting. This economic census category "comprises establishments primarily engaged in broadcasting images together with sound."³⁶¹ The SBA has created the following small business size standard for such businesses: Those having \$38.5 million or less in annual receipts.³⁶² The 2007 U.S. Census indicates that 808 firms in this category operated in that year. Of that number, 709 had annual receipts of \$25,000,000 or less, and 99 had annual receipts of more than \$25,000,000.³⁶³ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$38.5 million in that year, we conclude that the majority of television broadcast stations were small under the applicable SBA size standard.

80. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,390 stations.³⁶⁴ Of this total, 1,221 stations (or about 88 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 2, 2014. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395.³⁶⁵ NCE stations are non-profit, and therefore considered to be small entities.³⁶⁶ Therefore, we estimate that

³⁴⁶ 13 CFR 121.201; NAICS code 517110.

³⁴⁷ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁴⁸ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³⁴⁹ <http://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp>.

³⁵⁰ The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of fewer than 50,000). 5 U.S.C. 601(4) through (6).

³⁵¹ This category of Wired Telecommunications Carriers is defined above. See also U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵² 13 CFR 121.201; NAICS code 517110.

³⁵³ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁵⁴ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³⁵⁵ 15 U.S.C. 632.

³⁵⁶ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

³⁵⁷ This category of Wired Telecommunications Carriers is defined above. See also U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁵⁸ 13 CFR 121.201; NAICS code 517110.

³⁵⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

³⁶⁰ *Id.* With respect to the latter 44 firms, there is no data available that shows how many operated with more than 1,500 employees.

³⁶¹ U.S. Census Bureau, 2012 NAICS Definitions, "515120 Television Broadcasting," at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources."

³⁶² 13 CFR 121.201; 2012 NAICS code 515120.

³⁶³ U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 (515120)*, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

³⁶⁴ See *Broadcast Station Totals as of December 31, 2014*, Press Release (MB rel. Jan. 7, 2015) (*Broadcast Station Totals*) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-331381A1.pdf.

³⁶⁵ See *Broadcast Station Totals*, *supra*.

³⁶⁶ See generally 5 U.S.C. 601(4), (6).

the majority of television broadcast stations are small entities.

81. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³⁶⁷ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

82. *Class A TV and LPTV Stations.* The same SBA definition that applies to television broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: those having \$38.5 million or less in annual receipts.³⁶⁸ The Commission has estimated the number of licensed Class A television stations to be 431.³⁶⁹ The Commission has also estimated the number of licensed LPTV stations to be 2,003.³⁷⁰ Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

83. The Report and Order revises section 76.59 of the rules to apply also to the satellite television context. The new satellite rules permit commercial television broadcast stations, satellite carriers and county governments to file petitions seeking to modify a commercial television broadcast station’s local television market for purposes of satellite carriage rights.³⁷¹

³⁶⁷ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

³⁶⁸ 13 CFR 121.201; NAICS code 515120.

³⁶⁹ See *Broadcast Station Totals*, *supra*.

³⁷⁰ See *Broadcast Station Totals*, *supra*.

³⁷¹ See Report and Order para. 9.

Under section 76.59 of the rules, commercial TV broadcast stations and cable system operators may already file such requests for market modification for purposes of cable carriage rights. Consistent with the current cable requirements, the adopted rules require petitioners to file market modification requests and/or responsive pleadings in accordance with the procedures for filing Special Relief petitions in section 76.7 of the rules.³⁷² Consistent with the current cable requirements, the adopted rules require petitioners to provide specific forms of evidence to support market modification petitions, should they choose to file such petitions.³⁷³ A television broadcast station that becomes eligible for mandatory satellite carriage by operation of a market modification may elect retransmission consent or mandatory carriage with respect to a satellite carrier within 30 days of the market determination.³⁷⁴ A satellite carrier must commence carriage within 90 days of receiving the station’s request for carriage.³⁷⁵

84. The Report and Order establishes a process that will allow a prospective petitioner (*i.e.*, broadcaster or county government) to obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a market modification petition.³⁷⁶ To initiate this process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite

³⁷² See Report and Order paras. 12–13. Broadcasters and satellite carriers that want to oppose market modification requests would need to file responsive pleadings in accordance with 47 CFR 76.7.

³⁷³ See Report and Order para. 17 (discussing evidentiary requirements for filing market modification petitions). These requirements are codified in 47 CFR 76.59.

³⁷⁴ See Report and Order at para. 24. Carriage elections must be made in accordance with the procedures set forth in section 76.66(d)(1). See Report and Order at para. 26. Section 76.66(d)(1) requires that an election request made by a television station must be in writing and sent to the satellite carrier’s principal place of business, by certified mail, return receipt requested. 47 CFR 76.66(d)(1)(ii). The rule requires that a television station’s written notification shall include the following information: (1) Station’s call sign; (2) Name of the appropriate station contact person; (3) Station’s address for purposes of receiving official correspondence; (4) Station’s community of license; (5) Station’s DMA assignment; and (6) Station’s election of mandatory carriage or retransmission consent. 47 CFR 76.66(d)(1)(iii).

³⁷⁵ See Report and Order at para. 25.

³⁷⁶ See Report and Order para. 45.

carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner.³⁷⁷ A satellite carrier must also file a copy of the correspondence and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS so that the Media Bureau can track these certifications and monitor carrier response time. If the carrier is claiming spot beam coverage infeasibility, then the certification provided by the carrier must be the same detailed certification that would be required in response to a market modification petition.³⁷⁸ For any other claim of infeasibility, the carrier’s feasibility certification must explain in detail the basis of such infeasibility and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to challenge the carrier’s claim.³⁷⁹ If carriage is feasible, a statement to that effect must be provided in the certification.³⁸⁰ If a broadcaster or county government has concerns about the adequacy of the carrier’s certification, or has some reason to question the validity of the carrier’s certification, the broadcaster or county government may raise such concerns in a (separate) petition for special relief or its market modification petition.³⁸¹

85. The adopted rules require a satellite carrier to provide a detailed and specialized certification to demonstrate its claim that satellite carriage resulting from a market modification would be technically or economically infeasible due to insufficient spot beam coverage.³⁸² Satellite carriers will be required to provide supporting

³⁷⁷ *Id.* With respect to what would be a reasonable amount of time for a carrier to respond to a request for a feasibility certification, we expect carriers will generally be able to respond within 45 days of receipt of a prospective petitioner’s written request; however, we find that it would be reasonable for the satellite carrier to respond in 90 days if the carrier has to process several requests at the same time. If the response is after 45 days, the carrier must provide an explanation for the longer time period in its certification (*e.g.*, having to respond to multiple simultaneous requests). If the Media Bureau finds that a carrier is routinely taking up to 90 days to respond or is not providing a reasonable explanation for when it takes 90 days to respond, the Bureau may order such carrier to respond to future requests in a shorter time period or may take other enforcement action. With this process, we are trying to balance the need to provide broadcasters’ with as fast a response as possible, while recognizing that satellite carriers may have problems responding to numerous requests at once.

³⁷⁸ See Report and Order paras. 37–39.

³⁷⁹ See Report and Order para. 45.

³⁸⁰ See Report and Order para. 45.

³⁸¹ See Report and Order para. 45.

³⁸² See Report and Order paras. 35–36.

documentation upon request by the Commission and must therefore retain such supporting documentation substantiating potential review by the Commission.³⁸³ As noted in section C of this FRFA, neither one of the satellite carriers, DISH nor DIRECTV, qualify as a small entity and small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

86. The RFA requires an agency to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.³⁸⁴

87. Consistent with the statute's goal of promoting regulatory parity between cable and satellite service, the Report and Order applies the existing cable market modification rules to the satellite context, while adding provisions to the rules to address the unique nature of satellite television service. Therefore, the adopted rules for the first time allow a commercial television broadcast station to request a modification of its local television market for purposes of satellite carriage. Small TV stations that choose to file satellite market modification petitions must comply with the associated filing and evidentiary requirements (explained in section D of the FRFA); however, the filing of such petitions is voluntary. In addition, small TV stations may want to respond to a petition to modify its market (or the market of a competitor station) filed by a satellite carrier or a competitor station; however, there are no standardized evidentiary requirements associated with such responsive pleadings. Through a market modification process, a small TV station may gain or lose carriage rights with respect to a particular community, based on the five statutory factors, to better reflect localism.³⁸⁵

88. In the IRFA, we invited small TV stations to comment on whether they are more or less likely, on the whole, to benefit from market modifications.³⁸⁶ In addition, we invited comment on whether there are any alternatives we should consider to the Commission's proposed implementation of section 102 of the STELAR that would minimize any adverse impact on small TV stations, but which are consistent with the statute and its goals, such as promoting localism and regulatory parity.³⁸⁷ We received no comments in direct response to these inquiries. In comments to the NPRM, Gray Television, Inc. ("Gray") proposed that the Commission should establish a presumption in favor of applying prior cable market modification determinations to satellite markets to lower the burden on television broadcast stations, including small stations.³⁸⁸ In the Report and Order, the Commission rejected Gray's proposal, finding it was inconsistent with the statute's requirement to apply the statutory factors to each market modification petition.³⁸⁹ The Commission did observe, however, that consideration of historic carriage is one of the five statutory factors that the Commission is required to consider in evaluating market modification requests and explained that consideration under such factor would "give sufficient weight to prior decisions without the need to establish a presumption."³⁹⁰

89. Unique to satellite market modifications, the STELAR provides

same area—(a) have been historically carried on the cable system or systems within such community; and (b) have been historically carried on the satellite carrier or carriers serving such community; (2) whether the television station provides coverage or other local service to such community; (3) whether modifying the local market of the television station would promote consumers' access to television broadcast station signals that originate in their State of residence; (4) whether any other television station that is eligible to be carried by a satellite carrier in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (5) evidence of viewing patterns in households that subscribe and do not subscribe to the services offered by multichannel video programming distributors within the areas served by such multichannel video programming distributors in such community. 47 U.S.C. 338(l)(2)(B)(i) through (v). See also discussion at Report and Order at section III.B.

³⁸⁶ NPRM, para. 25.

³⁸⁷ *Id.*

³⁸⁸ Comments of Gray Television, Inc., MB Docket No. 15–71, at 4–5 (filed May 13, 2015) (Gray Comments).

³⁸⁹ See Report and Order para. 23 (explaining the reasons for not establishing a presumption that prior cable market determinations should apply to satellite markets).

³⁹⁰ *Id.*

that a satellite carrier is not required to carry a station pursuant to a market modification if it is not technically and economically feasible for the carrier to do so.³⁹¹ The Report and Order allows satellite carriers to demonstrate spot beam coverage infeasibility by providing a detailed and specialized certification under penalty of perjury.³⁹² To avoid unnecessary burdens on broadcasters, satellite carriers, and the Commission, the Report and Order established a process for the parties to exchange information regarding feasibility of carriage prior to the filing of a prospective market modification petition.³⁹³ The adopted rules allow TV broadcast stations to request a certification regarding claims of technical or economic infeasibility from a satellite carrier before filing a prospective market modification petition, and the station may seek review of such certification by filing a petition for special relief before filing a prospective petition for market modification.³⁹⁴ This process will particularly benefit small stations, allowing them to avoid the time and expense of filing a market modification petition that could not result in carriage of the station. In comments to the NPRM, the Virginia Broadcasting Corp. ("WVIR-TV") expressed concern that a certification approach would not provide broadcasters with sufficient information to challenge the validity of the satellite carrier's claim of infeasibility.³⁹⁵ The Report and Order addressed this concern by requiring a detailed and specialized certification that is subject to penalties for perjury and which would contain sufficient detail to ensure that the analysis performed by the satellite carrier was appropriate and valid.³⁹⁶

³⁹¹ See 47 U.S.C. 338(l)(3) (providing that "[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination."). See also discussion in Report and Order at section III.D.

³⁹² See Report and Order para. 36.

³⁹³ See section D of this FRFA.

³⁹⁴ See Report and Order paras. 39–40.

³⁹⁵ Reply Comments of Virginia Broadcasting Corp., MB Docket No. 15–71, at 1 (filed May 28, 2015) (WVIR-TV Reply) (urging the Commission "to reject suggestions by DBS operators that would impose heavy burdens on broadcasters seeking market modifications—burdens that would be particularly onerous for small market television stations—by withholding information that is uniquely in their possession regarding technical and economic infeasibility or by requiring broadcasters to provide support for market modification requests that goes well beyond what is required in the cable television context.").

³⁹⁶ See Report and Order paras. 35–36.

³⁸³ See Report and Order para. 35.

³⁸⁴ 5 U.S.C. 604(a)(6).

³⁸⁵ See Report and Order para. 6. Section 338(l) of the Act provides that, in deciding requests for market modifications, the Commission must afford particular attention to the value of localism by taking into account the following five factors: (1) Whether the station, or other stations located in the

90. The adopted rules, for the first time, allow satellite carriers to request market modifications. The adopted rules also allow satellite carriers to assert claims of infeasibility by certification, which will minimize the burden on them, although the Commission may require satellite carriers to provide documentation upon request.³⁹⁷ As previously discussed, only two entities—DIRECTV and DISH Network—provide direct broadcast satellite (DBS) service, which requires a great investment of capital for operation. As noted in section C of this FRFA, neither one of these two entities qualify as a small entity and small businesses do not generally have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services.

6. Report to Congress

91. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁹⁸ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.³⁹⁹

B. Final Paperwork Reduction Act Analysis

92. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁴⁰⁰ The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002 (SBPRA),⁴⁰¹ we previously sought

specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Congressional Review Act

93. 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.⁴⁰²

V. Ordering Clauses

94. Accordingly, *it is ordered* that, pursuant to section 102 of the STELA Reauthorization Act of 2014 (STELAR), Public Law 113–200, 128 Stat. 2059 (2014), and sections 1, 4(i), 303(r), 325, 338 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 325, 338 and 534, this Report and Order *is hereby adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

95. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix B of the Report and Order and *will become effective* November 2, 2015, except for 47 CFR 76.59(a) and (b), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

96. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Broadcast television, Cable television, Satellite television.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544,

⁴⁰² See 5 U.S.C. 801(a)(1)(A).

544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.5 is amended by revising paragraph (gg) to read as follows:

§ 76.5 Definitions.

* * * * *

(gg) *Satellite community.* (1) For purposes of the significantly viewed rules (see § 76.54), a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more adjacent five-digit zip code areas. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in paragraph (dd) of this section.

(2) For purposes of the market modification rules (see § 76.59), a county.

* * * * *

■ 3. Section 76.7 is amended by revising paragraph (a)(3) to read as follows:

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) * * *

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, multichannel video programming distributor, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

* * * * *

■ 4. Section 76.59 is amended by revising paragraphs (a), (b)(1) and (2), and (b)(5) and (6), adding paragraph (b)(7), revising paragraph (d), and adding paragraphs (e) and (f) to read as follows:

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station, cable system, satellite carrier or county government (only with respect to satellite modifications), may deem that the television market, as defined either by § 76.55(e) or § 76.66(e), of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) * * *

(1) A map or maps illustrating the relevant community locations and

³⁹⁷ See Report and Order para. 35.

³⁹⁸ See 5 U.S.C. 801(a)(1)(A).

³⁹⁹ See 5 U.S.C. 604(b).

⁴⁰⁰ The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). See OMB Control Number 3060–0546. The Commission received pre-approval for this modified collection on June 17, 2015; however, we are making additional modifications to this collection in this Report and Order.

⁴⁰¹ The Small Business Paperwork Relief Act of 2002 (SBPRA), Publaw Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). See 44 U.S.C. 3506(c)(4).

geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Noise-limited service contour maps (for full-power digital stations) or protected contour maps (for Class A and low power television stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

Note to paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

* * * * *

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday–Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

(7) If applicable, a statement that the station is licensed to a community within the same state as the relevant community.

* * * * *

(d) A cable operator or satellite carrier shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

(e) A market determination under this section shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.

(f) No modification of a commercial television broadcast station's local market pursuant to this section shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals from a satellite carrier pursuant to 47 U.S.C. 339.

■ 5. Section 76.66 is amended by adding paragraph (d)(6) and revising paragraph

(e)(1) introductory text to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(d) * * *

(6) *Carriage after a market modification.* Television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements in paragraph (d)(1) of this section.

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, unless such market is amended pursuant to § 76.59, and

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[FR Doc. 2015–24999 Filed 10–1–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Hours of Service for Drivers: Regulatory Guidance Concerning the Editing of Automatic On-Board Recording Device (AOBRD) Information

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

ACTION: Notice of regulatory guidance.

SUMMARY: FMCSA issues regulatory guidance concerning the editing of records created by automatic on-board recording devices (AOBRDs). The guidance makes clear that, within certain limits, a driver must be allowed to review his or her AOBRD records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information. The AOBRD must retain the original entries, and reflect the date, time, and name of the person making edits to the information. Drivers' supervisors may request that a driver make edits to correct errors, but the driver must

accept or reject such requests. Driving time may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. All prior Agency interpretations and regulatory guidance on this subject, including memoranda and letters, may no longer be relied upon to the extent they are inconsistent with this guidance.

DATES: This regulatory guidance is effective October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, phone (202) 366–4325, email MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act), as amended (codified at 49 U.S.C. 31136(a)) authorizes the Secretary of Transportation to regulate commercial motor vehicles (CMVs) and equipment, and the drivers and motor carriers that operate them. Section 211 of the 1984 Act also gives the Secretary broad power to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” (49 U.S.C. 31133(a)(8) and (10)). The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation.

Background

Motor carriers began to use automated hours-of-service (HOS) recording devices in the mid-1980s to replace paper records. The Federal Highway Administration, the agency then responsible for the motor carrier safety regulations, published a final rule in 1988 that defined Automatic On Board Recording Devices (AOBRDs) and set forth performance standards for their use (53 FR 38670, September 30, 1988, codified at 49 CFR 395.15).

Question 2 of the regulatory guidance for § 395.15 prohibits CMV drivers from “amending” AOBRD records of duty status (RODS) during a trip; the guidance was published on April 4, 1997 (65 FR 16370, at 16426). The reason for the prohibition—“If drivers, who use automatic on-board recording devices, were allowed to amend their record of duty status while in transit,

legitimate amendments could not be distinguished from falsifications”—was to block a pathway for drivers to falsify their electronic records. At the time the guidance was written, most AOBDR systems required the driver to physically deliver his or her electronic HOS information to the motor carrier using removable media such as a data disk. The Agency may have been concerned that some of those early AOBDR systems might not have incorporated audit trails into their software.

Over 25 years have passed since the AOBDR rule was published. Many systems now allow electronic transfer of data from in-cab units to a support system. Thousands of motor carriers and hundreds of thousands of drivers are using HOS recording systems that far exceed the minimum performance requirements for AOBDRs. Information technology systems can place very precise controls over the data revision; e.g., specific data elements can be “locked” to prevent any revision once an entry has been made. They also routinely incorporate audit trails to indicate who revised data that was originally entered, when the revision was made, and the reason for the change.

FMCSA acknowledges that drivers need to be able to make legitimate corrections to their electronic AOBDR records. For example, if a driver erroneously enters “off duty” when he or she actually is on duty/not driving, and realizes this error later, under current guidance the driver would have to relay this information to a supervisory motor carrier official, and that official would need to edit the driver’s record. In another example, a driver might need to enter on-duty activity performed when the driver was away from the CMV.

With the steady increase in CMV drivers using AOBDRs, and the ability of software to note edits without deleting the original record, the need for a driver to make this request through another party is no longer necessary and is becoming increasing less viable. Therefore, as long as the AOBDR record reflects both the original entry and the revised entry, along with information on who made the revision, the date and time, and the reason (in the Remarks sections, see current Question 2 to § 395.15), FMCSA will now allow these edits.

However, FMCSA continues to prohibit drivers from editing records related to driving time, except in limited circumstances. Driving time may not be edited except in the case of unidentified or team drivers, and when driving time

was assigned to the wrong driver or no driver. Such time may be reassigned to the correct driver. Staff of the motor carrier or its electronic systems provider may request that a driver make edits to correct errors. The driver must accept or reject such requests and the AOBDR must record the transaction. If the driver edits the record based on the request, he or she must re-submit and re-certify the corrected record.

In all instances of editing, the AOBDR must retain the original entries, and reflect the date, time, and name of the person making any edit. The motor carrier must also retain both the original and edited record of duty status.

The Agency revises Question 2 of the Regulatory Guidance for § 395.15 to address all of these issues.

PART 395—HOURS OF SERVICE OF DRIVERS

- Replace the text of § 395.15 Question 2 with the following:

“*Question 2:* May entries made on an automatic on-board recording device (AOBDR) be annotated?”

Guidance: Yes.

(1) Within certain limits, a driver must be allowed to review his or her AOBDR records, annotate and correct inaccurate records, enter any missing information, and certify the accuracy of the information.

(2) The AOBDR must retain the original entries, and reflect the date and time of an edit, and name of the person making the edit. If the driver has already “certified” the entries for the duty period, he or she must re-certify the edited version, which must be transmitted to the carrier.

(3) “Driving time” may not be edited except in the case of unidentified or team drivers, and when driving time was assigned to the wrong driver or no driver. Such time may be reassigned to the correct driver.

(4) After reviewing incoming records, drivers’ supervisors may request that a driver make edits to correct errors. The driver must accept or reject such requests and the AOBDR must record the transaction. If the driver annotates the record based on the request, he or she must re-submit and re-certify the corrected record.”

Issued on: September 25, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015–25135 Filed 10–1–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2081–04]

RIN 0648–XE217

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2015 Recreational Accountability Measure and Closure for Red Grouper

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

ACTION: Temporary rule; accountability measures.

SUMMARY: NMFS implements accountability measures (AMs) for the red grouper recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2015 fishing year through this temporary rule. NMFS projects the recreational sector will reach the recreational annual catch limit (ACL) by October 7, 2015. Therefore, the red grouper recreational sector in the Gulf EEZ will close at 12:01 a.m., local time, October 8, 2015. This closure is necessary to protect the Gulf red grouper resource.

DATES: The recreational sector closure for red grouper in the Gulf EEZ is effective at 12:01 a.m., local time, October 8, 2015, until January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf, which includes red grouper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights specified in this rule are in gutted weight.

In accordance with regulations at 50 CFR 622.41(e)(2)(i), if red grouper recreational landings reach or are projected to reach the recreational ACL and without regard to overfished status, NMFS will close the red grouper recreational sector in the Gulf EEZ for the remainder of the fishing year by filing a notification to that effect with the Office of the **Federal Register**. The

Gulf red grouper recreational ACL is 1.90 million lb (0.862 million kg), as specified in 50 CFR 622.41(e)(2)(iv). Gulf red grouper are not overfished based on the most recent Status of U.S. Fisheries Report to Congress. Based on 2015 recreational landings data thus far, NMFS projects the recreational sector will reach the red grouper recreational ACL by October 7, 2015. Therefore, NMFS closes the red grouper recreational sector in the Gulf EEZ at 12:01 a.m., local time, October 8, 2015, through December 31, 2015.

During the recreational sector closure, the bag and possession limits for red grouper in or from the Gulf EEZ are zero. These bag and possession limits also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

The recreational sector for red grouper will reopen on January 1, 2016, the beginning of the 2016 recreational fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf red grouper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(e)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the red grouper recreational sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B),

because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule establishing the closure provisions was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect red grouper. Prior notice and opportunity for public comment would require time and could potentially allow the recreational sector to exceed the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 29, 2015.

Emily H. Menashes,

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

[FR Doc. 2015-25129 Filed 9-29-15; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 80, No. 191

Friday, October 2, 2015

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

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115, 120, and 121

RIN 3245-AG73

Affiliation for Business Loan Programs and Surety Bond Guarantee Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) has determined that changing conditions in the American economy and a constantly evolving small business community compel it to seek ways to improve program efficiency for its Surety Bond Guarantee ("SBG") Program, and the business loan programs consisting of the 7(a) Loan Program, the Business Disaster Loan Programs (collectively, the Economic Injury Disaster Loans, Reservist Injury Disaster Loans, Physical Disaster Business Loans, Immediate Disaster Assistance Program loans), the Microloan Program, and the Development Company Program (the "504 Loan Program"). As a result, SBA proposes to simplify guidelines for determining affiliation for eligibility based on size as it relates to these programs. This proposed rule would redefine affiliation for all five Programs, thereby simplifying eligibility determinations.

DATES: SBA must receive comments to the proposed rule on or before December 1, 2015.

ADDRESSES: You may submit comments, identified by RIN: 3245-AG73 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* ocareg2015@sba.gov.

Include RIN 3245-AG73 in the subject line of the message.

- *Mail:* Linda Reilly, Chief, 504 Loan Program, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

- *Hand Delivery/Courier:* Linda Reilly, Chief, 504 Loan Program, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please submit the information to Linda Reilly, Chief, 504 Loan Program, Office of Financial Assistance, Office of Capital Access, 409 Third Street SW., Washington, DC 20416, or send an email to ocareg2015@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Linda Reilly, Chief, 504 Loan Program, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW., Washington, DC 20416; telephone 202-205-9949.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 13563, "Improving Regulation and Regulatory Review," provides that agencies "must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends." (Emphasis added). Executive Order 13563 further provides that "[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote *retrospective analysis* of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to *modify, streamline, expand, or repeal* them in accordance with what has been learned." (Emphasis added). SBA has reviewed its regulations with regard to the business loan programs and SBG program and is proposing a number of amendments and revisions to accomplish this goal.

The business loan programs authorized by the Small Business Act (Act), 15 U.S.C. 631 *et seq.*, that are affected by this proposed rule are: (1) The 7(a) Loan Program authorized by Section 7(a) of the Act; (2) the Business Disaster Loan Program ("BDLP")

Program authorized by Section 7(b) of the Act; and (3) the Microloan Program authorized by Section 7(m) of the Act. The 504 Loan Program, which is authorized by Title V of the Small Business Investment Act of 1958 (the "SBIA"), as amended, 15 U.S.C. 695 *et seq.*, is also affected. These programs (7(a), BDLP, Microloan, and 504) are referred to collectively as the Business Loan Programs in this rule. Finally, this rule also proposes revisions to the Surety Bond Guarantee ("SBG") Program, authorized by section 411 of the SBIA. A description of each program is set forth below.

A. 7(a) Loan Program

The 7(a) Loan Program's main purpose is to help eligible small businesses obtain credit when they cannot obtain credit elsewhere. The Agency recognizes that the 7(a) Loan Program is an important engine for job creation. The 7(a) Loan Program provides financing for general business purposes through the guaranty of loans made by participating private sector lenders. Currently, there are approximately 4,500 lenders participating in the 7(a) Loan Program with approximately \$66 billion in total SBA guarantees outstanding.

B. Business Disaster Loan Programs

Through its Business Disaster Loan Programs, SBA provides low-interest disaster loans to businesses of all sizes and private non-profit organizations. These loans can be used to restore, repair or replace disaster damaged assets and working capital as a result of a declared disaster. The loans are made directly by SBA and repayment terms are determined on a case-by-case basis, based upon each borrower's satisfactory credit and ability to repay.

C. Microloan Program

The Microloan Program provides loans up to \$50,000 to help small businesses and certain nonprofit childcare centers. The average microloan is about \$13,000. SBA lends funds to specially-designated intermediary lenders, which are primarily nonprofit community-based organizations with experience in lending as well as management and technical assistance. These intermediaries administer the Microloan Program for eligible borrowers lending directly to them. Each intermediary

lender has its own lending and credit requirements. Intermediaries generally require some type of collateral as well as the personal guarantee of the business owner. Depending on their prior experience, applicants to the Microloan Program may be required to fulfill training or planning requirements before a loan application will be considered.

D. 504 Loan Program

The core mission of the 504 Loan Program is to provide long-term fixed asset financing to small businesses for the purchase or improvement of land, buildings, and major equipment purchases, to facilitate the creation of jobs and to stimulate local economic development. A Certified Development Company ("CDC") is a nonprofit corporation, with the exception of selected for-profit CDCs grandfathered into the 504 Loan Program that promotes economic development within its community through 504 loans. Under the 504 Loan Program, loans are made to small business applicants by CDCs, which are funded through sales of debentures, which are guaranteed 100% by the SBA. There are over 260 CDCs nationwide, each with a defined Area of Operations covering a specific geographic area.

E. SBG Program

Pursuant to the SBG Program, SBA guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee is an agreement between a Surety and SBA that SBA will cover a certain percentage of the Surety's loss should a contractor default on the underlying contract. Specifically, SBA guarantees Sureties participating in the program against a portion of their losses incurred and paid as a result of a breach of the terms of a bid bond, final bond or ancillary bond, on any eligible contract. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities which require these bonds as a condition for obtaining the contract.

II. Summary of Proposed Program Changes

The Agency, in compliance with Executive Order 13132, previously requested and received public comments on the Rules of Affiliation as part of a Notice of Proposed Rule Change (February 25, 2013) to update the business loan program. SBA received

and reviewed comments and met with industry participants to identify best practices based on the feedback. SBA received 54 comments regarding Affiliation Rules in general support of the proposed change. Ten comments further suggested modification and clarification of the proposal. The most consistent concern expressed was the need in that proposal to require a borrower to prepare a document that qualified each potential affiliation under SBA rules. SBA has determined that the modifications proposed herein fully incorporate previous input.

Below is a summary of the proposed changes regarding determining size and affiliation of applicants to Business Loan Programs and SBG Programs. The Agency requests comments on all of the proposed regulatory revisions in this rule and on any related issues affecting the programs.

A. Business Loan Programs and Affiliation

The Act defines a small business concern as "one which is independently owned and operated and which is not dominant in its field of operation . . ." 15 U.S.C. 632(a)(1). In order to be eligible for an SBA guaranteed loan, an applicant must be a small business pursuant to size standards established by SBA through regulation. 13 CFR 120.100. In general, to be considered small, concerns must meet the particular size standard that corresponds to a six-digit North American Industrial Classification System (NAICS) code. Each size standard is stated in terms of either gross revenue receipts or number of employees, and in limited cases a basis other than receipts or employees (e.g., megawatt hours). SBA considers the receipts or employees (or other measure) of an applicant, and all of its domestic and foreign affiliates, when determining a business concern's eligibility as a small business. 13 CFR 121.103(a)(6).

SBA's regulations in 13 CFR 121.103 set forth the Agency's principles of affiliation and explain when an individual or an entity is an affiliate of another individual or entity. SBA's affiliation rules generally apply to all SBA programs for which a business must qualify as small, including SBA's government contracting and business development programs, small business loan programs and grant programs. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions

between parties. SBA may also find affiliation based on "negative control," which includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

Upon review of the statutory provisions for the Business Loan Programs, the purpose behind these programs, and the overall goals of simplification and maximization of benefits for small businesses, SBA is proposing amendments to the current affiliation rules with respect to these programs. SBA believes that, in general, a majority of the principles of affiliation set forth in § 121.103 apply to the Business Loan Programs. However, SBA believes that certain affiliation principles in their current form are more applicable to determining size with respect to federal contracting and subcontracting (where SBA is trying to ensure only eligible small businesses win federal contracts expressly intended for small businesses) and are not necessarily applicable to business loan applicants. SBA seeks to create simple, bright-line tests for Business Loan Program applicants when determining eligibility with respect to size and affiliation, and streamline requirements for determining whether a business is small for purposes of receiving SBA loan assistance. In addition to clarification, this will reduce costs of an application for the loan applicant and its participating lender.

SBA previously amended the affiliation rules for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Small Business Size Regulations, Small Business Innovation Research (SBIR) Program and Small Business Technology Transfer (STTR) Program, Proposed Rule 77 FR 28520 (May 15, 2012) and Final Rule 77 FR 76215 (December 27, 2012). SBA determined that the general affiliation rules did not apply to the SBIR and STTR programs due to the specialized nature of the program (research and development) and the type of small business that applies for the program (innovative start-ups and research businesses). The amended affiliation rules for the SBIR and STTR programs have helped increase opportunities for small businesses within these programs, reduced burdens for SBIR/STTR eligibility, and streamlined the programs' processes.

SBA is proposing similar changes for the Business Loan Programs. In the SBIR revision R&D costs were cited, as an impediment to program participation.

Many start-ups and undercapitalized firms face the same, if not greater, economic challenges. SBA proposes to add a new § 121.103(a)(8) that would explain that the bases for affiliation applicable to SBA's Business Loan Programs will be found at a new § 121.301(f). SBA proposes to address size and affiliation for the Business Loan Programs separately in this new § 121.301(f), to avoid any confusion with SBA's treatment of affiliation for government contracting programs, business development programs, and other purposes.

In the new § 121.301(f), SBA proposes to refine the principles of "affiliation" for the purpose of the Business Loan Programs. Proposed new paragraph (f)(1) sets forth the affiliation principles based on percentage of ownership. With respect to affiliation based on control through ownership, SBA's current affiliation rule (*see* 13 CFR 121.103(c)) sets forth a minority shareholder standard stating that when no one person owns more than 50% of a company, SBA will find that the person(s) that own(s) directly or indirectly an interest in the business no less than the ownership of the next largest owner(s) is deemed to have control of the small business. In addition, if the ownership of a business concern is widely held and no ownership interest is a large single block of stock as compared to any other, then the Board of Directors and President or Chief Executive Officer are deemed to control the business concern, unless they can present evidence showing otherwise.

SBA's current affiliation rule states that if two or more persons own, control or have the power to control less than 50% of the concern's voting interests, and the interests are equal, or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other holding, SBA presumes these owners have control of the business concern.

For purposes of the Business Loan Programs, however, SBA considers that in all of these instances, the holdings are so diffused that control would always rest with the small business concern's Board of Directors or management since it is that unit of the organization that is truly running the business.

Therefore, in § 121.301(f)(1), SBA proposes that for the business loan programs, SBA will determine control exists based on ownership when:

(1) A person owns or has the power to control more than 50% of the voting equity of a concern; or

(2) if no one person owns or has the power to control more than 50% of the voting equity of the concern, SBA would deem the small business to be controlled by either the President, Chairman of the Board, or Chief Executive Officer (CEO) of the concern (or other officers, managing members, partners, or directors who control the management of the concern).

SBA refers to ownership or equity without designating that it is "stock" ownership because not all business loan applicants are corporations with ownership determined through stock issuance.

In paragraph (f)(2) of § 121.301 SBA proposes no changes to the existing principles regarding affiliation arising under stock options, convertible securities, and agreements to merge currently found in § 121.103(d).

In § 121.301(f)(3), SBA proposes to utilize the same principles of affiliation for common management that are set forth in § 121.103. However, SBA has amended the language here to clarify the different types of managers or management.

In § 121.301(f)(4), SBA is proposing to use a different affiliation rule concerning "identity of interest," 13 CFR 121.103(f), for the purposes of the Business Loan Programs and Surety Bond Program. Currently under identity of interest, SBA determines affiliation between individuals or firms when these individuals or firms have identical (or substantially identical) business or economic interests, unless they can demonstrate to SBA otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual (or other) relationships, are among those treated this way. For the Business Loan Programs and the Surety Bond Guarantee Program, SBA proposes to presume that there is an identity of interest only between close relatives as defined in § 120.10. SBA proposes to retain this affiliation principle based on the customary understanding that close relatives have an overarching and close alignment of interests and a strong financial incentive to participate in and support family businesses. In the proposed rule, SBA states that it may determine affiliation based on an identity of interest for other reasons. Upon such a determination, the applicant may make a case to rebut the SBA decision.

In § 121.301(f)(5), SBA proposes to make one change to the existing language affecting affiliation based on franchise and license agreements currently found in § 121.103(i). Under current § 121.103(i), SBA must review

franchise agreements as they pertain to both the applicant and any affiliates of the applicant. If the applicant has an affiliate that operates under a franchise or license agreement, SBA would be required to review the franchise agreements as it pertains to the affiliate to determine the size of the applicant. Therefore, if the affiliate entity was operating under a franchise agreement that gave the franchisor control over the affiliate franchisee, SBA would determine that the affiliate entity is affiliated with the franchisor. Based on this analysis, when the size of the affiliate entity and the franchisor are combined with the size of the applicant, the applicant may be considered other than small. The proposed regulation would limit franchise or license agreement reviews to the immediate loan applicant, and not consider other agreements in place with affiliated entities.

The proposed change would revise the first sentence of current § 121.103(i) to read as follows: "The restraints imposed on a franchisee or licensee by its franchise or license agreement related to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee, provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership." The revised language would ensure that a review of the applicant only takes into consideration the size of the applicant and its direct affiliate and not the relationship of the affiliate to any franchisor or licensor. With this change, SBA will still have to consider the size of any affiliate entities, but will not be required to examine any franchisor/franchisee relationship of the affiliated entity. The remaining language will stay the same and still require a review of a franchise/license agreement as it pertains to the applicant.

SBA proposes to retain in § 121.301(f)(6) a finding of affiliation based on the totality of circumstances currently found in § 121.103(a)(5). This provides SBA with the ability to consider all contributing factors that could potentially impact the determination that the applicant business is small. Therefore, notwithstanding the Agency's goal to provide bright line eligibility criteria regarding affiliation determinations for loan eligibility, the Agency recognizes that it must prevent instances where large entities participate in a small business loan program, and application

of the totality of circumstances standard will reinforce that program integrity.

SBA proposes to incorporate the exceptions to affiliation set forth in section § 121.103(b) in new § 121.301(f)(8). SBA does not propose any changes to these exceptions to affiliation.

Finally, SBA proposes to eliminate from the Business Loan Programs several current bases of affiliation that apply in federal contracting. Specifically, SBA proposes to eliminate applying affiliation based on a newly organized concern (*see* § 121.103(g)) and joint ventures (*see* § 121.103(h)). One purpose of the newly organized concern rule is to prevent former small businesses from creating spin-off companies in order to continue to perform on small business contracts or receive other contracting benefits. While this affiliation principle applies in federal contracting, it is generally not applicable to the Business Loan Programs because the responsible party or parties for any loan are the immediate business owners, not any former entity from which they may have been employed previously.

With respect to joint ventures, these partnerships are formed when two or more businesses combine their efforts in order to perform on a federal contract or receive other contract assistance. SBA does not consider this affiliation based on joint venture to be of significant concern to the Business Loan Programs because a loan to any joint venture will require all members of the joint venture to accept full responsibility for loan guarantee liability. Also, agency records indicate that applicants for assistance under SBA Business Loan Programs are rarely, if ever, joint ventures, and, therefore, this provision is unnecessary. For the Surety Bond Guarantee Program, the guarantee is on the bond, not a contract. Any joint venture project where the applicant small business requests a guarantee would also be subject to guaranteeing the obligation.

SBA also proposes to omit the discussion of “negative control” as a stand-alone factor in determining affiliation for the purpose of loan eligibility. As noted above, pursuant to 13 CFR 121.103(a)(3), negative control may exist where a minority shareholder can block certain actions by the board of directors. Under this proposal for loan eligibility, SBA will consider all factors when making an affiliation determination based on the totality of the circumstances.

SBA considers that this proposed definition of affiliation used in determining the applicant’s loan eligibility, while continuing SBA’s

ability to review totality of circumstances, adequately ensures that the loan programs are provided appropriately to small businesses.

B. Surety Bond Guarantee Program and Affiliation

Under this program, SBA provides surety bond guarantees for qualified small and emerging businesses, in direct partnership with surety companies. SBA helps small contractors by guaranteeing bid, performance, and payment bonds issued by participating surety companies for contracts up to \$6.5 million so as to allow the qualified small contractor to obtain a contract.

SBA’s SBG Program is most commonly used for non-federal contracts. SBA regularly guarantees bonds for eligible small business on state, local and private entity contracts. State and local jurisdictions may not have the same size and affiliation rules as SBA. SBA has proposed to amend the definition of “Affiliate” in 13 CFR 115.10 to explain that the term is defined in the proposed 13 CFR 121.301 (the loan programs definition of affiliation).

C. Request for Comments

SBA requests comments on these proposed amendments to its current regulations. Although SBA seeks comments on all aspects of this proposed rule, it specifically requests comments on the following:

1. What impact will this rule have on Small Business Loan and SBG applicants?
2. Are there alternatives to the proposed rule relating to control, negative control, common ownership, identity of interest, common management, and franchise agreements?
3. Would the elimination of the newly-organized concern and joint venture affiliation rules from the Business Loan and SBG Programs affect those programs, and if so, how?

Compliance With Executive Orders 13563, 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a “significant” regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA’s Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The Agency believes it needs to reduce regulatory burdens and expand its Business Loan Programs and SBG Program by streamlining delivery, lowering costs, and facilitating job creation. As noted above, responses received from the **Federal Register** proposed rule notice regarding SBA rules on affiliation were in favor of simplified rules that enhanced understanding and aligned with normal commercial industry practices. Small business applicants will be assisted by this proposed streamlining of requirements because it will be easier and more cost effective for a lender to research whether the applicant small business controls other large companies which would jeopardize their eligibility. Higher lender costs potentially results in greater costs to the applicant small business.

What are the potential benefits and costs of this regulatory action?

As stated above, the potential benefits of this proposed rule are based on its elimination of unnecessary cost burdens on loan applicants’ and lenders’ participation in SBA-guaranteed loans.

These proposed changes would exempt the Business Loan Programs and SBG Program from certain government contracting rules that determine whether an entity is deemed affiliated with an applicant. These general affiliation rules apply to federal contracting to ensure that small businesses (and not another entity) receive and perform a federal contract when a preference for small businesses is provided. Many of these general principles of affiliation (*e.g.*, newly organized concern) are not applicable to the Business Loan Program or SBG Program.

What alternatives have been considered?

As indicated above, on February 25, 2013, the Agency issued a proposed rule for comment in the **Federal Register** to implement several changes intended to reinvigorate the Business Loan Programs and SBG Program by eliminating unnecessary compliance burdens and loan eligibility restrictions. Proposed Rule: 504 and 7(a) Loan Programs Updates, 78 FR 12633 (February 25, 2013). Included in these proposals was an alternate affiliation definition. After a full comment period ending April 26, 2013, and careful consideration of all comments, SBA decided to further consider issues of redefining affiliation

for the Business Loan Programs and SBG Program. Final Rule: 504 and 7(a) Loan Programs Updates, 78 FR 15641 (March 21, 2014). This proposal presents a set of requirements to determine affiliation based on the precedent separating the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs from the government contracting standards. SBA will review public comment and suggestions to the proposed rule and consider changes needed to mitigate identified economic risk to the taxpayers and reduce waste, fraud, and abuse.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

With the exception of the Economic Injury Disaster Loan (EIDL) which is a direct loan from SBA to the Borrower, the Business Loan Programs operate through the Agency's lending partners, which are 7(a) Lenders for the 7(a) Loan Program, Intermediaries for the Microloan Program, and CDCs for the 504 Loan Program. The Agency has held public forums and meetings which allowed it to reach hundreds of its lending partners and gain valuable insight, guidance, and suggestions from many of them and the trade associations which represent many of them. The Agency's outreach efforts to engage stakeholders before proposing this rule was extensive, and will continue throughout the comment period.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

The SBA has determined that this proposed rule would not impose significant additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA). Specifically, participants in SBA's 7(a) Loan Program will continue to report any affiliates of their business on SBA Form 1919 (OMB Control No. 3245-0348), and participants in SBA's 504 Loan Program will continue to report affiliates on SBA Form 1244 (OMB Control No. 3245-0071). EIDL Program participants will continue to report affiliates on SBA Form 5 (OMB Control No. 3245-0017), and SBG Program participants will continue to report affiliates on SBA Form 994 (OMB Control No. 3245-0007).

Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory analysis" which will "describe the impact of the proposed rule on small entities." Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The rulemaking will positively impact all of the approximately 5,000 7(a) Lenders (some of which are small) and all of the approximately 260 CDCs (all of which are small). The proposed rule will reduce the burden on program participants as they independently choose on what level to participate, with cost to deliver being a significant influence. The proposed modifications of certain program process requirements through this proposed modification of eligibility based on affiliation is not projected to adversely impact or cost on the small business borrower, lender or CDC.

This proposal presents a best practice rule that removes unnecessary regulatory burdens and increases access to capital for small businesses and facilitates American job preservation and creation. SBA has determined that there is no significant impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact either on lenders, CDCs, or their borrowers.

List of Subjects

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 120

Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 115, 120, and 121 as follows:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110-246, Sec. 12079, 122 Stat. 1651.

■ 2. Amend § 115.10 to revise the definition of "Affiliate" to read as follows:

§ 115.10 Definitions.

Affiliate is defined in § 121.301(f) of this chapter.

* * * * *

PART 120—BUSINESS LOANS

■ 3. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111-5, 123 Stat. 115, Pub. L. 111-240, 124 Stat. 2504.

■ 4. Amend § 120.1700 to revise the definition of "Affiliate" to read as follows:

§ 120.1700 Definitions used in subpart J.

* * * * *

Affiliate. A person or entity SBA determines to be an affiliate of a Program Participant pursuant to the application of the principles and guidelines set forth in § 121.301 of this Chapter.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 5. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

■ 6. Amend § 121.103 to add paragraph (a)(8) to read as follows:

§ 121.103 How does SBA determine affiliation?

(a) * * *

(8) For SBA's Business Loan and Surety Bond Guarantee programs, the size standards and bases for affiliation are set forth in § 121.301.

* * * * *

■ 7. Amend § 121.301 to add paragraph (f) to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. For the purposes of SBA's Business Loan Programs, Disaster Loan Program, and Surety Bond Guarantee Program, the following principles of affiliation apply:

(1) *Affiliation based on ownership.* For determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity. If no individual, concern, or entity is found to control, SBA will deem the Board of Directors or President or Chief Executive Officer (CEO) (or other officers, managing members, or partners who control the management of the concern) to be in control of the concern.

(2) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (i) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(ii) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(iii) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is

shown to be extremely remote, are not given present effect.

(iv) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(3) *Affiliation based on common management.* Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single individual, concern or entity that controls the Board of Directors or management of one concern also controls the Board of Directors or management of one of more other concerns.

(4) *Affiliation based on identity of interest.* (i) Affiliation may arise among two or more persons (including any individual, concern, or other entity) with an identity of interest. An individual, concern, or entity may rebut a determination of identity of interest with evidence showing that the interests deemed to be one are in fact separate.

(ii) SBA may presume an identity of interest between close relatives, as defined in 13 CFR 120.10, with identical or substantially identical business or economic interests (such as where the family members operate concerns in the same or similar industry in the same geographic area).

(5) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

(6) *Affiliation based on SBA's determination of the totality of the circumstances.* SBA may find affiliation after considering the totality of the circumstances, even when no single factor is sufficient to constitute affiliation.

(7) *Determining the concern's size.* In determining the concern's size, SBA counts the receipts, employees, or the alternate size standard of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(8) *Exceptions to affiliation.* For exceptions to affiliation, see 13 CFR 121.103(b).

Maria Contreras-Sweet,
Administrator.

[FR Doc. 2015-25204 Filed 10-1-15; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-2983; Directorate Identifier 2015-NE-20-AD]

RIN 2120-AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain CFM International S.A. (CFM) CFM56-5B series turbofan engines. This proposed AD was prompted by a corrected lifing analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for certain part number (P/N) turbine rear frames (TRFs). This proposed AD would require initial and repetitive inspections of certain P/N TRFs on the low-pressure turbine (LPT) frame assembly. We are proposing this AD to prevent failure of the TRF on the LPT frame assembly, which could lead to engine separation, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 1, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877-432-3272; fax: 877-432-3329; email: aviation.fleetsupport@ge.com. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-2983; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7183; fax: 781-238-7199; email: kyle.gustafson@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2015-2983; Directorate Identifier 2015-NE-20-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We were informed by CFM that it has corrected its lifing analysis for the TRF, P/N 338-102-907-0 and P/N 338-102-908-0, on the LPT frame assembly installed on CFM56-5B turbofan engines. This corrected lifing analysis shows the need for initial and repetitive inspections of certain P/N TRFs to manage low-cycle fatigue cracks. This condition, if not corrected, could result in failure of the TRF on the LPT frame assembly, which could lead to engine separation, damage to the engine, and damage to the airplane.

The initial and repetitive inspection intervals differ depending on whether CFM Service Bulletin (SB) No. CFM56-5B S/B 72-0308, Revision 5, dated October 12, 2007, has been applied. We are proposing to allow engines with TRFs that have exceeded the initial inspection threshold a continued in-service allowance of 150 cycles to provide sufficient time to perform the initial inspection. The proposed repetitive inspection intervals are based on the size of the crack, if any, found during the inspection.

Relevant Service Information Under 1 CFR Part 51

We reviewed CFM SB No. CFM56-5B S/B 72-0850, dated December 19, 2012, and CFM SB No. CFM56-5B S/B 72-0308, Revision 5, dated October 12, 2007. CFM SB No. CFM56-5B S/B 72-0850 describes procedures for inspecting the TRF. CFM SB No. CFM56-5B S/B 72-0308 identifies the engines to which this proposed AD applies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this document.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require initial and repetitive inspections of the TRF on the LPT frame assembly.

Costs of Compliance

We estimate that this proposed AD would affect about 94 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3 hours per engine to do the inspection. The average labor rate is \$85 per hour. Based on these figures, we estimate the

cost of this proposed AD on U.S. operators to be \$23,970.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

CFM International S.A.: Docket No. FAA–2015–2983; Directorate Identifier 2015–NE–20–AD.

(a) Comments Due Date

We must receive comments by December 1, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. (CFM) CFM56–5B engines with turbine rear frame (TRF), part number (P/N) 338–102–907–0 or P/N 338–102–908–0, installed.

(d) Unsafe Condition

This AD was prompted by a corrected lifing analysis by the engine manufacturer that shows the need for an initial and repetitive inspection of certain P/N TRFs on the low-pressure turbine (LPT) frame assembly. We are issuing this AD to prevent failure of the TRF on the LPT frame assembly, which could lead to engine separation, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) *For Engines that have Applied CFM Service Bulletin (SB) No. CFM56–5B S/B 72–0308:*

(i) Prior to accumulating 25,000 cycles since new (CSN) on the TRF of the LPT frame assembly or within 150 cycles after the effective date of this AD, whichever occurs later, perform an initial eddy current inspection (ECI) or a fluorescent penetrant inspection (FPI) of the TRF mount struts on the LPT assembly.

(ii) For engines with unknown CSN on the TRF of the LPT frame assembly, perform the initial inspection required by this AD within 150 cycles-in-service after the effective date of this AD.

(iii) Use paragraph 3.B. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, dated December 19, 2012, to do the ECI and paragraph 3.C. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, to do the FPI. Do not include TRF mount strut crack lengths towards the cumulative crack length after the cracks are repaired.

(iv) If no cracks are found on any of the three TRF mount struts, or the cumulative length of all cracks at any TRF mount strut location is less than 0.20 inches, repeat the inspection within 1,670 cycles since last inspection (CSLI).

(v) If the cumulative length of cracks at any TRF mount strut location is greater than or equal to 0.20 inches, but less than 0.25 inches, repeat the inspection within 280 CSLI.

(vi) If the cumulative length of cracks at any TRF mount strut location is 0.25 inches or greater, replace the TRF with a part eligible for installation before further flight.

(2) *For Engines that have Not Applied CFM SB No. CFM56–5B S/B 72–0308:*

(i) Prior to accumulating 32,000 CSN on the TRF of the LPT frame assembly or within 150 cycles after the effective date of this AD, whichever occurs later, perform an initial ECI or FPI of the TRF mount struts on the LPT frame assembly.

(ii) For engines with unknown CSN on the TRF of the LPT frame assembly, perform the initial inspection required by this AD within 150 cycles-in-service after the effective date of this AD.

(iii) Use paragraph 3.B. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, dated December 19, 2012, to do the ECI and paragraph 3.C. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, to do the FPI. Do not include TRF mount strut crack lengths towards the cumulative crack length after the cracks are repaired.

(iv) If no cracks are found on any of the three TRF mount struts, or the cumulative length of cracks at any TRF mount strut location is less than 0.20 inches, repeat the inspection within 2,500 CSLI.

(v) If the cumulative length of cracks at any TRF mount strut location is greater than or equal to 0.20 inches and less than 0.25 inches, repeat the inspection within 370 CSLI.

(vi) If the cumulative length of cracks at any TRF mount strut location is 0.25 inches or greater, replace the TRF with a part eligible for installation before further flight.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: ANE-AD-AMOC@faa.gov.

(g) Related Information

(1) For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: kyle.gustafson@faa.gov.

(2) CFM SB No. CFM56–5B S/B 72–0850, dated December 19, 2012, and CFM SB No. CFM56–5B S/B 72–0308, Revision 5, dated October 12, 2007, can be obtained from CFM using the contact information in paragraph (g)(3) of this proposed AD.

(3) For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: aviation.fleetsupport@ge.com.

(4) You may view this service information at the FAA, Engine & Propeller Directorate,

12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on September 24, 2015.

Colleen M. D'Allesandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–24729 Filed 10–1–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 147

[Docket No. FAA–2015–3901; Notice No. 15–10]

RIN 2120–AK48

Aviation Maintenance Technician Schools

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulations governing the curriculum and operations of FAA-certificated Aviation Maintenance Technician Schools. These amendments would modernize and reorganize the required curriculum subjects in the appendices of the current regulations. They would also remove the course content items currently located in the appendices and require that they be placed in each school's operations specifications so they could more easily be amended when necessary. The amendments are needed because the existing curriculums are outdated, do not meet current industry needs, and can be changed only through notice and comment rulemaking. These amendments would ensure that aviation maintenance technician students receive up-to-date foundational training to meet the demanding and consistently changing needs of the aviation industry.

DATES: Send comments on or before December 31, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–3901 using any of the following methods:

- *Federal Rulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Robert W. Warren, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-1711; email Robert.W.Warren@faa.gov. For legal questions concerning this action, contact Edmund Averman, Office of the Chief Counsel (AGC-210), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3147; email Ed.Averman@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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 Title 49, Subtitle VII, Part A, Subpart I, Chapter 401, Section 40113 (prescribing general authority of the Administrator of the FAA, with respect to aviation safety duties and powers, to prescribe regulations); and Subpart III, Chapter 447, Sections 44701 (general authority of the Administrator to prescribe regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, engines, propellers, and appliances,

including for other practices, methods, and procedures necessary for safety in air commerce); 44702 (authority of the Administrator to issue air agency certificates); 44707 (authority of the Administrator to examine and rate air agencies, including civilian schools giving instruction in repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors); and 44709 (authority of the Administrator to amend, modify, suspend, and revoke air agency and other FAA-issued certificates). This proposed regulation is within the scope of that authority.

I. Executive Summary

a. Summary of the Proposed Rule

This proposed rule would amend the regulations governing Aviation Maintenance Technician Schools (14 CFR part 147) to both update the existing curriculums and provide an efficient means of changing specific course items under each main subject heading, when needed, by including them in each school's operations specifications. The proposal sets forth both a description of operations specifications and a process for amending, suspending, or terminating them. In addition, the proposed amendments would clarify existing requirements, remove gender-specific references, and eliminate duplication found in some sections of the current rules.

The FAA has updated its regulations governing aviation maintenance technician schools only infrequently since 1962, when they were re-codified from the former Civil Air Regulations (CAR) part 53 into current Title 14 of the Code of Federal Regulations (14 CFR) part 147. (27 FR 6669, Jul. 19, 1962). The agency last amended part 147 in 2011 to add a new § 147.8 that placed restrictions on the employment of former FAA employees, however the agency has made no curriculum changes since 1992. Based on recent studies and reports (which are discussed below in more detail), the FAA has determined that the current school curriculums are dated and do not provide students with the skills necessary for maintaining modern aircraft.

When the FAA first shaped the basic training curriculum during the 1962 recodification, the use of advanced materials, advanced electronic operating systems, computers, high bypass propulsion systems, and smart aircraft did not exist in civilian aviation. Since

the 1992 rule changes, the industry has produced larger, state of the art transport aircraft (such as the Boeing 787 and Airbus A380) that incorporate very advanced technologies and complex systems. Similar advancements in technology have also evolved in all other levels of aircraft such as general aviation aircraft and business aircraft. The FAA has also not updated part 147 to account for recent advances in rotorcraft technology, composites, unmanned aerial vehicles, glass panels, light sport aircraft (LSA), and the spread of electronics into every other aspect of aircraft.

In view of the expected continued rapid pace of technological change in the aviation industry, part 147 curriculums will need to be updated frequently and quickly. However, because these curriculums are currently specified in the part 147 appendices, the FAA can change them only through notice and comment rulemaking, which is a time-consuming and inefficient means of modernizing the curriculum. As a consequence, without the proposed changes, the school curriculums will always be several years behind what is needed to effectively train aviation maintenance technician students. By including the curriculums in each school's operations specifications, they may be updated expeditiously to keep pace with emerging technologies.

b. Summary of Costs and Benefits

The FAA finds the proposed rule's benefits would accrue from changing curriculum hours, which would lower the more costly laboratory/workshop time (while offset by increasing classroom time) and also from eliminating the exemptions currently issued for aviation mechanic testing requirements. The estimated total benefits of this rule are about \$10 million (\$7 million, present value at 7%).

The two major compliance costs of the rule are initial curriculum revisions and subsequent curriculum revisions. The latter may be divided into FAA-proposed recommendations for amendments to the technician school curriculum, and technician school submissions to request amendments to their curriculum. The estimated total costs are about \$4 million (\$3 million, present value at 7%). Net benefits equal approximately \$7 million (\$3 million, present value at 7%).

II. Background

a. History of Part 147

Part 147 specifies the requirements for the certification and operations of FAA-

certificated aviation maintenance technician schools, including the course curriculums they must provide. Part 147 originated as Civil Air Regulations (CAR) part 53. As a result of the recodification of the CARs in 1962, CAR part 53 became 14 CFR part 147. In 1970, the FAA revised part 147 to increase the required core curriculum hours from 1,500 to 1,900 and to further define the subject content and teaching guidelines. A minor revision to the curriculum requirements adopted in 1992 included the use of computers in the training environment, composite materials, an introduction to unducted fans, and auxiliary power units. There have been no further revisions.

b. General Accounting Office Report and Part 147 Working Group

While not the only studies/reports that addressed the issues supporting this proposed rulemaking, two were instrumental to its development. First, in March 2003, the General Accounting Office (GAO)¹ issued a report titled *Aviation Safety-FAA Needs To Update the Curriculum and Certification Requirements for Aviation Mechanics* (GAO 03-317, March 2003) (GAO Report). The report detailed the following:

1. Serious and growing gaps between the minimum training curriculum required by part 147 and the current and forecast levels of aircraft technology.

2. Concerns that the required curriculums at FAA-approved aviation maintenance technician schools are outdated and are primarily geared to smaller, less complex aircraft that do not transport a significant number of passengers, and may not be relevant to most of the aircraft flown today.

3. Limitations of basic courses that should prepare students to maintain and repair the body and engines of modern commercial aircraft.

The GAO recommended the FAA review the minimum Airframe and Powerplant (A&P) curriculums required for certificated schools to identify courses that do not reflect widely used aircraft technology and materials on commonly flown commercial aircraft. The GAO also recommended that changes to the curriculums be reflected on the mechanic's certification examination. This would ensure the same standards applied to all candidates for the A&P certificate.

Growing recognition of these issues prompted the second study and report

instrumental to this rulemaking. In 2007, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to form the Part 147 Aviation Maintenance Technician Schools Curriculum and Operating Requirements Working Group (the Part 147 Working Group). The ARAC subsequently tasked the Part 147 Working Group to study some of the issues raised in the GAO report and to make recommendations to address them. In December 2008, the Part 147 Working Group issued its Final Report (the ARAC Report).

The ARAC Report suggested a solution that could help expedite keeping course content current. The report referenced the process used by training centers certificated by the FAA under 14 CFR part 142 to control course content and other matters related to the centers' providing flight-related training to airmen. Section 142.3 provides for and defines "training specifications" as a document issued by the FAA to a training center that "prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements." Training specifications are similar to "operations specifications" issued by the FAA to certificate holders in other venues (e.g., air carriers) that document basic information and limitations that govern the allowable operations of the certificate holder. Operations specifications are mutually agreed upon between the FAA and the specific certificate holder, and may be amended by procedures specified in the regulations.

Amending training or operations specifications is a more efficient and expeditious means of making changes to a certificate holder's operations than is the process of notice and comment rulemaking for rules of general applicability. The ARAC Report recommended that aviation maintenance technician schools' curriculum procedures documents be placed in what would be new training specifications. These would function similar to operations specifications, thereby facilitating their updating by means of the amendment process. The FAA is proposing that each certificated aviation maintenance technician school would use operations specifications (in lieu of the suggested training specifications) to manage its operations, including its training curriculum.

This proposal addresses several of the recommendations in the ARAC Report,² including:

- Placing the subject course items in operations specifications while keeping the required subject area headings in the appendices;
- Updating some of the subject areas and the items under the subject course headings;
- Revising the distribution of curriculum hours among the General, the Airframe, and the Powerplant curriculums;
- Incorporating a distance learning option; and
- Creating a new provision to allow students to take the General written test after completing that curriculum but before meeting the experience requirements of § 65.77.

III. Discussion of the Proposal

Consistent with the recommendations in both the GAO Report and the ARAC Report, and with the FAA's own awareness that the current course curriculums set forth in the part 147 appendices are long overdue to be updated, the FAA proposes to amend some of the subject headings in part 147 appendices B–D to better reflect their appropriate course content. The agency also proposes to remove the course content items currently found under each subject heading in the appendices and include them in each school's operations specifications under the identical subject headings that would remain in the appendices. We also propose to amend some of these course content items to update them and to better reflect the areas to be taught within each subject area. As discussed above, if the course content items are contained in the schools' operations specifications, they can, when necessary, be more easily amended through the process provided by this proposal for amending operations specifications.

a. Curriculum Hours (§ 147.21)

Section 147.21(b) contains the total minimum number of curriculum hours of instruction (1,900 hours) for the combined Airframe and Powerplant ratings. The ARAC Report recommended retaining this 1,900 hour minimum. The FAA agrees with that recommendation, and also with the report's recommendation that the number of instruction hours for the Airframe and Powerplant ratings should be redistributed as follows:

² A copy of the ARAC Report has been placed in the docket.

¹ In 2004, the GAO Human Capital Reform Act of 2004, Public Law 108-271, 118 Stat. 811 (2004), changed GAO's legal name from the General Accounting Office to the Government Accountability Office.

- General—from 400 hours to 450 hours.
- Airframe—from 750 hours to 800 hours.
- Powerplant—from 750 hours to 650 hours.

With changes in aircraft technologies increasingly emphasizing electricity, electronics, and advanced materials, the FAA concurs with the ARAC Report that adding hours to the General and Airframe curriculum is appropriate. The FAA also agrees that revising the list of required subjects and updating the course content items within the major subject headings would be an important step in meeting industry needs for aviation maintenance technicians who have been trained in up-to-date aircraft materials and systems.

The FAA also proposes to include an option for competency-based training utilizing minimum credit hours based on typical higher education accreditation criteria. The minimum number of credit hours (equivalent to 1,900 training hours) would total 43 credit hours. This would be the combined credit hours for Airframe and Powerplant requirements, which include a minimum of 10 credit hours for the General curriculum, 18 credit hours for the Airframe curriculum, and 15 credit hours for the Powerplant curriculum. Each school would have the option to be approved for either an instructional hours curriculum or a credit hours curriculum, but not both.

A credit hour is a unit of measure that gives value to the level of instruction, academic rigor, and time requirements for a course taken at an educational institution. At its most basic, a credit hour is a proxy measure of a quantity of student learning. The higher education community has long used the credit hour, as defined by the “Carnegie unit,” as part of a process to establish a standard measure of faculty workloads, costs of instruction, and rates of educational efficiencies, as well as a measure of student work for transfer students. A credit hour for purposes of part 147 is an institutionally established equivalency that reasonably approximates some minimum amount of student work reflective of the amount of work expected in a Carnegie unit. A school that chooses to use a credit hour curriculum would be required to determine the clock-to-credit-hour conversion requirements and credit hours to be awarded for coursework under that option.

No matter which of the two options a school would select, it would have to ensure equivalent comprehensive coverage of the General, Airframe, and Powerplant curriculum subjects areas,

including the course content items under them.

b. General Curriculum Subjects Headings (Appendix B)

As proposed, the “General Curriculum Subjects” headings, including proposed new and revised subject headings, would remain in Appendix B of part 147. In addition, those same subject headings would be included in each school’s Operations Specification B002, captioned “General Curriculum Subjects.” The FAA proposes to delete the course content items currently included under each curriculum subject heading in the appendix. These course content items, as well as new course content items for the new and revised subject headings, would be included in each school’s operations specifications, as recommended by the ARAC Report. These items would be listed in each school’s Operations Specification B002 under the corresponding subject heading. Once the course content items were included in a school’s Operations Specifications, the FAA and the school could amend them as needed to keep pace with ongoing changes in technology. The proposed “General Curriculum Subjects” headings are as follows:

- A. Fundamental Electricity and Electronics
- B. Aircraft Drawings
- C. Weight and Balance
- D. Fluid Lines and Fittings
- E. Aircraft Materials, Hardware, and Processes
- F. Ground Operations and Servicing
- G. Cleaning and Corrosion Control
- H. Mathematics
- I. Maintenance Forms, Records, and Publications
- J. Physics for Aviation
- K. Inspection Concepts and Techniques
- L. Mechanic Privileges and Limitations
- M. Human Factors
- N. Foreign Object Elimination (FOE)
- O. Alerts, Cautions, and Warning Indications

The above proposed “General Curriculum Subjects” headings differ from the existing subject headings as follows:

- Proposed subject heading “A” (“Fundamental Electricity and Electronics”) would be a change from the existing subject heading “A” (“Basic Electricity”). This revision is needed to better reflect evolving technological changes, with emphasis on electronics required for maintaining current and newer aircraft types.
- Proposed subject heading “E” (“Aircraft Materials, Hardware, and Processes”) would be a change from the existing subject heading “E” (“Materials and Processes”). This revision is needed to highlight the differences between

aircraft materials, hardware, and specific processes, such as new nondestructive testing methods and techniques.

- Proposed subject heading “I” (“Maintenance Forms, Records, and Publications”) would be a change from the existing subject heading “I” (“Maintenance Forms and Records”). Items to be covered would include completing miscellaneous forms, using appropriate terminologies, and familiarization with pertinent records and publications. This would also help ensure that students have the ability to read and understand publications and FAA regulations. This heading would also encompass what is in the current subject heading “K” (“Maintenance Publications”). Accordingly, “Maintenance Publications” would be deleted as a separate subject heading.

- Proposed subject heading “J” (“Physics for Aviation”) would be a change from the existing subject heading “J” (“Basic Physics”). This change would better reflect the specifics of aviation physics that should be taught.

- A new subject heading “K” is proposed entitled “Inspection Concepts and Techniques.” This would replace the current subject heading “K” (“Maintenance Publications”), which is now part of proposed subject heading “I.” Inspections are a key element in any good maintenance practice and require a high degree of knowledge and practical application. Inspections vary from nondestructive testing to general visual and detailed visual inspections—all of which must be performed in accordance with approved or acceptable data.

- A new subject heading “M” is proposed entitled “Human Factors.” Aviation maintenance is always in a state of flux. Evolving aircraft design and manufacturing contain materials, powerplants, and electronic subsystems that did not exist in earlier models. This situation is compounded by the growing number of aging aircraft. Technicians are working longer hours and different shifts. Maintenance technicians are increasingly using sophisticated equipment and procedures to maintain modern aircraft. Human error is the primary, or a contributing factor, in 80% (or more) of aviation incidents/accidents. Workers routinely commit errors that result in injuries, damage to equipment, regulatory non-compliance, breaches of flight safety, and more. The goal of introducing human factors training into the schools’ General curriculum is to help aviation technicians recognize the situations that can lead to error. This training would

help identify and address the human factors hazards that jeopardize workers and the safety of flight. The requirement would also help harmonize FAA rules with those of other international authorities.

- A new subject heading “N” is proposed entitled “Foreign Object Elimination (FOE).” Foreign objects have been a major cause of aircraft damage and ad hoc maintenance. This damage has led to disastrous aviation accidents. Raising the awareness of foreign object elimination principals and techniques in a school’s curriculum is a positive first step in foreign object damage elimination.

- A new subject heading “O” is proposed entitled “Alerts, Cautions, and Warning Indications.” Current and future flight deck designs incorporate sophisticated flight crew alerting systems. The existing curriculums do not take into consideration this state of the art technology, or associated safety and implementation issues associated with maintaining these alerting systems.

c. Airframe Curriculum Subjects Headings (Appendix C)

Similar to the General Curriculum Subjects headings amendments proposed above, the Airframe Curriculum Subject headings, including proposed new and revised subject headings, would remain in part 147, in this case, in Appendix C. In addition, those same subject headings would be included in each school’s Operations Specification B003, captioned “Airframe Curriculum Subjects.” The FAA proposes to delete the course content items currently included under each curriculum subject heading in the appendix. These course content items, as well as new course content items for the new and revised subject headings, would be included in each school’s operations specifications, as recommended by the ARAC Report. These items would be listed in each school’s Operations Specification B003 under the corresponding subject heading. Once the course content items were included in a school’s operations specifications, the FAA and the school could amend them as needed to keep pace with ongoing changes in technology.

The FAA proposes to eliminate the two Appendix C sub-headings: “I. Airframe Structures” and “II. Airframe Systems and Components.” Instead, all subject headings would be included under the main Appendix C heading “Airframe Curriculum Subjects.” The proposed “Airframe Curriculum Subjects” headings are as follows:

- A. Metallic Structures
- B. Non-Metallic Structures
- C. Flight Controls
- D. Airframe Inspection
- E. Landing Gear Systems
- F. Hydraulic and Pneumatic Systems
- G. Environmental Systems
- H. Aircraft Instrument Systems
- I. Communication and Navigation Systems
- J. Aircraft Fuel Systems
- K. Aircraft Electrical Systems
- L. Ice and Rain Control Systems
- M. Airframe Fire Protection Systems
- N. Rotorcraft Fundamentals
- O. Water and Waste Systems

The above proposed “Airframe Curriculum Subjects” headings differ from the existing subject headings as follows:

- The proposed new subject heading “Metallic Structures” (proposed subject “A”) would be a change from the existing subject heading (“Wood Structures”—current subject “I.A”). This revision, along with the proposed revision to subject I.B (proposed “Non-Metallic Structures”—proposed subject “B”), is necessary to reflect a more useful division between metallic structures and non-metallic (including wood) structures. Metallic structures would cover aviation-related sheet metals, rivets, hardware, special fasteners, heat treatments, welding, forming, and the importance of using the Structural Repair Manual.

- The proposed new subject heading “Non-Metallic Structures” (proposed subject “B”) would be a change from the existing subject heading (“Aircraft Covering”—current subject “I.B”). This section would incorporate wood structures, aircraft coverings, composites, plastics, and glass. The subject matters currently included in the existing subject heading “Aircraft Finishes” (current subject “I.C”) would be covered in the proposed subject heading “G” titled “Cleaning and Corrosion Control” in the General Curriculum Subjects in Appendix B. The FAA proposes a new subject heading to read “Flight Controls” (proposed subject “C”). This subject heading would cover topics such as primary and secondary flight controls, structure alignment, and control surface indicators. It would also include the assembly and rigging subject matter that is currently listed as subject “I.F” (“Assembly and Rigging”) in Appendix C. Accordingly, “Assembly and Rigging” would be deleted as a separate subject heading.

- The subject matters included in the current subject heading “Sheet Metal and Non-Metallic Structures” (current subject “I.D”) would be covered in the proposed new subject headings “Metallic Structures” and “Non-

Metallic Structures” (discussed above). Therefore, the agency proposes to remove that subject heading.

- The subject matters included in the current subject heading “Welding” (current subject “I.E”) would be covered in the proposed subject heading “Metallic Structures” (discussed above). Therefore, the agency proposes to remove that subject heading.

- While the subject matters included in the current heading “Airframe Inspection” would remain in Appendix C, they would no longer be in subject heading “I.G.” Under this proposal, they would be moved to subject heading “D.”

- While the subject matters included in the current heading “Aircraft Landing Gear Systems” would remain in Appendix C, they would no longer be in subject heading “II.A.” Under this proposal, they would move to subject heading “E,” which would be captioned “Landing Gear Systems.”

- While the subject matters included in the current heading “Hydraulic and Pneumatic Power Systems” would remain in Appendix C, they would no longer be in subject heading “II.B.” Under this proposal, they would move to subject heading “F,” which would be captioned “Hydraulic and Pneumatic Systems.”

- While the subject matters included in the current heading “Cabin Atmosphere Control Systems” would remain in Appendix C, they would no longer be in subject heading “II.C.” Under this proposal, they would move to subject heading “G,” which would be captioned “Environmental Systems.” This title better describes the course content, which covers cabin environmental systems, including the inspection, servicing, and troubleshooting of oxygen systems and instrument cooling systems.

- While the subject matters included in the current heading “Aircraft Instrument Systems” would remain in Appendix C, they would no longer be in subject heading “II.D.” Under this proposal, they would move to subject heading “H.”

- While the subject matters included in the current heading “Communication and Navigation Systems” would remain in Appendix C, they would no longer be in subject heading “II.E.” Under this proposal, they would move to subject heading “L.”

- While the subject matters included in the current heading “Aircraft Fuel Systems” would remain in Appendix C, they would no longer be in subject heading “II.F.” Under this proposal, they would move to subject heading “J.”

- While the subject matters included in the current heading “Aircraft

Electrical Systems” would remain in Appendix C, they would no longer be in subject heading “II.G.” Under this proposal, they would move to subject heading “K.”

- While the subject matters included in the current heading “Position and Warning Systems” would remain in Appendix C, they would no longer be in subject heading “II.H.” Under this proposal, they would be included in proposed subject heading “E” (“Landing Gear Systems”) because its course content items are appropriate to be covered in that subject. Accordingly, “Position and Warning Systems” would be deleted as a separate subject heading.

- While the subject matters included in the current heading “Ice and Rain Control Systems” would remain in Appendix C, they would no longer be in subject heading “II.I.” Under this proposal, they would move to subject heading “L.”

- While the subject matters included in the current heading “Fire Protection Systems” would remain in Appendix C, they would no longer be in subject heading “II.J.” Under this proposal, they would move to subject heading “M” and be retitled “Airframe Fire Protection Systems.”

- The FAA proposes to add a new subject heading entitled “Rotorcraft Fundamentals” (new subject heading “N”) to address maintenance items such as rotorcraft fundamentals, transmissions, and operation of rotor systems.

- The FAA proposes to add a new subject heading entitled “Water and Waste Systems” (new subject heading “O”) to address the advances in potable water and lavatory waste systems. Additionally, there is the potential for the accumulation of ice if the systems are not operated, maintained, or serviced properly. This ice could detach from the aircraft causing damage to the aircraft and raising safety issues on the ground.

d. Powerplant Curriculum Subjects Headings (Appendix D)

Similar to the General and the Airframe curriculum subjects headings amendments proposed above, the “Powerplant Curriculum Subjects” headings, including proposed new and revised subject headings, would remain in part 147, in this case, in Appendix D. In addition, those same subject headings would be included in each school’s Operations Specification B004, captioned “Powerplant Curriculum Subjects.” The FAA proposes to delete the course content items currently included under each curriculum subject heading in the appendix. These course

content items, as well as new course content items for the new and revised subject headings, would be included in each school’s operations specifications, as recommended by the ARAC Report. These items would be listed in each school’s Operations Specification B004 under the corresponding subject heading. Once the course content items were included in a school’s operations specifications, the FAA and the school could amend them as needed to keep pace with ongoing changes in technology.

The FAA proposes to eliminate the two Appendix D sub-headings: “I. Powerplant Theory and Maintenance” and “II. Powerplant Systems and Components.” Instead, all subject headings would be included under the main Appendix D heading “Powerplant Curriculum Subjects.” The proposed “Powerplant Curriculum Subjects” headings are as follows:

- A. Reciprocating Engines
- B. Turbine engines
- C. Engine Inspection
- D. Engine Instrument Systems
- E. Engine Fire Protection Systems
- F. Engine Electrical Systems
- G. Lubrication Systems
- H. Ignition and Starting Systems
- I. Fuel Metering Systems
- J. Reciprocating Engine Induction and Cooling Systems
- K. Turbine Engine Air Systems
- L. Engine Exhaust and Reverser Systems
- M. Propellers

The above proposed “Powerplant Curriculum Subjects” headings differ from the existing subject headings as follows:

- The FAA is proposing to combine the existing subject headings “Fuel Metering Systems” (current subject “II.F”) and “Engine Fuel Systems” (current subject “II.G”) under a new subject heading: “Fuel Metering Systems” (proposed subject “I”).

- The FAA is proposing to combine the existing subject headings of “Induction and Engine Airflow Systems” (current subject “II.H”) and “Engine Cooling Systems” (current subject “II.I”) under a new subject heading: “Reciprocating Engine Induction and Cooling Systems” (proposed subject “J”). This revised subject would incorporate induction and cooling systems designs, components, and inspection practices.

- The FAA proposes to add a new subject heading: “Turbine Engine Air Systems” (proposed subject “K”). This section would address engine anti ice systems, compressor bleed systems, and turbine case cooling.

- The FAA proposes to remove the subject “Unducted Fans” (current

subject “II.L”) from the Powerplant Curriculum Subjects of Appendix D. In the late 1970’s, the unducted fan engine (a type of aircraft engine related in concept to both the turboprop and turbofan, but different from both) was under consideration for use on commercial airliners because of its fuel economy benefits. Since fuel costs became an increasingly significant aspect for commercial aviation, engine designers felt the unducted fan would become a viable solution. For that reason, the FAA added unducted fans to the aviation maintenance technician school powerplant curriculum in 1992. Because unducted fan technology never became popular, the FAA is proposing to remove this subject from the powerplant curriculum.

e. Curriculum Course Content

One of the primary objectives of this proposed rulemaking is to establish a regulatory basis for the FAA to issue operations specifications to aviation maintenance technician schools as a tool for their management and oversight. As discussed above, in order to facilitate keeping the schools’ curriculums up-to-date, the FAA proposes to remove the course content items listed under each subject heading in Appendices B–D and place them in each school’s operations specifications. Current § 147.5 provides for the FAA to issue operations specifications to certificate holders who meet the requirements of part 147, and we are not proposing to change that. We are, however, proposing to amend § 147.3 to provide that no person may operate as an aviation maintenance technician school without or in violation of a certificate, rating, or operations specifications. And, the FAA is proposing a new § 147.9 that would provide, among other things, that each school’s operations specifications contain its complete curriculum and the descriptions required under each of the subjects specified in the part 147 appendices. In addition, in order to facilitate keeping course content and other items included in the schools’ operations specifications up to date, we are proposing a new § 147.10 that would provide processes for amending, suspending, or terminating operations specifications, including processes for petitioning for reconsideration of a decision adverse to the certificate holder. Whenever a proposed process states the submission must be written or in writing, the FAA contemplates that the submission could be a paper submission, one filed electronically, or both.

In a case where the certificate-holding district office found, under proposed

§ 147.10(f), that an emergency existed that required immediate action with respect to safety in air transportation or air commerce, the above-referenced administrative processes would not apply. The affected certificate holder could appeal the action that amended, suspended, or terminated the operation specification to the appropriate United States Court of Appeals as a final order of the Administrator under 49 U.S.C. 46110(a).

Because the FAA is proposing to remove the course curriculum items from the appendices of part 147 and require that all course curriculum items be placed in each school's operations specifications, all certificated aviation maintenance technician schools would be required to submit new curriculums to the FAA for approval. Current FAA Advisory Circular AC 147-3A (Certification and Operation of Aviation Maintenance Technician Schools) lists the course curriculum items from the appendices, and suggests acceptable options to the curriculums. This Advisory Circular is currently undergoing revision by the FAA. If this proposed rule becomes final, the FAA will further revise this Advisory Circular to provide guidance on how the schools can develop the required curriculums based on the existing course content items in the current appendices, and also on developing new course content items for the proposed new and revised subject headings. We are also proposing in § 147.21(a) to permit, with FAA approval, a school to teach approved curriculum subjects at levels exceeding those specified in the school's operations specifications. This change reflects that the FAA's rules are considered minimum standards that certificate holders may exceed. It also is consistent with the provision in current § 147.21(c) that the course content items must be taught to at least the indicated level of proficiency defined in appendix A. In order to facilitate future curriculum updates, the FAA is considering the creation of a Maintenance Training Review Board (MTRB) that would assess evolving industry needs on a recurring basis. The MTRB would review and recommend subsequent amendments to the curriculums. Under the procedures in proposed § 145.10, certificate holders and the FAA could agree upon appropriate curriculum changes when needed, and the operations specifications could be amended accordingly.

f. Distance Learning (§ 147.31(g))

A form of information sharing for educational purposes using computer

systems away from the traditional classroom setting has become known as "distance learning." Distance learning (also known by other terms such as E-learning, home study, self-guided training, virtual classroom, distributed training, computer-based training (CBT) and Web-based training (WBT)) can be an effective means of teaching that affords a low cost alternative to classroom training when applied to a select group of curriculum subject areas. It is also an alternative that is timely and appropriate in today's challenging economic environment. Therefore, the FAA is proposing a new paragraph (g) to § 147.31 to provide the option for distance learning instruction under certain circumstances approved by the FAA.

g. Change Instructor Requirements (§ 147.23)

The FAA proposes to revise the instructor requirements for certificated aviation maintenance technician schools to allow specially qualified instructors, who may not be FAA-certificated technicians, to teach certain courses when approved by the FAA. This proposed amendment would alleviate the limitation for non-FAA-certificated instructors to teach only in the General curriculum. This proposal would allow qualified non-FAA-certificated instructors to teach not only in the General curriculum, but also the Airframe, and/or Powerplant curriculums if deemed qualified and subsequently approved by the FAA. Each school would be required to maintain and keep in its operations specifications an up-to-date list of the names and qualifications of all its instructors.

h. Written Knowledge Test (§ 147.31)

The FAA proposes to add a new paragraph (f) to § 147.31 that would permit a student who had successfully completed the General curriculum to take the general written knowledge test even if the student had not met the experience requirements of 14 CFR 65.77. Section 65.75(a) provides that applicants for a mechanic certificate or rating must, after meeting the applicable experience requirements of § 65.77, pass a written test. Under this proposal, whenever a certificated aviation maintenance technician school demonstrates to an FAA Aviation Safety Inspector (ASI) with oversight responsibility for the school that a student has made satisfactory progress at the school, the student could take the aviation mechanic written general knowledge test.

i. Change of Location Requirements (§ 147.41)

The FAA proposes to amend § 147.41 to retain the requirement that an aviation maintenance technician school certificate holder may not change the school's physical location unless the change is approved in advance by the FAA, and that an application for the change must be made 30 days in advance of the contemplated move. However, the agency proposes to remove the current text that states if a school changes its location without FAA approval, "the certificate is revoked." All certificate holders are entitled to due process before a certificate action could be final. Accordingly, we propose to remove existing text that states: "If he [the certificate holder] changes its location without approval, the certificate is revoked." Because each certificate holder's operations specifications would include the physical address of the primary location of the school, we are proposing that new § 147.41 contain the requirement that the new location be listed in the school's operations specifications. Also, and as discussed below, we propose to remove gender-specific language from this section (e.g., "he") and from other sections of part 147.

j. Inspection Requirements (§ 147.43)

The FAA proposes to amend § 147.43 for clarity and to remove inappropriate text related to FAA inspection policies (e.g., on expected frequency of and procedures related to inspections of aviation maintenance technician schools). The section, as proposed, would require only that a school allow the FAA to inspect it at any time to determine compliance with the applicable regulations.

k. Advertising (§ 147.45)

The FAA proposes to remove this section in its entirety. The FAA believes that Federal and State laws adequately protect the public from false and misleading advertising. Moreover, the FAA's mandate is to regulate aviation safety, not the advertising of the entities it regulates.

l. Duration of Certificate (§ 147.7)

The FAA proposes to revise § 147.7 to add a requirement that an aviation maintenance technician school certificate surrender is not complete until the FAA accepts it for cancellation. This new surrender requirement would codify existing FAA policy, and would prevent a school under investigation from attempting to circumvent a possible enforcement action that could result in a revocation

of the school's certificate by surrendering the certificate to stop the investigation before it could be completed.

m. Gender References

The FAA proposes to amend several sections of part 147 (specifically, §§ 147.13, 147.15, 147.17, 147.31(c), and 147.41) to remove gender-specific language ("he") from the current text, and revise the text to use gender-neutral terms.

n. Miscellaneous

The FAA proposes to remove current §§ 147.36, 147.37, and 147.38 because they are unnecessary in light of the corresponding initial certification requirements, which are continuing and ongoing. For example, current §§ 147.13, 147.21, and 147.23 each require an "applicant" to have or provide certain things, whereas the sections that would be removed require the continuation the initial requirement.

We also propose to revise §§ 147.13, 147.21, 147.23, and others, where pertinent, to read: "Each certificated aviation maintenance technician school must" Those requirements then would apply to an applicant for a certificate and would continue to apply to the school while in operation.

We are also proposing minor, non-substantive revisions throughout part 147 for clarity.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses.

First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant

regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

1. Total Benefits and Costs of This Rule

Benefits would accrue from changing curriculum hours, which would lower the more costly laboratory time (while offset by increasing classroom time) and also from eliminating the exemptions currently issued for aviation mechanic testing requirements. The estimated total benefits of this rule are about \$10 million (\$7 million, present value at 7%).

The two compliance costs of the rule are initial curriculum revisions and subsequent curriculum revisions. The estimated total costs are about \$4 million (\$3 million, present value at 7%).

Net benefits equal approximately \$7 million (\$3 million, present value at 7%).

NET BENEFITS

Year	Benefits				Cost			Net benefits	Present value net benefits
	Exemptions		Changes to the curriculum hours	Total benefits	Initial curriculum revisions	Subsequent curriculum revisions	Total costs		
	Private sector	Government							
2016–2025	\$63,429	\$185,403	\$10,206,000	\$10,454,831	\$3,456,430	\$315,801	\$3,772,230	\$6,682,601	\$3,346,000

2. Who is potentially affected by this rule?

Aviation maintenance technician schools and the FAA.

3. Assumptions

- The analysis is conducted in constant dollars with 2014 as the base year.
- We calculated the present value of the potential benefit stream by discounting the monetary values using a 7 percent interest rate from 2016 to 2025.
- This final rule will become effective in 2016. We assume the compliance

date will be one year after the effective date (2017).

- We assume no growth in the number of Aviation Maintenance Technician Schools.
- As per DOT guidance, we assume that there will be a 1.18 percent projected annual increase in real wages.

4. Benefits

From 2016 to 2025, the estimated total benefits of this rule to aviation maintenance technician schools, and the FAA are about \$10 million (\$7 million, present value at 7%).

5. Costs

From 2016 to 2025, the estimated total costs are about \$4 million (\$3 million, present value at 7%).

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle,

agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

The FAA identified a total of 20 proprietary technician schools with less than 1,500 employees which are classified as small entities.

The FAA believes that this proposed rule would not have a significant economic impact on a substantial number of entities for the following reason:

The FAA estimates that their ratio of annualized costs to annual revenue is between 0.004% and 0.599%, which is not considered a significant economic impact. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where

appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that the objective would only affect domestic firms therefore would not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$151 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule would impose the following amended information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for these information collections will be published in a future **Federal Register** document.

Summary: The FAA proposes to amend the regulations governing the curriculum and operations of FAA-certificated Aviation Maintenance Technician Schools (AMTS). These amendments would modernize and reorganize the required curriculum subjects in the appendices of the current regulations. They would also remove the course content items currently located in the appendices and require that they be placed in each AMTS’s operations specifications so they could more easily be amended when necessary.

Respondents (including number of):
There are 162 technician schools affected by this rule.

I. Private Sector Costs and Cost-Savings

A. Initial Curriculum Revisions

All active certificated technician schools will be required to submit a new curriculum to the FAA and issue updated OpSpecs.

We assumed:

- 162 technician schools.
- 320 hours for a manager and 80 hours for an administrative assistant for the initial revision.
- 32 hours for a manager and 8 hours for an administrative assistant for subsequent revisions.
- 10 percent of the curriculums would be rejected in every submission.
- Subsequent submissions would occur in the same year when curriculums are rejected.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = $(162 \times ((320 \text{ hours} \times \$40.79) + (80 \text{ hours} \times \$20.05))) + (18 \times ((32 \text{ hours} \times \$40.79) + (8 \text{ hours} \times \$20.05))) = \$2,400,523.$

Time = $(162 \times (320 \text{ hours} + 80 \text{ hours})) + (18 \times (32 \text{ hours} + 8 \text{ hours})) = 65,520 \text{ hours}.$

Subsequent Year Costs

Cost = \$0.

Time = 0.

Total Over 10 years

Cost = \$2,400,523.

Time = 65,520 hours.

Average Per Year

Cost = $\$2,400,523/10 = \$240,052.$

Time = $65,520 \text{ hours}/10 = 6,552 \text{ hours}.$

B. Subsequent Curriculum Revisions

B.1. Requests for Amendments to the Curriculums

Technician schools would submit requests for amendments to their curriculums.

We assumed:

- 9 requests per year.
- We estimate a technician school manager and an administrative assistant would need 3 hours each.
- A technician school director would need one hour to review and sign each amendment request.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = \$0.

Time = 0.

Third Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$41.27) + (3 \text{ hours} \times \$20.29) + (1 \text{ hour} \times \$103.46)) = \$2,593.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Fourth Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$41.75) + (3 \text{ hours} \times \$20.52) + (1 \text{ hour} \times \$104.68)) = \$2,624.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Fifth Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$42.25) + (3 \text{ hours} \times \$20.77) + (1 \text{ hour} \times \$105.92)) = \$2,655.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Sixth Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$42.74) + (3 \text{ hours} \times \$21.01) + (1 \text{ hour} \times \$107.17)) = \$2,686.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Seventh Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$43.25) + (3 \text{ hours} \times \$21.26) + (1 \text{ hour} \times \$108.43)) = \$2,718.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Eight Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$43.76) + (3 \text{ hours} \times \$21.51) + (1 \text{ hour} \times \$109.71)) = \$2,750.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Ninth Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$44.28) + (3 \text{ hours} \times \$21.76) + (1 \text{ hour} \times \$111.01)) = \$2,782.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Tenth Year Costs

Cost = $9 \times ((3 \text{ hours} \times \$44.80) + (3 \text{ hours} \times \$22.02) + (1 \text{ hour} \times \$112.32)) = \$2,815.$

Time = $9 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 63 \text{ hours}.$

Total Over 10 Years

Cost = $\$2,593 + \$2,624 + \$2,655 + \$2,686 + \$2,718 + \$2,750 + \$2,782 + \$2,815 = \$21,622.$

Time = $8 \times 63 \text{ hours} = 504 \text{ hours}.$

Average Per Year

Cost = $\$21,622/10 = \$2,162.$

Time = $504 \text{ hours}/10 = 50 \text{ hours}.$

B.2. Curriculum Revisions

Once the amendments are approved, the technician school curriculums would have to be revised.

We assumed:

- 9 curriculums per year would be revised.
- We estimate a technician school manager and an administrative assistant would need 32 hours and 8 hours, respectively to revise their curriculums.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = \$0.

Time = 0.

Third Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$41.27) + (8 \text{ hours} \times \$20.29)) = \$13,345.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Fourth Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$41.75) + (8 \text{ hours} \times \$20.52)) = \$13,503.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Fifth Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$42.25) + (8 \text{ hours} \times \$20.77)) = \$13,662.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Sixth Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$42.74) + (8 \text{ hours} \times \$21.01)) = \$13,823.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Seventh Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$43.25) + (8 \text{ hours} \times \$21.26)) = \$13,986.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Eight Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$43.76) + (8 \text{ hours} \times \$21.51)) = \$14,151.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Ninth Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$44.28) + (8 \text{ hours} \times \$21.76)) = \$14,318.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Tenth Year Costs

Cost = $9 \times ((32 \text{ hours} \times \$44.80) + (8 \text{ hours} \times \$22.02)) = \$14,487.$

Time = $9 \times (32 \text{ hours} + 8 \text{ hours}) = 360 \text{ hours}.$

Total Over 10 Years

Cost = $\$13,345 + \$13,503 + \$13,662 + \$13,823 + \$14,986 + \$14,151 + \$14,318 + \$14,487 = \$111,277.$

Time = $8 \times 360 \text{ hours} = 2,880 \text{ hours}.$

Average Per Year

Cost = $\$111,277/10 = \$11,128.$

Time = $2,880 \text{ hours}/10 = 288 \text{ hours}.$

C. Exemptions

The proposed rule would eliminate exemptions currently issued for aviation mechanic testing requirements.

We assumed:

- 30 exemptions/extensions per year.
- For each exemption/extension, we estimate 3 hours each for a technician school manager and an administrative assistant to write the exemption/extension letter and for a technician school director 1 hour to review and sign the exemption/extension letter.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Cost-Savings

Cost-saving = \$0.

Time = 0.

Second Year Cost-Savings

Cost-saving = \$0.

Time = 0.

Third Year Cost-Savings

Cost-saving = \$0.

Time = 0.

Fourth Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$41.75) + (3 \text{ hours} \times \$20.52) + (1 \text{ hour} \times \$104.68)) = \$8,745.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Fifth Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$42.25) + (3 \text{ hours} \times \$20.77) + (1 \text{ hour} \times \$105.92)) = \$8,849.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Sixth Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$42.74) + (3 \text{ hours} \times \$21.01) + (1 \text{ hour} \times \$107.17)) = \$8,953.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Seventh Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$43.25) + (3 \text{ hours} \times \$21.26) + (1 \text{ hour} \times \$108.43)) = \$9,059.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Eight Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$43.76) + (3 \text{ hours} \times \$21.51) + (1 \text{ hour} \times \$109.71)) = \$9,166.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Ninth Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$44.28) + (3 \text{ hours} \times \$21.76) + (1 \text{ hour} \times \$111.01)) = \$9,274.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Tenth Year Cost-Savings

Cost-saving = $30 \times ((3 \text{ hours} \times \$44.80) + (3 \text{ hours} \times \$22.02) + (1 \text{ hour} \times \$112.32)) = \$9,383.$

Time = $30 \times (3 \text{ hours} + 3 \text{ hours} + 1 \text{ hour}) = 210 \text{ hours}.$

Total Over 10 Years

Cost-savings = $\$8,745 + \$8,849 + \$8,953 + \$9,059 + \$9,166 + \$9,274 + \$9,383 = \$63,429.$

Time = $7 \times 210 \text{ hours} = 1,470 \text{ hours}.$

Average Per Year

Cost-savings = $\$63,429/10 = \$6,343.$

Time = $1,470 \text{ hours}/10 = 147 \text{ hours}.$

II. Government Costs and Cost-Savings*A. Initial Curriculum Revisions*

FSDOs will have to review and approve the technician school curriculums.

We assumed:

- 162 curriculums would be submitted.
- 80 hours for a principal inspector to review the curriculums the first time and 16 hours for subsequent revisions.
- 10 percent of the curriculums would be rejected in every submission.
- Subsequent submissions would occur in the same year when curriculums are rejected.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = $(162 \times 80 \text{ hours} \times \$79.70) + ((16 + 2) \times 16 \text{ hours} \times \$79.70) = \$1,055,907.$

Time = $(162 \times 80 \text{ hours}) + ((16 + 2) \times 16 \text{ hours}) = 13,248 \text{ hours}.$

Subsequent Year Costs

Cost = \$0.

Time = 0.

Total Over 10 Years

Cost = \$1,056,907.

Time = 13,248 hours.

Average Per Year

Cost = $\$1,055,907/10 = \$105,591.$

Time = $13,248 \text{ hours}/10 = 1,325 \text{ hours}.$

*B. Subsequent Curriculum Revisions**B.1. FAA To Approve or Reject the Requests*

The FAA would review and approve every request for amendments.

We assumed:

- The FAA would review and approve 9 requests per year.
- A principal inspector would need 16 hours for each review.
- 10 percent of the curriculums would be rejected in every submission.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = \$0.

Time = 0.

Third Year Costs

Cost = $9 \times 16 \text{ hours} \times \$80.64 = \$11,613.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Fourth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$81.60 = \$11,750.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Fifth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$82.56 = \$11,888.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Sixth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$83.53 = \$12,029.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Seventh Year Costs

Cost = $9 \times 16 \text{ hours} \times \$84.52 = \$12,171.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Eight Year Costs

Cost = $9 \times 16 \text{ hours} \times \$85.52 = \$12,314.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Ninth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$86.52 = \$12,459.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Tenth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$87.55 = \$12,607.$

Time = $9 \times 16 \text{ hours} = 144 \text{ hours}.$

Total Over 10 Years

Cost = $\$11,613 + \$11,750 + \$11,888 + \$12,029 + \$12,171 + \$12,314 + \$12,459 + \$12,607 = \$96,830.$

Time = $8 \times 144 \text{ hours} = 1,152 \text{ hours}.$

Average Per Year

Cost = $\$96,830/10 = \$9,683.$

Time = $1,152 \text{ hours}/10 = 115 \text{ hours}.$

B.2. Curriculum Revisions

The FAA would need to approve the technician school curriculums.

We assumed:

- 8 curriculums per year would be approved.
- A principal inspector would need 16 hours for each review.
- 10 percent of the curriculums would be rejected in every submission.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Costs

Cost = \$0.

Time = 0.

Second Year Costs

Cost = \$0.

Time = 0.

Third Year Costs

Cost = $8 \times 16 \text{ hours} \times \$80.64 = \$10,322.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Fourth Year Costs

Cost = $8 \times 16 \text{ hours} \times \$81.60 = \$10,444.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Fifth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$82.56 = \$10,567.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Sixth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$83.53 = \$10,692.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Seventh Year Costs

Cost = $9 \times 16 \text{ hours} \times \$84.52 = \$10,818.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Eight Year Costs

Cost = $9 \times 16 \text{ hours} \times \$85.52 = \$10,946.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Ninth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$86.52 = \$11,075.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Tenth Year Costs

Cost = $9 \times 16 \text{ hours} \times \$87.55 = \$11,206.$

Time = $8 \times 16 \text{ hours} = 128 \text{ hours}.$

Total Over 10 Years

Cost = $\$10,322 + \$10,444 + \$10,567 + \$10,692 + \$10,818 + \$10,946 + \$11,075 + \$11,206 = \$86,071.$

Time = $8 \times 128 \text{ hours} = 1,024 \text{ hours}.$

Average Per Year

Cost = $\$86,071/10 = \$8,607.$

Time = $1,024 \text{ hours}/10 = 102 \text{ hours}.$

C. Exemptions

The proposed rule would eliminate exemptions currently issued for aviation mechanic testing requirements.

We assumed:

- 30 exemptions/extensions per year.
- 1 hour each for a Rule making director, an Office of Primary Responsibility (OPR) director and a Rule making manager.

- 2 hours each for an FAA attorney, a Rule making analyst, and an OPR administrative assistant
- 4 hours for a Rule making administrative assistant.
- For the wages we assume that there will be a 1.18 percent annual increase in real wages.

First Year Cost-Savings

Cost-saving = \$0.
Time = 0.

Second Year Cost-Savings

Cost-saving = \$0.
Time = 0.

Third Year Cost-Savings

Cost-saving = \$0.
Time = 0.

Fourth Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$33.23) + (2 \text{ hours} \times \$55.50) + (1 \text{ hour} \times \$97.51) + (1 \text{ hour} \times \$124.59) + (2 \text{ hours} \times \$97.51) + (1 \text{ hour} \times \$124.59) + (2 \text{ hours} \times \$33.23)) = \$25,563.$
Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Fifth Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$33.62) + (2 \text{ hours} \times \$56.15) + (1 \text{ hour} \times \$98.66) + (1 \text{ hour} \times \$126.06) + (2 \text{ hours} \times \$98.66) + (1 \text{ hour} \times \$126.06) + (2 \text{ hours} \times \$33.62)) = \$25,865.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Sixth Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$34.02) + (2 \text{ hours} \times \$56.82) + (1 \text{ hour} \times \$99.83) + (1 \text{ hour} \times \$127.55) + (2 \text{ hours} \times \$99.83) + (1 \text{ hour} \times \$127.55) + (2 \text{ hours} \times \$34.02)) = \$26,170.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Seventh Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$34.42) + (2 \text{ hours} \times \$57.49) + (1 \text{ hour} \times \$101.01) + (1 \text{ hour} \times \$129.06) + (2 \text{ hours} \times \$101.01) + (1 \text{ hour} \times \$129.06) + (2 \text{ hours} \times \$34.42)) = \$26,479.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Eight Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$34.83) + (2 \text{ hours} \times \$58.16) + (1 \text{ hour} \times \$102.20) + (1 \text{ hour} \times \$130.58) + (2 \text{ hours} \times \$102.20) + (1 \text{ hour} \times \$130.58) + (2 \text{ hours} \times \$34.83)) = \$26,791.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Ninth Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$35.24) + (2 \text{ hours} \times \$58.85) + (1 \text{ hour} \times \$103.40) + (1 \text{ hour} \times \$132.12) + (2 \text{ hours} \times \$103.40) + (1 \text{ hour} \times \$132.12) + (2 \text{ hours} \times \$35.24)) = \$27,107.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Tenth Year Cost-Savings

Cost-saving = $30 \times ((4 \text{ hours} \times \$35.65) + (2 \text{ hours} \times \$59.55) + (1 \text{ hour} \times \$104.63) + (1 \text{ hour} \times \$133.68) + (2 \text{ hours} \times \$104.63) + (1 \text{ hour} \times \$133.68) + (2 \text{ hours} \times \$35.65)) = \$27,427.$

Time = $30 \times (4 \text{ hours} + 2 \text{ hours} + 1 \text{ hour} + 1 \text{ hour} + 2 \text{ hours} + 1 \text{ hour} + 2 \text{ hours}) = 390 \text{ hours}.$

Total Over 10 Years

Cost-savings = $\$25,563 + \$25,865 + \$26,170 + \$26,479 + \$26,791 + \$27,107 + \$27,427 = \$185,403.$
Time = $7 \times 390 \text{ hours} = 2,730 \text{ hours}.$

Average Per Year

Cost-savings = $\$185,403/10 = \$18,540.$
Time = $2,730 \text{ hours}/10 = 273 \text{ hours}.$

Summary

The total paperwork impact averages \$352,340, taking 8,013 hours annually, as shown in the following table.

SUMMARY TABLE

	Over 10 years						Average per year					
	Private sector		Government		Total		Private sector		Government		Total	
	Cost	Total time	Cost	Total time	Cost	Total time	Cost	Total time	Cost	Total time	Cost	Total time
A. Initial Curriculum revisions	\$2,400,523	65,520	\$1,055,907	13,248	\$3,456,430	78,768	\$240,032	6,552	\$105,591	1,325	\$345,643	7,877
B. Subsequent Curriculum revisions:												
B.1 Requests	21,622	504	96,830	1,152	118,452	1,656	2,162	50	9,683	115	11,845	166
B.2 Curriculum Revisions	111,277	2,880	86,071	1,024	197,349	3,904	11,128	288	8,607	102	19,735	390
C. Exemptions (Savings)	-63,429	-1,470	-185,403	-2,730	-248,831	-4,200	-6,343	-147	-18,540	-273	-24,883	-420
Total	2,469,993	67,434	1,053,406	12,694	3,523,399	80,128	246,999	6,743	105,341	1,269	352,340	8,013

F. International Compatibility and Cooperation

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

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental

assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

V. Executive Order Determinations*A. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship

between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

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

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a "significant energy action" under the executive order and would not be

likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

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

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

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>.

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

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 147

Aircraft, Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 147—AVIATION MAINTENANCE TECHNICIAN SCHOOLS

- 1. The authority citation for part 147 would read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44709.

- 2. Revise § 147.1 to read as follows:

§ 147.1 Applicability.

This part describes how to obtain an aviation maintenance technician school certificate and associated ratings. This part also contains the rules each FAA-certificated school must follow in conducting its operations.

- 3. Revise § 147.3 to read as follows:

§ 147.3 Certificate and operations specifications requirements.

No person may operate as a certificated aviation maintenance technician school without, or in violation of, an aviation maintenance technician school certificate, rating, or operations specifications issued under this part.

- 4. Revise § 147.5 to read as follows:

§ 147.5 Application and issue.

(a) An application for a certificate and rating, or for an additional rating, must be made in a format acceptable to the FAA and must include the following:

- (1) A description of the proposed curriculum;
- (2) A list of the facilities, including their physical addresses, and the materials and equipment to be used;
- (3) A list of the instructors to be used, including the kind of certificate and ratings held by each, and their certificate numbers; and
- (4) The maximum number of students to be enrolled at any one time.

(b) An applicant who meets the requirements of this part is entitled to an aviation maintenance technician school certificate and associated ratings prescribing such operations specifications and limitations as are necessary in the interest of safety.

- 5. Amend § 147.7 by revising paragraph (a) to read as follows:

§ 147.7 Duration of certificate.

(a) An aviation maintenance technician school certificate or rating is effective from the date of issue until the certificate holder surrenders the certificate and the FAA accepts it for cancellation, or the FAA suspends or revokes it.

* * * * *

- 6. Add § 147.9 to read as follows:

§ 147.9 Operations Specifications.

(a) Except for operations specifications paragraphs specifying ratings, operations specifications are not part of a certificate.

(b) The operations specifications issued to an aviation maintenance technician school must be available at the school for inspection by the public and the FAA at the address required by paragraph (c)(1) of this section.

(c) Each certificate holder's operations specifications must contain—

(1) The physical address of the certificate holder's primary location for operation of the school. The address shall also serve as the address for mailed paper correspondence between the FAA and the certificate holder.

(2) The ratings held.

(3) The complete curriculum and the descriptions required under each of the subjects specified in the appendices.

(4) Any exemption granted by the FAA to the school.

(5) Lists of the facilities, equipment, and materials used by the school to meet the requirements of §§ 147.15 through 147.19.

(6) The maximum number of students to be enrolled at any one time.

(7) A current list of instructors and their qualifications.

(8) Any other information the Administrator determines is necessary.
 ■ 7. Add § 147.10 to read as follows:

§ 147.10 Amendment, suspension, and termination of operations specifications.

(a) The FAA may amend any operations specifications issued under this part if—

(1) The operations specification was issued erroneously;

(2) The FAA revises the operations specifications template;

(3) The FAA determines that safety in air commerce and the public interest require the amendment; or

(4) The certificate holder applies for the amendment and the FAA determines that safety in air commerce and the public interest allows the amendment.

(b) Except for an amendment involving a rating, which would be considered a certificate action, the FAA may amend, suspend, or terminate any operations specification issued under this part if the certificate-holding district office determines that safety in air commerce and the public interest require the amendment, suspension, or termination.

(c) Except as provided in paragraph (f) of this section for an amendment, suspension, or termination of an operations specification in which the certificate-holding district office finds that an emergency exists requiring immediate action, when the FAA initiates an amendment, suspension, or termination of an operations specification, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment, suspension, or termination.

(2) The certificate-holding district office sets a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the proposed amendment, suspension, or termination.

(3) After considering the material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment, suspension, or termination;

(ii) The partial adoption of the proposed amendment, suspension, or termination; or

(iii) The withdrawal of the proposed amendment, suspension, or termination.

(4) If the certificate-holding district office issues an amendment, suspension, or termination of an operations specification, it becomes effective not less than 30 days after the

certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (f) of this section that there is an emergency requiring immediate action with respect to safety in air commerce; or,

(ii) The certificate holder petitions for reconsideration of the amendment, suspension, or termination under paragraph (e) of this section.

(d) If the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications at least 30 days before the date proposed by the applicant for the amendment to become effective.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the FAA.

(3) After considering the material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial or partial adoption under paragraph (e) of this section.

(4) If the certificate-holding district office approves the amendment following coordination with the certificate holder regarding its implementation, the amendment is effective on the date the FAA approves it.

(e) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the denial or partial adoption of the certificate holder's applied for amendment, or of an FAA-initiated amendment, suspension, or termination of an operations specification, the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial or partial adoption of the applied for amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment, suspension, or termination of one or more of its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the applicable Flight Standards Regional Division Manager.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment, suspension, or termination issued by the certificate-holding district office unless the certificate-holding district office has found, under paragraph (f) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the effective date of the amendment, suspension, or termination shall be as specified under paragraphs (c) or (d) of this section.

(f) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in paragraphs (c) and (e) of this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends, suspends, or terminates the operations specification(s) and makes the amendment, suspension, or termination effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office specifies the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air commerce and air transportation or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment, suspension, or termination.

■ 8. Revise § 147.13 to read as follows:

§ 147.13 Facilities, equipment, and material requirements.

(a) Each certificated aviation maintenance technician school must provide and maintain at least the facilities, equipment, and materials specified in §§ 147.15 through 147.19 that are appropriate to the ratings held.

(b) A school may not make a significant change to its facilities, equipment, or materials used to comply with paragraph (a) of this section unless the change is approved in advance by the FAA. The approved changes must be listed in the certificate holder's operations specifications.

■ 9. Amend § 147.15 by revising the introductory paragraph and paragraph (f) to read as follows:

§ 147.15 Space requirements.

Each certificated aviation maintenance technician school must provide and maintain properly heated, lighted, and ventilated facilities for the rating or ratings held that the FAA determines are appropriate for the

maximum number of students expected to be taught at any time for the following areas and classrooms:

* * * * *

(f) A suitable area and space with adequate equipment, including benches, tables, and test equipment, to disassemble, service, and inspect:

* * * * *

■ 10. Amend § 147.17 by revising paragraph (a) to read as follows:

§ 147.17 Instructional equipment requirements.

(a) Each certificated aviation maintenance technician school must provide and maintain the following instructional equipment appropriate to the ratings held:

* * * * *

■ 11. Revise § 147.19 to read as follows:

§ 147.19 Materials, special tools, and shop equipment requirements.

Each certificated aviation maintenance technician school must provide and maintain an adequate supply of materials, special tools, and shop equipment appropriate to the school's FAA-approved curriculum that are used in constructing and maintaining aircraft, to assure that each student will be properly instructed. The special tools and shop equipment must be in satisfactory working condition for their intended purpose.

■ 12. Revise § 147.21 to read as follows:

§ 147.21 General curriculum requirements.

(a) Each certificated aviation maintenance technician school must have and use an FAA-approved curriculum that meets the minimum requirements set forth in the school's operations specifications. The curriculum must be designed to qualify students to meet the minimum requirements of subpart D of 14 CFR part 65. With FAA approval, a school may teach approved curriculum subjects at levels exceeding those specified in the school's operations specifications.

(b) The curriculum required by paragraph (a) of this section must offer at least the number of instructional hours or credit hours for the rating sought as set forth in paragraph (b)(1) or (b)(2) as follows:

(1) For instructional hours, each instruction unit hour may not be less than 50 minutes—

(i) Airframe—1,250 hours (450 general plus 800 airframe).

(ii) Power plant—1,100 hours (450 general plus 650 power plant).

(iii) Combined airframe and power plant—1,900 hours (450 general plus 800 airframe and 650 powerplant).

(2) For credit hours, each credit unit hour must be based on higher education accreditation criteria—

(i) Airframe—28 credit hours (10 general credit hours plus 18 credit hours airframe).

(ii) Powerplant—25 credit hours (10 general credit hours plus 15 credit hours power plant)

(iii) Combined airframe and power plant—43 credit hours (10 credit hours general plus 18 credit hours airframe and 15 credit hours power plant).

(c) The curriculum must cover the subjects and items prescribed in appendices B, C, or D, and the items included under those subject headings in each school's operations specifications as applicable for the school's ratings. Each item must be taught to at least the indicated level of proficiency, defined in Appendix A and set forth in the corresponding operations specification item.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this section and § 147.11, the holder of a certificate issued under subpart B of this part may apply for and receive approval of special courses in the performance of special inspection and preventive maintenance programs for a primary category aircraft type certificated under § 21.24(b) of this chapter. The school may also issue certificates of competency to persons successfully completing such courses provided that all other requirements of this part are met and the certificate of competency specifies the aircraft make and model to which the certificate applies.

■ 13. Revise § 147.23 to read as follows:

§ 147.23 Instructor requirements.

Each certificated aviation maintenance technician school must provide the number of instructors holding appropriate mechanic certificates and ratings that the FAA determines necessary to provide adequate instruction and supervision of the students, including at least one FAA-certificated instructor for each 25 students in each shop or class. However, a school may, with FAA approval, provide specially qualified instructors who are not FAA certificated mechanics to teach general, airframe, powerplant, or specialized subjects. This provision does not relieve the school from having one instructor who holds an FAA mechanic certificate with ratings for Airframe, Powerplant, or both, as appropriate for each 25 students. Each school must maintain and keep current a list of the names and qualifications of all its instructors in its operations specifications.

■ 14. Amend § 147.31 by revising paragraphs (c) through (e) and adding new paragraph (f) to read as follows:

§ 147.31 Attendance and enrollment, test, and credit for prior instruction or experience.

* * * * *

(c) A school may not graduate a student unless the student has completed all of the appropriate curriculum requirements. However, the school may credit a student with instruction or previous experience as follows:

(1) A school may credit a student with instruction satisfactorily completed at—

(i) An accredited university, college, community college, or junior college;

(ii) An accredited vocational, technical, trade, or high school;

(iii) A military technical school, or

(iv) A certificated aviation maintenance technician school.

(2) A school may determine the amount of credit to be allowed—

(i) By an entrance test equal to one given to the students who complete a comparable required curriculum subject at the crediting school;

(ii) By an evaluation of an authenticated transcript from the student's former school; or

(iii) In the case of a student from a non-accredited military technical school, credit allowed may be determined based only on the successful completion of an entrance test.

(3) A school may credit a student with previous aviation maintenance experience comparable to required curriculum subjects. It must determine the amount of credit to be allowed by documents verifying that experience, and by giving the student a test equal to the one given to students who complete the comparable required curriculum subject at the school.

(4) A school may credit a student seeking an additional rating with previous satisfactory completion of the general portion of another school's curriculum.

(d) A school may not have more students enrolled at any one time than the number of students specified on its FAA-issued operations specifications.

(e) A school must use an FAA-approved system for determining final course grades and for recording student attendance. The system must show hours of absence allowed, and show how the missed material and hours will be made available to the student.

(f) Whenever an aviation maintenance technician school demonstrates to the FAA that a student has made satisfactory progress at the school, the student may take the aviation mechanic

written general knowledge test after completing the corresponding portion of the curriculum, even if the student has not met the experience requirements of § 65.77. The school must prepare and issue a Certificate of Completion to identify students who are eligible to take the written general knowledge test. An official of the school must authenticate the certificate. The certificate must show the completion date and the approved curriculum title under which the student was enrolled.

(g) A certificated aviation maintenance technician school may use distance learning as an alternative instructional delivery method under certain circumstances approved by the FAA. Prior to implementation, the school must obtain initial and final FAA approval of the distance learning training program and must adopt policies and procedures for managing its distance learning program. The distance learning program must show that it will achieve a level of competency equal to, or greater than, that required by § 145.37.

■ 15. Revise § 147.33 to read as follows:

§ 147.33 Records.

(a) Each certificated aviation maintenance technician school must keep current records for each student enrolled, showing—

(1) The student's attendance, tests, and grades received on the subjects required by this part;

(2) The instruction credited to the student under § 147.31(c), if any; and

(3) The authenticated transcript of the student's grades from that school.

(b) Each school must retain the records required by paragraph (a) for at least two years after the end of the student's enrollment, and must make each record available for inspection by the FAA during that period.

(c) Each school must keep a current progress chart or individual progress record for each of its students, showing the practical projects or laboratory work completed, or to be completed, by the student in each subject.

■ 16. Revise § 147.35 to read as follows:

§ 147.35 Transcripts and graduation certificates.

(a) Each certificated aviation maintenance technician school must, upon request by a student who has graduated from the school, or by a student who leaves the school before being graduated, provide a transcript of the student's grades to the student. An official of the school must authenticate the transcript. The transcript must state the curriculum in which the student was enrolled, whether the student

satisfactorily completed that curriculum, and the final grades the student received.

(b) Each school must provide a graduation certificate or certificate of completion to every student it graduates. An official of the school must authenticate the certificate. The certificate must show the date of graduation and the approved curriculum.

§ 147.36 [Removed and Reserved].

■ 17. Remove and reserve § 147.36.

■ 18. Revise § 147.37 to read as follows:

§ 147.37 Quality of instruction.

(a) Each certificated aviation maintenance technician school must provide instruction of sufficient quality that its graduates achieve the pass rates described in this section. For the school's graduates who apply for a mechanic certificate or for an additional rating within 60 days after they are graduated, the percentage of those passing the applicable FAA written tests on their first attempt during any period of 24 calendar months must be at least the percentage figured as follows:

(1) For a school graduating fewer than 51 students during that period—the national passing norm minus the number 20.

(2) For a school graduating at least 51, but fewer than 201, students during that period—the national passing norm minus the number 15.

(3) For a school graduating more than 200 students during that period—the national passing norm minus the number 10.

(b) The failure of a school to maintain the quality of instruction specified in paragraph (a) of this section may be the basis for suspending or revoking that school's certificate.

(c) As used in this section, "national passing norm" is the number representing the percentage of all graduates (of a curriculum for a particular rating) of all certificated aviation maintenance technician schools who apply for a mechanic certificate or additional rating within 60 days after they are graduated and pass the applicable FAA written tests on their first attempt during the period of 24 calendar months described in this section.

§§ 147.38 and 147.38(a) [Removed and Reserved].

■ 19. Remove and reserve §§ 147.38 and 147.38(a).

■ 20. Revise § 147.39 to read as follows:

§ 147.39 Display of certificates.

Each certificated aviation maintenance technician school must

display the school's certificate, along with its associated ratings, at a place in the school that is normally accessible to the public and where its view is not obscured. The certificate must be available for inspection by the FAA.

■ 21. Revise § 147.41 to read as follows:

§ 147.41 Change of location.

The holder of an aviation maintenance technician school certificate may not make any change in the school's physical location unless the change is approved by the FAA in advance. If the certificate holder desires to change the school's location, the holder must notify the FAA, in writing, at least 30 days before the date of the contemplated change. The new location must be listed in the certificate holder's operations specifications.

■ 22. Revise § 147.43 to read as follows:

§ 147.43 FAA Inspection.

A certificated aviation maintenance technician school must allow the FAA to inspect the school at any time to determine compliance with this part.

§ 147.45 [Removed and Reserved].

■ 24. Remove and reserve § 147.45.

■ 25. Amend Appendix A by revising paragraph (c) to read as follows:

Appendix A to Part 147—Curriculum Requirements

This Appendix Defines Terms Used in Appendices B, C, and D of This Part, and Describes the Levels of Proficiency at Which Items Under Each Subject in Each Curriculum Must Be Taught

* * * * *

(c) *Teaching Materials and Equipment.* The curriculum may be presented utilizing currently accepted educational materials and equipment, including but not limited to: calculators, computers, distance learning delivery equipment/methods and audio-visual equipment.

* * * * *

■ 26. Revise Appendix B to read as follows:

- A. Fundamental Electricity and Electronics
- B. Aircraft Drawings
- C. Weight and Balance
- D. Fluid Lines and Fittings
- E. Aircraft Material, Hardware, and Processes
- F. Ground Operations and Servicing
- G. Cleaning and Corrosion Control
- H. Mathematics
- I. Maintenance Forms, Records, and Publications
- J. Physics for Aviation
- K. Mechanic Privileges and Limitations
- L. Inspection Concepts and Techniques
- M. Human Factors
- N. Foreign Object Elimination (FOE)
- O. Alerts, Cautions, and Warning Indications

■ 27. Revise Appendix C to read as follows:

A. Metallic Structures
 B. Non-Metallic Structures
 C. Flight Controls
 D. Airframe Inspection
 E. Landing Gear Systems
 F. Hydraulic and Pneumatic Systems
 G. Environmental Systems
 H. Aircraft Instrument Systems
 I. Communication and Navigation Systems
 J. Aircraft Fuel Systems
 K. Aircraft Electrical Systems
 L. Ice and Rain Control Systems
 M. Airframe Fire Protection Systems
 N. Rotorcraft Fundamentals
 O. Water and Waste Systems

■ **28. Revise Appendix D to read as follows:**

A. Reciprocating Engines
 B. Turbine engines
 C. Engine Inspection
 D. Engine Fire Protection Systems
 E. Engine Instrument Systems
 F. Engine Electrical Systems
 G. Lubrication Systems
 H. Ignition and Starting Systems
 I. Fuel Metering Systems
 J. Reciprocating Engine Induction and Cooling Systems
 K. Turbine Engine Air System
 L. Engine Exhaust and Reverser Systems
 M. Propellers

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44707 in Washington, DC, on 22 September, 2015.

John Duncan,

Director, Flight Standards Office.

[FR Doc. 2015-24841 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR-5776-P-01]

RIN 2502-AJ32

Disposition of HUD-Acquired Single Family Properties; Updating HUD's Single Family Property Disposition Regulations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations that address property disposition. This rule proposes to consolidate and reorganize HUD's property disposition regulations so that they better reflect industry standards and allow HUD to conduct its Single Family Property Disposition Program more efficiently and more effectively so that HUD can obtain the greatest value for its real estate-owned (REO) properties in different market conditions.

DATES: *Comment Due Date:* December 1, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. **Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. **Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Thomas Kumi, Director, Single Family Asset Management and Disposition Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9172, Washington, DC 20410-8000, telephone number 202-708-1672. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204(g) of the National Housing Act (12 U.S.C. 1710g) addresses the management and disposition of HUD-acquired single family property, which includes HUD-acquired real and personal property assets. HUD's implementing regulations are codified in 24 CFR part 291 (currently entitled, "Disposition of HUD-Acquired Single Family Property"). Under these statutory and regulatory authorities, HUD is charged with carrying out a program of sales of HUD-acquired and owned properties along with appropriate credit terms and standards to be used in carrying out the program. Property owned by HUD as a result of acquisition includes REO. The goals of HUD's Single Family Property Disposition program are to reduce the inventory of single family properties in a manner that minimizes losses to the Mutual Mortgage Insurance Fund, promote the expansion of homeownership opportunities for American families by, among other things, selling such properties at a discount to state and local governments and HUD-approved nonprofit entities, and help stabilize distressed communities.

As a result of recent changes in the housing market, specifically the economic and housing crisis that commenced in 2008, HUD acquired an unprecedented number of REO properties—98,342, 90,943, 103,215 and 111,416 in FY 2010, FY 2011, FY 2012, and FY 2013 respectively. This increase caused FHA to reexamine its disposition strategy for HUD-acquired single family properties and determine that it needed to revise, consolidate and reorganize its property disposition regulations to facilitate the expeditious sale of REO properties acquired and provide greater efficiency in the administration of HUD's property disposition program. While part 291 addresses both HUD-acquired real and personal property assets, the focus of this proposed rule is on HUD's disposition of REO properties. FHA's intent is to bring its practices into

conformance with industry standards and allow HUD to conduct its Single Family Property Disposition Program more efficiently and more effectively so that it can obtain the greatest value for REO properties in different market conditions.

II. This Proposed Rule

The proposed amendments to part 291 would make several changes to the administration of HUD's single-family property disposition program with respect to the disposition of REO properties. These changes seek to provide greater efficiency in the administration of HUD's property disposition program for REO properties, align FHA's regulatory authority with its business practices, and provide flexibility in anticipation of future changes to the property disposition program for REO properties. The following section of this preamble describes the changes to the property disposition process proposed by this rule.

1. Ownership and Disposition

Authority. HUD proposes to revise the heading of part 291 from "Disposition of HUD-Acquired Single Family Property" to "Disposition of HUD-Acquired and Owned Single Family Property" to better reflect the fact that HUD not only receives REO properties, but also holds and maintains them throughout the disposition process. For similar reasons, the heading of § 291.100, which states HUD's general policy on disposition, would be changed from "General policy" to "General policy on HUD acquisition, ownership, and disposition of real estate assets". Under section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), HUD is authorized to carry on activity necessary for receiving, owning, holding and maintaining property before selling it. Section 291.1(a), which states the purpose of part 291, would be amended to reference HUD's authority to acquire and possess properties. This authority would also be cited in § 291.90 governing sales methods to reiterate HUD's authority to prescribe methods of sale and dispose of properties.

2. Appraisal of HUD REO Properties. Section 291.100(b) of the proposed rule would be revised to clarify that the list price for HUD REO properties may be established utilizing one or more evaluation tools. When an appraisal is ordered as part of the process of establishing list price, the value must be established by an appraiser who meets the requirements in 24 CFR part 200, subpart G (Appraiser Roster), and who is in good standing on the appraiser roster established under that section. All

methods used by appraisers must be consistent with FHA appraisal requirements at the time the appraisal is made. This change will align requirements for REO appraisers with requirements for appraisers found in part 200, subpart G, to ensure consistency. The proposed rule would expand the valuation methods available to include alternative methods commonly used in the real estate industry, such as Broker Price Opinions¹ and Automated Valuation Models.²

3. Escrow Amount Required for Properties Needing Repairs. Currently, buyers of HUD-acquired properties can qualify for FHA mortgage insurance even if the property does not meet FHA's minimum property standards, provided that they put money into escrow to make necessary repairs to bring the property up to standard. As currently codified in § 291.100(c)(2), a property that requires no more than \$5,000 for repairs may be offered for sale in an "as-is" condition if the purchaser establishes a cash escrow in the amount of \$5,000. This amount has not been increased since 1994. Based on present value calculations with an escalation of 3.5 percent, HUD estimates that repairs costing \$5,000 in 1994 would cost \$10,000 in 2015. Therefore, the proposed rule would increase the maximum repair amount that would allow a purchaser to acquire property under § 291.100(d)(1)(ii) to \$10,000. In addition, in order to ensure that HUD can keep this amount updated, this rule proposes to add a provision at § 291.100(d)(1)(ii)(B) that would allow HUD to increase or decrease this amount based on changes to the Consumer Price Index³ by issuing a

¹ A Broker's Price Opinion (BPO) is the process a hired sales agent utilizes to determine the selling price of a real estate property. BPOs are popularly used in situations where lenders and mortgage companies believe the expense and delay of an appraisal to determine the value of properties is unnecessary. See <https://www.brokerpriceopinion.com>.

² Automated valuation model (AVM) is the name given to a service that can provide real estate property valuations using mathematical modeling combined with a database. Most AVMs calculate a property's value at a specific point in time by analyzing values of comparable properties. Some also take into account previous surveyor valuations, historical house price movements and user inputs (e.g. number of bedrooms, property improvements). Appraisers, investment professionals and lending institutions use AVM technology in their analysis of residential property. It is a technology-driven report. The product of an automated valuation technology comes from analysis of public record data and computer decision logic combined to provide a calculated estimate of a probable selling price of a residential property.

³ The Consumer Price Index (CPI) is prepared by the Department of Labor's Bureau of Labor Statistics and is a measure of the average change over time

Federal Register notice for comment. After consideration of public comments received on the notice, HUD would then publish the revised escrow amounts in a **Federal Register** notice. Finally, the rule would revise §§ 291.100(c) and (d) to better reflect the distinction between FHA's role in the property disposition process and FHA's role as an insurer of qualified properties when they are sold.

4. Listings. The proposed rule would clarify that HUD has the statutory authority to allow for a number of listings options in § 291.100(h) that real estate brokers may use to list REO properties. In addition to asset management and listing contracts, this rule would provide that HUD may use other methods deemed to be appropriate. This will provide HUD with additional flexibility to expedite the sales process, thereby ensuring that properties are disposed of efficiently and at minimum cost to HUD. In addition, the proposed rule would revise § 291.100(h)(2)(ii) to require the purchaser's broker to submit bids through HUD's designated electronic bid system rather than through the exclusive broker.

5. Settlement Cost Assistance Available to Owner-Occupant Purchasers. Section 291.205(b) currently provides that, in the case of competitive sales, HUD, upon request by the purchaser, may elect to pay all or a portion of the financing and loan closing costs as well as the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. The proposed rule would remove HUD's obligation to pay the broker's sales commission and specify that settlement cost assistance is only available to owner-occupant purchasers and not available to investor purchasers. Both "owner-occupant purchaser" and "investor purchaser" are defined in § 291.5.

6. Bidding Process for Competitive Sales: The proposed rule would update the bidding process established under the competitive sales procedures in § 291.205. Section 291.205(k) would be revised to provide for winning bids to be made available publicly rather than making them available for inspection at a time and place designated by the HUD local office. Losing bids would no longer be made available either through electronic posting or through the HUD local office. In addition, the rule would specify that winning bidders may be notified by their brokers using

in the prices paid by urban consumers for a market basket of consumer goods and services. For more information, see <http://stats.bls.gov/cpi/home.htm>.

electronic mail and that an executed sales contract will be deemed final when, after being signed by both parties, the executed contract is sent by email rather than via postal service delivery to the successful bidder.

7. *Good Neighbor Next Door (GNND)*. The objective of the GNND program is to improve the quality of life in distressed urban communities by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians, whose daily responsibilities reflect a high level of public service commitment and represent a nexus to the needs of the community, to purchase and live in homes in these communities, as the preamble to that final rule made clear. (See 71 FR 64422, November 1, 2006.) As to law enforcement officers specifically, one of the purposes of the GNND Sales Program is to revitalize distressed communities by deterring the commission of crimes with the presence of law enforcement officers in these areas. (See 71 FR 64424.) However, the currently codified rule, while it requires teachers and firefighters in the GNND program to live in the areas they serve, does not do so with respect to police officers. Therefore, this rule would add this requirement for police officers in accordance with the purpose of the rule.

This proposed rule further clarifies that similar requirements apply to all of the GNND participants by making a parallel change to §§ 291.500, 291.525 and 291.530, which are the sections on purpose and purchaser qualifications, in general. This rule also adds a definition of “locality” to § 291.505, and uses that term in this proposed rule rather than “area,” which is the current terminology, to avoid repetitive language and confusion with the concept of a “revitalization area” used in codified § 291.510.

Technical Changes

This proposed rule would revise the structure of § 291.5 to consolidate the

definition for “Secretary” with the other definitions in this section.

III. Findings and Certifications

Executive Order 12866 and Executive Order 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The majority of the proposed changes to part 291 described above would streamline HUD’s property disposition program by bringing its practices into conformance with industry standards and allowing HUD to administer its Single Family Property Disposition Program more efficiently and more effectively. These changes would not create additional significant burdens for the public. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD defines “small supervised lenders” as those depository institutions that are regulated by the Federal Reserve, the Office of the Comptroller of the Currency, the Federal Deposit Insurance

Corporation, or the National Credit Union Administration, and which have a depository asset base of less than \$500 million.⁴ This rule proposes to make changes to the administration of HUD’s property disposition and acquisition activities carried out as part of the FHA insurance program for one-to-four family homes. These changes include limiting the provision of settlement cost assistance to owner-occupants, providing HUD flexibility to run the bidding process for REO properties, changes to the direct sales process, the additional flexibility to list properties electronically, changes to the required escrow amount for purchasers obtaining property not meeting HUD’s property standards, and clarifications in the rule governing HUD’s appraisal process. These changes would streamline HUD’s administration of its Single Family Property Disposition Program and adopt measures that reflect industry practice. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD’s determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with 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 the collection displays a currently valid OMB control number. The burden of information collection in this proposed rule is estimated as follows:

INFORMATION COLLECTION UNDER PROPOSED PROCESS

Information collection	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Total annual burden hours	Hourly cost	Total annual cost
2502–0306—Acquisition/Disposition of Mortgaged Single Family Properties (§ 291.100)	65,000	1	65,000	.08	5200	\$63.67	\$331,084
2502–0189—Repair Completion Escrow Requirement (§ 291.100)	35,000	1	35,000	.02	700	63.67	44,569

⁴ Of HUD’s 1,459 supervised lenders, 598 are considered, by HUD, to be “small supervised lenders.”

INFORMATION COLLECTION UNDER PROPOSED PROCESS—Continued

Information collection	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Total annual burden hours	Hourly cost	Total annual cost
2502-0570—HUD-Owned Real Estate—Good Neighbor Next Door Program (\$291.500)	65,000	1	65,000	.02	1300	63.67	82,771
Totals	165,000	3	165,000	1.2	7200	.....	458,424

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication date. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR-5776-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947, and Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 2204, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD

strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of National Environmental Policy Act (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law

within the meaning of the Executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED AND OWNED SINGLE FAMILY PROPERTY

■ 1. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*, 42 U.S.C. 1441, 1441a, 1551a and 3535(d).

■ 2. Revise the heading of part 291 to read as set forth above.

■ 3. Revise § 291.1(a)(1) to read as follows:

§ 291.1 Purpose and general requirements.

(a) * * *

(1) This part governs the acquisition, possession and disposition of one-to-four family properties acquired by the Federal Housing Administration (FHA) through foreclosure of an insured or Secretary-held mortgage or loan under the National Housing Act, or acquired by HUD under section 204(g) of the National Housing Act (12 U.S.C. 1710(g)). HUD will issue detailed policies and procedures that must be followed in specific areas.

* * * * *

■ 4. Amend § 291.5 by removing paragraphs (a) and (b), adding

introductory text, and revising the definition of “Secretary.”

The addition and revision to read as follows:

§ 291.5 Definitions.

Terms used in this part are defined as follows:

* * * * *

Secretary is defined in 24 CFR 5.100.

* * * * *

■ 5. Amend § 291.90 by revising the introductory paragraph to read as follows:

§ 291.90 Sales methods.

In accordance with section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), HUD will prescribe the terms and conditions for all methods of sale. HUD may dispose of assets using any method that the Secretary deems appropriate, including, but not limited to the following:

* * * * *

■ 6. Amend § 291.100 by revising the section heading and paragraphs (b), (c), (d), and (h) to read as follows:

§ 291.100 General policy on HUD acquisition, ownership and disposition of real estate assets.

(a) * * *

(b) *List price.* The list price, or “asking price,” assigned to the property is based upon one or more evaluation tools (e.g. appraisal, Broker Price Opinion, Automated Valuation Model). An appraisal, when used, must be conducted by an independent real estate appraiser who meets all of the requirements of 24 CFR part 200, subpart G, and is in good standing on the appraiser roster established under that section. The appraiser must provide an opinion of the “as-is” market value using a valuation method that is commonly employed in the industry and that is consistent with FHA appraisal requirements.

(c) *Insurance.* When listing properties, HUD may elect to only identify property not eligible for mortgage insurance under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)).

(d) *Financing.* (1) Subject to underwriting requirements, REO properties that have not been identified as uninsurable in accordance with paragraph (c) of this section can be purchased and financed with a mortgage insured under section 203(b) or 203(k) of the National Housing Act (12 U.S.C. 1709(b), 1709(k)), if supported by an FHA appraisal, in one of the following ways:

(i) *Insured.* A property that meets the Minimum Property Standards (MPS) as defined in HUD Handbook 4905.1 or

any successor handbook, as determined by the Secretary, for existing dwellings will be offered for sale in “as-is” condition with FHA mortgage insurance available as provided in part 203 of this chapter.

(ii) *Insured with repair escrow.* (A) A property that requires no more than \$10,000 for repairs to meet the MPS as defined in HUD Handbook 4905.1 or any successor handbook or, as determined by the Secretary, will be offered for sale in “as-is” condition with FHA mortgage insurance available, as provided in part 203 of this chapter, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(B) *Changes in repair escrow.* HUD may adjust the escrow balance required under this paragraph based on changes to the Consumer Price Index by publishing a **Federal Register** notice that provides for a public comment period of 30 calendar days for the purpose of accepting comments on the amount of the change. After comments have been considered, HUD will publish a final notice announcing the revised escrow amounts.

(iii) *Insured with rehabilitation loan* in accordance with 203(k) of the National Housing Act and pursuant to § 203.50 of this chapter.

(2) REO properties that have been identified as uninsurable in accordance with paragraph (c) of this section can be purchased and financed with a mortgage insured under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)), subject to underwriting requirements supported by an FHA-specified appraisal and in accordance with 24 CFR 203.50.

(3) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed 5 years. Mortgagors must meet FHA mortgage credit standards.

(i) For purposes of this section, the term “purchase money mortgage,” or *PMM* means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

(ii) Except as provided in paragraph (d)(3) of this section, the purchaser is

entirely responsible for obtaining financing for purchasing a property.

(e) * * *

(h) Any real estate broker who has agreed to comply with HUD requirements may be eligible to participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker. In accordance with section 204(g) of the National Housing Act (12 U.S.C. 1710(g)), HUD will prescribe the terms and conditions for all methods of listing properties. HUD may dispose of properties using any method that the Secretary deems appropriate, including, but not limited to the following:

(1) *Open listings.* Properties may be sold on an open listing basis with participating real estate brokers.

(2) *Asset management and listing contracts.* (i) HUD may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(ii) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser’s broker must submit the bid through HUD’s designated electronic bid system.

* * * * *

■ 7. Amend § 291.205 by revising the introductory text and paragraphs (b), (k)(1), (k)(2), and (l) to read as follows:

§ 291.205 Competitive sales of individual properties.

When HUD conducts competitive sales of individual properties to individual buyers, it will generally sell the properties on an “as-is” basis, without repairs or warranties, and it will follow the sales procedures provided in this section.

* * * * *

(b) * * *

(1) The net offer is calculated by subtracting from the bid price the dollar amounts for the financing and loan closing costs and the broker’s sales commission, as described in paragraph (b)(2) of this section.

(2) If an owner-occupant purchaser of the property requests in the bid, HUD may pay all or a portion of the financing and loan closing costs, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the total amount for broker’s sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties. No assistance for

financing and loan closing costs or for the broker's sales commission will be provided to investor purchasers.

* * * * *

(k) * * *

(1) The Secretary will make all winning bids available publicly.

(2) Successful bidders will be notified through their real estate brokers by electronic mail, mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract, signed by both the submitting real estate broker and the prospective purchaser, and sending a copy of the executed contract by electronic mail to the successful bidder or the bidder's agent.

(l) *Counteroffers*. HUD may present counteroffers during competitive bid periods as it deems appropriate to minimize losses to its insurance fund. "Best and Final" offers requested by HUD are considered counteroffers.

Subpart F—Good Neighbor Next Door Sales Program

■ 8. Revise § 291.500 to read as follows:

§ 291.500 Purpose.

This subpart describes the policies and procedures governing the Good Neighbor Next Door (GNND) Sales Program. The purpose of the GNND Sales Program is to improve the quality of life in distressed urban communities. This is to be accomplished by encouraging law enforcement officers, teachers, and firefighters/emergency medical technicians to purchase and live in homes that are located in the same communities where they perform their daily responsibilities and duties.

■ 9. Revise § 291.505 to read as follows:

§ 291.505 Definitions.

For purposes of this subpart:

Locality means the community, neighborhood, or jurisdiction of the unit of general local government, or Indian tribal government;

Unit of general local government means a county or parish, city, town, township, or other political subdivision of a state.

■ 10. In § 291.520, remove "and" from the end of paragraph (a), add the word "and" at the end of paragraph (b), and add paragraph (c).

The addition reads as follows:

§ 291.520 Eligible law enforcement officers.

* * * * *

(c) The full time employment in paragraph (a) of this section must, in the normal course of business, directly serve the locality in which the home is located.

■ 11. Revise § 291.525(b) to read as follows:

§ 291.525 Eligible teachers.

* * * * *

(b) The full time employment in paragraph (a) of this section must, in the normal course of business, serve students from the locality where the home is located.

■ 12. Revise § 291.530 to read as follows:

§ 291.530 Eligible firefighter/emergency medical technicians.

A person qualifies as a firefighter/emergency medical technician for the purposes of the GNND Sales Program if the person is:

(a) Employed full-time as a firefighter or emergency medical technician by a fire department or emergency medical services responder unit of the federal government, a state, unit of general local government, or an Indian tribal government; and

(b) The full time employment in paragraph (a) of this section must, in the normal course of business, directly serve the locality where the home is located.

Dated: August 13, 2015.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2015-24837 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0582; FRL-9935-00-Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Iowa; 2015 Iowa State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to grant full approval of Iowa's attainment demonstration State Implementation Plan (SIP) for the lead National Ambient Air Quality Standard (NAAQS) nonattainment area of Council Bluffs, Pottawattamie County, Iowa, received by EPA on February 9, 2015. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air

Act, and will bring the designated portions of Council Bluffs, Iowa into attainment of the 0.15 microgram per cubic meter (ug/m³) lead NAAQS.

DATES: Comments must be received on or before November 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0582, by one of the following methods:

SUPPLEMENTARY INFORMATION:

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

2. *Email*: doolan.stephanie@epa.gov.

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

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2015-0582. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” or “our” refer to EPA.

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I. What is being addressed in this document?

In this document, EPA is addressing Iowa’s attainment demonstration State Implementation Plan (SIP) for the lead

National Ambient Air Quality Standard (NAAQS) nonattainment area in portions of Council Bluffs, Pottawattamie County, Iowa. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act (CAA) identified in EPA’s Final Rule (73 FR 66964, October 15, 2008), and will bring the area into attainment of the 0.15 microgram per cubic meter ($\mu\text{g}/\text{m}^3$) lead NAAQS.

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

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

III. What action is EPA taking?

EPA is proposing to grant full approval of Iowa’s attainment demonstration SIP for the 2008 lead NAAQS. EPA is proposing this action in order to solicit comments. Final rulemaking will occur after consideration of any comments received.

IV. Background

EPA established the National Ambient Air Quality Standards (NAAQS) for lead on October 5, 1978 (43 FR 46246). On October 15, 2008, EPA established a new lead NAAQS of 0.15 $\mu\text{g}/\text{m}^3$ in air, measured as a rolling three-month average. (73 FR 66964). On November 22, 2011, portions of Councils Bluffs, Pottawattamie County, Iowa were designated as nonattainment for the 2008 lead NAAQS. (76 FR 72097). Under sections 191(a) and 192(a) of the CAA, Iowa is required to submit to EPA an attainment demonstration SIP revision for lead and to demonstrate the nonattainment area will reach attainment of the 2008 lead NAAQS no later than five years from the date of the nonattainment area designation.

V. Technical Review of the Attainment Demonstration SIP for the 2008 Lead NAAQS

A. Facility Description

There are two lead-emitting sources contributing to the Council Bluffs lead nonattainment area: Griffin Pipe Products Company, L.L.C. (Griffin Pipe); and Alter Metal Recycling (Alter). A description of the operation of these two facilities is presented below.

1. Griffin Process Description

Griffin Pipe manufactures ductile iron pressure pipe for potable water transmission and wastewater collection. The facility is classified as a gray iron foundry in accordance with the North American Industry Classification System (NAICS). Griffin Pipe is considered a major source for CAA Title V and Prevention of Significant Deterioration (PSD) permitting purposes.

Griffin Pipe’s Council Bluffs facility covers more than 105,000 square feet and is located on a 19 acre site along the Missouri River bottoms. It produces ductile iron pressure pipe in 20 foot lengths and diameters ranging from six to 48 inches which are stored on the property until off-site shipment. There are paved haul routes on-site for the trucks that pick up the product for off-site transport. There is also a rail spur that traverses the south side of the property.

The hot iron required in the pipe manufacturing process is produced in a cupola. The cupola is charged with raw materials including coke, scrap iron, scrap steel, and fluxes. The scrap metal primarily comes from Alter Recycling which is located to the south of Griffin Pipe and is part of the nonattainment area, as discussed in paragraph V.A.2 below. After the molten iron leaves the cupola, it is treated in a desulfurization and magnesium inoculation processes. Desulfurization removes undesirable sulfur from the metal and magnesium inoculation uses magnesium to give the metal the physical properties needed to produce the ductile iron pipe. Lead present in the scrap metal is emitted as the metals are melted in the cupola, treated in the desulfurization and magnesium inoculation processes, and cast.

On December 7, 2010, the state issued a Prevention of Significant Deterioration (PSD) air permit to the facility. As a part of this permit, the facility installed air pollution controls in order to demonstrate that the facility met the Best Available Control Technology (BACT) criteria. Controls implemented in 2011 included: Replacement of the existing wet scrubber system for the cupola furnace with a baghouse; addition of a second baghouse to control emissions from the magnesium inoculation and desulfurization processes; and installation of two new chemical storage silos, one for a chemical that will be added to the gas stream after exiting cupola and before the baghouse for sulfur dioxide control, and the other for a chemical to be added to the gas stream for the treatment of

heavy metals in the baghouse. The facility also began implementing a scrap management plan to control the amount of lead contained in the scrap metal it processes as a part of the PSD permit.

On May 3, 2014, Griffin Pipe ceased operations. The facility has notified IDNR that it intends to restart operations in the future; thus, the attainment demonstration SIP contains an Administrative Order on Consent between Griffin Pipe and IDNR that requires written notification to be provided to IDNR at least 60 days prior to the date that the Facility resumes operation, and contains control requirements that apply upon resumption of Facility operations.

2. Alter Metal Recycling Process Description

Alter Metal Recycling is one of several scrap material processing center associated with Alter Trading Corporation, a privately held company with offices and processing centers across the central U.S. The Alter Recycling property occupies approximately 29 acres to the south and east of Griffin Pipe. The processing center receives scrap metal from a variety of sources, including used cars, and operates a shredder (hammer mill) to reduce the size of the incoming material. The facility is considered a minor source with regard to the State of Iowa's air permitting program. Lead emissions from Alter Recycling occur predominantly from fugitive emissions associated with vehicle traffic on facility roadways when lead-containing silt on roadways becomes airborne.

B. Model Selection, Meteorological and Emissions Inventory Input Data

Iowa conducted air dispersion modeling to evaluate the effectiveness of the proposed control strategy. The model, AERMOD, was utilized and is EPA's preferred model for demonstrating attainment of the lead NAAQS. AERMOD estimates the combined ambient impact of sources by simulating Gaussian dispersion of

emissions plumes. Emission rates, wind speed and direction, atmospheric mixing heights, terrain, plume rise from stack emissions, initial dispersion characteristics of fugitive sources, particle size and density are all factors considered by the model when estimating ambient impacts. Iowa performed five different dispersion modeling analyses for the 2008 lead NAAQS for the Council Bluffs nonattainment area. Two analyses were conducted to determine the cumulative impacts of both facilities under two operational configurations at Griffin Pipe, Options A and B, which are described below in greater detail. Three additional analyses were conducted to determine the impacts of Griffin Pipe under both Options A and B on Alter Recycling, and the impact of Alter Recycling on Griffin Pipe. The results of the analyses will be discussed in more detail in Section V.C. of this document.

Iowa used the surface and upper air meteorological data from the Omaha airport (KOMA) for years 2008 through 2012. EPA recommends the use of five years of meteorological data for the model (40 CFR part 51, appendix W, section 8.3.1.2). EPA conducted a review of the meteorological data used for the modeling and agreed with Iowa's determination that it is representative of meteorological conditions in the area of Griffin Pipe and Alter Recycling. The meteorological data were run through AERMOD's pre-processors to make the data usable by the model.

As required by Section 172(c)(3) of the CAA, a revised emission inventory was developed for this nonattainment area. Potential emissions rates for the point sources were developed from stack test data, process information, engineering assessment, and evaluation of the levels necessary to achieve attainment of the 2008 Pb NAAQS.

Iowa selected 2010 as the base year for lead emissions inputs to the model. As stated above, Griffin Pipe completed the installation of its emissions control projects under the PSD permit in 2011, so emissions estimates before these

projects were completed are more representative of base case conditions. Emissions from 2010 also correlate with the meteorological data used to input the model. Emissions for the haul routes were based on calculated emission rates from silt data collected by sampling haul routes at both Griffin Pipe and Alter Recycling. The haul route emissions were based on conservative assumptions regarding haul route traffic and hours of operation over a one-year period. The emissions calculations for haul route traffic are provided in appendix A of the Attainment SIP which is available in the docket.

Point source emissions from Griffin Pipe occur primarily from melting metal, a hot iron desulfurization process, a magnesium inoculation process and metal casting. The melting process uses a cupola furnace that is charged with coke, scrap iron and steel, and fluxes (inert materials) as raw materials. As the materials are heated, melted and moved through the casting process, lead in the scrap is released and vented through stacks and roof vents. Emissions represented in the model are from release points, stack emissions validated by stack test data, and fugitive emissions calculated using field measurements wherever possible or estimated based on EPA's AP-42 guidelines.¹

Alter Recycling lead emissions were calculated by estimating the inbound and outbound truck traffic on haul routes on the facility's property. Other activities conducted by the facility that could potentially result in lead emissions, such as torch cutting and operation of the hammer mill, are estimated to be *de minimis* and therefore were not included in the modeling and development of control measures.

Lead emissions estimates for base year 2010 are provided in Table 1 below. Note that haul route emissions provided are based on worst-case estimates and as such are likely overestimates.

TABLE 1—LEAD EMISSIONS ESTIMATES
[Pottawattamie County Lead Nonattainment Area]

Facility name	Source type	2010 Emissions tons per year (tpy) ^a
Griffin Pipe	Point	0.7447
	Fugitive	0.2570
Alter Recycling	Fugitive	0.7182

¹ AP-42, Compilation of Air Pollutant Emission Factors, Fifth Edition, <http://www.epa.gov/ttnchie1/ap42/>.

TABLE 1—LEAD EMISSIONS ESTIMATES—Continued
[Pottawattamie County Lead Nonattainment Area]

Facility name	Source type	2010 Emissions tons per year (tpy) ^a
Total Emissions		1.7564

^a Note that the emissions listed do not total exactly due to rounding when summing individual emissions units. See Section 3, 2010 Base-year Lead Emissions Inventory, of the Iowa SIP for greater detail.

In accordance with 40 CFR part 51, appendix W, background concentrations must be considered when determining NAAQS compliance. Background concentrations are intended to include impacts attributable to natural sources, nearby sources (excluding the dominant source(s)), and unidentified sources. The calculated background concentration includes all sources of lead not already included in the model run script. The background concentration includes distant sources of lead or naturally occurring lead in soils that has become re-entrained in the atmosphere.

The background value is calculated by averaging the monitored concentrations of lead in air from the monitor near the intersection of 8th Avenue and 27th Street in Council Bluffs, Iowa. The data included in the background calculation are those collected on days when the predominant wind direction was northerly (from the monitor toward the

facility), originating from 270 to 90 degrees. The data when the predominant wind direction was blowing from the dominant sources toward the monitor were excluded from the background calculation. The calculated background value using the monitoring data is 0.01 µg/m³.

EPA conducted an independent analysis of the data from the monitor and corresponding wind direction to verify the background concentration calculated by Iowa. Based on its independent analysis, EPA agrees that the calculated value represents a conservative estimate of background during the study period.

C. Control Strategy

The following describes the control strategy for each facility significantly contributing to the nonattainment area. The control strategy for Griffin Pipe is detailed in the Administrative Order on Consent, appendix B of the attainment SIP. The control strategy for Alter Metal

Recycling is detailed in the Construction Permit issued to the facility, which is appendix C of the attainment SIP.

1. Griffin Pipe

On May 3, 2014, Griffin Pipe ceased operations at its Council Bluffs facility. Because the shutdown occurred during the development of the attainment SIP, the state worked with the facility to develop and Administrative Order on Consent which outlines the requirements and options for the facility when it restarts operations at its Council Bluffs facility. At Griffin Pipe's request, the facility was given two options for control measures to comply with the lead NAAQS which are detailed in attachments A and B of the Administrative Consent Order between Iowa and Griffin Pipe. "Option A" consists of control measures in the form of emissions limits for point sources as follows:

TABLE 2—GRIFFIN PIPE LEAD EMISSION LIMITS "OPTION A"

Source description	EP ID	lb/hr ^b
Cupola (EU-2)	EP-2A	0.282/0.046 ^c
Desulfurization (EU-3)	EP-3	0.0018.
Bull Ladle (EU-3)		
Magnesium Inoculation (EU-4)		
Magnesium Inoculation—uncaptured (EU-4)	EP-7A	0.0026.
Ladle Preheat—uncaptured (EU-19)		
Desulfurization—uncaptured (EU-2)	EP-7B	0.0372.
Bull Ladle—uncaptured (EU-3)		
Small Diameter Casting (EU-6)		
Small Diameter Casting (EU-6)	EP-6A	0.0043.
Building Emissions	EP-6B	0.0025.
Large Diameter Casting (EU-29)	EP-29	0.0025.
	EP-29A	
Cupola Charge Handling (EU-17)	FUG1	0.00143.
Traffic Pathways	N/A	Not applicable ^d

^b The emission limit is expressed as the average of three test runs.

^c The 0.282 lb/hr is necessary to meet the 2008 Lead NAAQS; however, a lower emission limit of 0.046 lb/hr is required by the Consent Decree between EPA and Griffin Pipe *United States v. Griffin Pipe Products, LLC* (Civil Action No. 1:14-cv-00027-JAJ-RAW). The lower value is the SIP enforceable emission limit; the presentation of both limits in the SIP is to merely acknowledge that the higher emissions limit is RACT.

^d The emission limits for Traffic Pathways is 0.002 tons per rolling calendar quarter to correspond with the 2008 Lead NAAQS which is also based on a rolling calendar quarter.

For traffic pathways (haul routes), the emissions limit of 0.002 tons per rolling calendar quarter correlates to a lead silt loading content of 0.00016 g/m². This lead emission limit represents a 95

percent reduction over the baseline lead levels assuming maximum potential operation. "Option A" also contains an operational limit of 1,250 hours per

rolling calendar quarter which is not contained in "option B."

Griffin Pipe requested "option B" which includes adding a baghouse. Adding an additional baghouse to capture desulfurization (EU-2) and bull

ladle capture (EU-3), allows for more operational flexibility in other areas,

such as an increase in the silt loading for the traffic pathways. Below are the

emission limits by unit under “option B.”

TABLE 3—GRIFFIN PIPE LEAD EMISSION LIMITS “OPTION B”

Source description	EP ID	lb/hr ^e
Cupola (EU-2)	EP-2A	0.282/0.046 ^f
Desulfurization (EU-3)	EP-3	0.02.
Bull Ladle (EU-3)		
Magnesium Inoculation (EU-4)		
Magnesium Inoculation—uncaptured (EU-4)	EP-7A	0.0075.
Ladle Preheat—uncaptured (EU-19)		
Desulfurization—secondary capture (EU-2)	EP-7B	0.0025.
Bull Ladle—secondary capture (EU-3)		
Small Diameter Casting (EU-6)		
Small Diameter Casting (EU-6)	EP-6A	0.0043.
Building Emissions	EP-6B	0.0015.
Large Diameter Casting (EU-29)	0.0025.	
EP-29		
EP-29A		
Cupola Charge Handling (EU-17)	FUG1	0.00143.
Traffic Pathways	N/A	Not applicable ^g

^e The emission limit is expressed as the average of three test runs.

^f The 0.282 lb/hr is necessary to meet the 2008 Lead NAAQS; however, a lower emission limit of 0.046 lb/hr is required by the Consent Decree between EPA and Griffin Pipe *United States v. Griffin Pipe Products, LLC* (Civil Action No. 1:14-cv-00027-JAJ-RAW). The lower value is the SIP enforceable emission limit; the presentation of both limits in the SIP is to merely acknowledge that the higher emissions limit is RACT.

^g The emission limits for Traffic Pathways is 0.004 tons per rolling calendar quarter to correspond with the 2008 Lead NAAQS which is also based on a rolling calendar quarter

In “option B,” the emissions limit of 0.004 tons per rolling calendar quarter correlates to a lead silt loading content of 0.00032 g/m². This lead emission limit represents a 90 percent reduction over the baseline lead levels assuming maximum potential operation.

Both options contain the same performance testing and work practices requirements, including,

(1) The total production rate shall not exceed 235,150 tons of metal charged per rolling 12-month period.

(2) Bulk material shipment or deliveries of product, waste and raw materials shall only occur from 7 a.m. to 5 p.m. daily.

(3) Standard Operating Procedures (SOPs) for work practices to minimize emissions from the cupola charge handling (EU-17) and the scrap management plan for minimizing the amount of lead introduced to process as charge material are included as attachments to the Administrative Order on Consent between Griffin Pipe and Iowa.

(4) Limitations on public access to the facility at all property boundary lines.

(5) Fugitive dust control by sweeping all paved truck traffic routes once per day using a Tymco DST-4 Sweeper or functional equivalent as approved by the state. The Tymco DST-4 Sweeper is equipped with a HEPA filter to capture lead-contaminated particulates rather than emitting them to ambient air. Sweeping is required to begin within seven days after resuming operations.

Exceptions to the sweeping are as follows:

a. If sweeping cannot be accomplished due to daytime ambient air temperatures less than 35 degrees F or weather that creates hazardous driving conditions, then the sweeping shall be postponed and resume as soon after the scheduled date as the conditions preventing the sweeping have abated.

b. Paved road sweeping need not occur when a rain gauge located at the site indicates that at least 0.2 inches of precipitation (water equivalent) has occurred within the preceding 24-hour time period. However road sweeping shall resume within 24-hours after the precipitation event has ended.

c. Paved road sweeping need not occur when the facility experiences no production or shipping activities on that calendar day.

(6) If sweeping cannot be accomplished for the entire month due to low ambient temperatures or hazardous weather, silt load testing is not required for that month.

(7) In addition to the emissions limits for traffic pathways listed for “option A” and “option B” above, surface total silt loading or lead silt loading on the traffic pathways shall not exceed 0.64 g/m² or 0.00016 g/m², respectively, based on a three-month rolling average.

(8) Silt load sampling conducted at a minimum of three locations representative of normal conditions and not within four hours of sweeping.

(9) The owner or operator shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dust beyond the lot line of the property.

When Griffin Pipe seeks to resume operations, it is required to provide at least a sixty day notice to the state and adhere to all permitting and/or obligations of the Administrative Order on Consent prior to restarting operations.

2. Alter Metal Recycling

At Alter Metal Recycling, the control strategy to attain the 2008 Lead NAAQS consists of a lead limit in silt for traffic pathways (e.g., truck haul routes) of 0.01 tons of lead per rolling calendar quarter average. This correlates to a lead silt content of 0.00281 g/m² under maximum potential operations, defined as all raw material and product shipped or received by truck. This silt content limit is based on a 95 percent reduction over baseline lead levels. Based on empirical silt sampling, the total amount of silt that correlates with 0.00281 g/m² lead is 2.7 g/m²; thus, this amount has been established as a surrogate for the purposes of determining SIP compliance.

Other operating limits in Alter Metal Recycling’s permit include:

(1) The facility must complete paving of haul routes identified by the Construction Permit (appendix C of the attainment SIP) as segments 7, 14, 15 and 16 by October 31, 2015. By this same date, the facility also must cease the use of haul road segment 17.

(2) Fugitive dust control by sweeping all paved truck traffic routes once per day using a Tymco DST-4 Sweeper or functional equivalent as approved by the state. Sweeping is required to begin within seven days after resuming operations. Exceptions to the sweeping are as follows:

a. If sweeping cannot be accomplished due to daytime ambient air temperatures less than 35 degrees F or weather that creates hazardous driving conditions, then the sweeping shall be postponed and resume as soon after the scheduled date as the conditions preventing the sweeping have abated.

b. Paved road sweeping need not occur when a rain gauge located at the site indicates that at least 0.2 inches of precipitation (water equivalent) has occurred within the preceding 24-hour time period. However road sweeping shall resume within 24-hours after the precipitation event has ended.

c. Paved road sweeping need not occur when the facility experiences no production or shipping activities on that calendar day.

(3) If sweeping cannot be accomplished for the entire month due to low ambient temperatures or hazardous weather, silt load testing is not required for that month.

(4) The haul road surface silt loading shall not exceed 2.70 g/m².

(5) The facility is limited to shipping (inbound and outbound) material between the hours of 5 a.m. to 8 p.m., Monday through Friday, and 8 a.m. to 12 p.m. on Saturday. The facility is also limited to processing and shipping (inbound and outbound) no more than 946,000 tons of material per rolling 12-month period. Internal transfers at the facility are limited to Monday through Friday.

(6) The facility is required to implement "Best Management Practices" including clean up spills as expeditiously as possible, weekly cleanup of truck area scales and process buildings, and "good housekeeping" to minimize fugitive dust emissions. The facility is also required to post and maintain speed limit signs.

(7) The facility is required to limit public access posting signs at all facility boundaries that are not fenced. During days when the facility is operating, in-person surveillance shall be conducted and recorded by the facility. In lieu of in-person surveillance, the facility may maintain and operate equipment adequate to ensure surveillance of the boundary shared with the rail line.

D. Modeling Results

Iowa modeled five different cases to evaluate lead NAAQS compliance:

(1) The first case models combined impacts of both facilities on ambient air with Griffin Pipe operating under the "option A" control strategy described above;

(2) The second case models combined impacts of both facilities with Griffin Pipe operating under the "option B" control strategy described above;

(3) The third case models the impact of Griffin Pipe's lead emissions on Alter Metal Recycling with Griffin Pipe operating under the "option A" control strategy;

(4) The fourth case models the impact of Griffin Pipe's lead emissions on Alter Metal Recycling under the "option B" control strategy; and

(5) The fifth case models the impacts of Alter Metal Recycling's lead emissions on Griffin Pipe.

In all the modeling runs described above the Alter Metal Recycling control strategy remained the same as described in paragraph C.2 above.

The total impact of the combined lead emissions from both facilities with Griffin Pipe operating under "option A" was 0.149 µg/m³. The total impact of the combined lead emissions from both facilities with Griffin Pipe operating under "option B" was also 0.149 µg/m³. Thus, the modeling demonstrates that with Griffin Pipe operating under either "option A" or "option B" as a control strategy, the combined facility emissions will attain the 2008 Lead NAAQS. Under the other three scenarios, which examine the impact of the facilities on each other, the 2008 Lead NAAQS was also attained.

EPA reviewed and independently verified the modeling conducted by Iowa. Based on EPA's analysis of the attainment modeling and its outcomes, EPA believes that Iowa's control strategy, whether it includes "option A" or "option B" for Griffin Pipe, will bring the designated portions of Pottawattamie County, Iowa, into attainment of the 2008 Lead NAAQS.

E. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP)

Section 172(c)(1) of the CAA requires nonattainment areas to implement all RACM, including emissions reductions through the adoption of RACT, as expeditiously as practicable. EPA interprets this as requiring all nonattainment areas to consider all available controls and to implement all measures that are determined to be reasonably available, except that measures which will not assist the area to more expeditiously attain the standard are not required to be

implemented.² In March 2012, EPA issued guidance titled, "Implementation of Reasonably Available Control Measures (RACM) for Controlling Lead Emissions" (RACM Guidance).³

Section 172(c)(2) of the CAA requires areas designated as nonattainment for criteria pollutants to include a demonstration of Reasonable Further Progress (RFP) in attainment demonstrations. Section 171(1) of the CAA defines RFP as annual incremental reductions in emissions of the relevant air pollutants as required by part D, or emission reductions that may reasonably be required by EPA to ensure attainment of the applicable NAAQS by the applicable date. Part D does not include specific RFP requirements for lead.

EPA recommends a RACT analysis for facilities emitting 0.5 tpy lead per year or more. (73 FR 66964). As listed in Table 1 above, in the base year for modeling, 2010, Griffin Pipe and Alter Metal Recycling emitted 1.0382 and 0.7182 tons per year, respectively. Thus, both facilities exceeded the threshold for determining RACT to comply with the 2008 Lead NAAQS. Section 4 of the lead attainment SIP details Iowa's RACT/RACM analysis by facility and point or fugitive emissions sources considered.

Iowa performed a RACT/RACM analysis in compliance with the RACM Guidance. As stated in the final lead NAAQS rule, RFP is satisfied by the strict adherence to a compliance schedule which is expected to periodically yield significant emission reductions. Iowa has determined that either control strategy for Griffin Pipe under "option A" or "option B" as described above, combined with the control strategy for Alter Metal Recycling, constitutes RACM. The control measures including operational controls and work practices described in paragraph V.C above have been modeled and demonstrated to achieve the lead NAAQS and also comply with RACM and RFP.

RFP is addressed by the control strategy occurring in a timeframe consistent with the CAA. Upon implementation of the control strategy and practices described above, ambient air quality concentrations are expected to drop at or below attainment levels immediately. The nonattainment area's ambient air quality monitor began reporting lead concentrations below the 2008 lead NAAQS for the three-month

² See 58 FR 67751, December 22 1993, for a discussion of this interpretation as it relates to lead.

³ <http://www.epa.gov/oar/lead/pdfs/2012ImplementationGuide.pdf>

rolling average for October through December 2012. It should be noted that the air monitoring data are impacted by Griffin Pipe's shutdown on May 3, 2014. Griffin Pipe has informed Iowa that it intends to restart operations at an undetermined time in the future. Thus, the attainment SIP is based on the assumption that the facility will resume operations under one of the two control strategies detailed in paragraph V.C above.

Alter Metal Recycling began implementing its control measures by paving previously unpaved haul routes and sweeping with street sweeper equipped with a HEPA filter to remove lead-contaminated silt from the roadway. There are no point source lead emissions from the Alter Metal Recycling facility operations, only fugitive emissions from lead-contaminated silt on haul routes, the appropriate RACT is to significantly reduce fugitive emissions. The attainment SIP proposes a 95 percent reduction in fugitive lead emissions from sweeping all paved haul routes at the facility.

Based on the RACM analysis and the combined reduction in lead emissions to meet the 2008 Lead NAAQS, which demonstrates RFP, EPA proposes to approve Iowa's SIP as meeting the requirements of sections 172(c)(1) and (c)(2) of the CAA.

F. Attainment Demonstration

CAA section 172 requires a state to submit a plan for each of its nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable, but no later than the specified attainment date. This demonstration should consist of four parts: (1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS; (2) analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures to meet the RACT, RACM, and RFP requirements in the area; (3) adopted emissions reduction measures with schedules for implementation and (4) contingency measures required under section 172(c)(9) of the CAA.

The requirements for the first two parts are described in the sections on emissions inventories, RACT/RACM and air quality above and in the discussion of the attainment demonstration that follows immediately below. Requirements for the third and fourth parts are described in the

sections on the control strategy and the contingency measures, respectively.

The future case dispersion modeling is the attainment demonstration used to verify that the proposed control strategies will bring the area into attainment of the 2008 Lead NAAQS. In order to determine whether the planned emission reduction strategies will result in attainment of the NAAQS, the modeled maximum lead concentration in ambient air (based on a rolling three-month average) are added to the calculated background lead concentration of $0.01 \mu\text{g}/\text{m}^3$, then compared to the 2008 Lead NAAQS which is $0.150 \mu\text{g}/\text{m}^3$. As discussed above there are two model runs to predict the cumulative impacts of both facilities with Griffin Pipe operating under the control strategy prescribed by "option A" under the Administrative Consent Order between the facility and Iowa, and the control strategy prescribed by "option B." In both model runs, the control strategy for Alter Metal Recycling remains the same, it is the control strategy and work practices prescribed in the construction permit dated September 2, 2014. The predicted maximum three-month rolling average lead concentration is $0.149 \mu\text{g}/\text{m}^3$ with Griffin Pipe operating under either "option A" or "option B." Therefore, Iowa's modeling demonstrates attainment of the standard regardless of which control strategy Griffin Pipe chooses when it restarts operations.

G. New Source Review (NSR)

Within the CAA, Section 172(c)(5) refers to permits for construction and operation of new and modified major sources located within the nonattainment area. A special permitting process applies to such sources, referred to as a nonattainment new source review program. Section 173 of the CAA mandates nonattainment new source review and an approved state SIP must meet the requirements of 40 CFR part 51.165. On May 15, 2014 (79 FR 277763), EPA approved into Iowa's SIP the nonattainment new source review regulations which are found in 567—Iowa Administrative Code (IAC) chapter 33. The modified administrative rules in chapter 33 became effective on January 15, 2014.

H. Contingency Measures

As required by CAA section 172(c)(9), the SIP submittal includes contingency measures to be implemented if EPA determines that the area has failed to make RFP or if the area fails to attain the NAAQS by December 2016. If the air quality data for any three-month rolling period after the implementation of the

control measures identified in both the Administrative Consent Order between Iowa and Griffin Pipe or the construction permit for Alter Metal Recycling exceeds the $0.15 \mu\text{g}/\text{m}^3$ three-month rolling average lead standard, both facilities shall implement the contingency measures set forth in their respective governing documents.

The Administrative Consent Order for Griffin Pipe provided as appendix B of the attainment SIP contains the following contingency measures which apply to the facility under both control strategies for "option A" and "option B":

(1) After November 30, 2014, the owner or operator shall increase the frequency of cleaning/sweeping of the haul roads to twice per day within seven days after notification by Iowa that a monitored exceedance has occurred. The owner operator shall also submit sweeping data to the state and continue daily cleaning/sweeping until notified by the state that a different cleaning/sweeping frequency shall be used.

(2) After November 30, 2014, the owner or operator shall implement good housekeeping practices on paved haul road surfaces within seven days after notification by the state that a monitored exceedance of the lead NAAQS occurred during months in which the inclement weather provision as specified in V.C(5)(a) above applied. The good housekeeping practices shall include but are not limited to daily removal of material piles that have accumulated on haul road surfaces and decreasing vehicle speeds on paved road surfaces from fifteen miles per hour (mph) to five mph. The owner or operator shall continue good housekeeping practices on paved road surfaces until paved road sweeping resumes.

(3) If a monitored exceedance of the lead NAAQS occurs after the provisions of the above contingency measures have been implemented for three full calendar months the owner or operator will submit an emissions evaluation meeting the criteria and timeline specified by the state.

For Alter Metal Recycling, the following contingency measures contained in section 14, item L of the facility's construction permit apply:

(1) After November 30, 2014, the facility shall increase the frequency of cleaning/sweeping of the haul roads to daily within seven days after notification by the state that a monitored exceedance of the lead NAAQS occurred. The facility shall submit data to the state and continue

daily cleaning/seeping until notified by the state that a different cleaning/sweeping frequency shall be used.

(2) If a monitored exceedance of the lead NAAQS occurs after the provisions of the above contingency measure have been implemented for three full calendar months,

Alter Metal Recycling shall submit an emissions evaluation meeting the criteria and timeline specified by the state.

These measures will help ensure compliance with the 2008 lead NAAQS as well as meet the requirements of section 172(c)(9) of the CAA.

EPA proposes to approve Iowa's SIP as meeting the requirements of section 172(c)(9) of the CAA.

I. Enforceability

As specified in section 172(c)(6) and section 110(a)(2)(A) of the CAA, and 57 FR 13556, all measures and other elements in the SIP must be enforceable by the state and EPA. The enforceable documents included in Iowa's SIP submittal are the Administrative Consent Order between Iowa and Griffin Pipe dated January 29, 2015, and the construction permit for Alter Metal Recycling dated September 2, 2014. These documents contain all control and contingency measures with enforceable dates for implementation. Upon EPA approval of the SIP submission, the Administrative Consent Order for Griffin Pipe and the construction permit for Alter Metal Recycling will become Federally enforceable, and enforceable by citizens under section 304 of the CAA.

EPA proposes to approve Iowa's SIP as meeting the requirements of sections 172(c)(6) and 110(a)(2)(A) of the CAA, and 57 FR 13556.

VI. Proposed Action

EPA is proposing to grant full approval of Iowa's attainment demonstration SIP for the Pottawattamie County 2008 lead NAAQS nonattainment area. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the CAA identified in EPA's Final Rule (73 FR 66964, October 15, 2008), and will result in attainment of the 0.15 ug/m³ standard in the Pottawattamie County, Iowa, area.

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the proposed amendments to 40 CFR

part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2015. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rulemaking for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such

future rule or action. This proposed action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

- 2. In § 52.820:

- a. Amend the table in paragraph (d) by adding entries (110) and (111), in numerical order; and

- b. Amend the table in paragraph (e) by adding entry (43), in numerical order.

The additions read as follows:

§ 52.820 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED IOWA SOURCE-SPECIFIC ORDERS/PERMITS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
(110) Griffin Pipe Products Co., LLC.	Administrative Consent Order No. 2015-AQ-02.	1/29/15	10/2/15 [Insert Federal Register citation].	
(111) Alter Metal Recycling	Permit No. 14-A-521	9/2/14	10/2/15 [Insert Federal Register citation].	

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
(43) Lead attainment SIP	Portions of Pottawattamie County.	1/30/15	10/2/15 [Insert Federal Register citation].	EPA-R07-OAR-2015-0582; FRL-9935-00-Region 7.

[FR Doc. 2015-24995 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0470; FRL-9934-90-Region 4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of the Base Year Emissions Inventory for the Liberty-Clairton Nonattainment Area for the 2006 24-Hour Fine Particulate Matter Standard and Approval of Transportation Conformity Insignificance Findings for the 1997 Annual and 2006 24-Hour Fine Particulate Matter Standards for the Liberty-Clairton Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of meeting the statutory emissions inventory requirements for the Liberty-Clairton nonattainment area (hereafter “the Liberty-Clairton Area” or “the Area”) with respect the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS or standard). The SIP revision consists of the 2007 base year emissions inventory for the Liberty-Clairton Area for the 2006 24-hour PM_{2.5} NAAQS. EPA is also proposing to approve a SIP revision consisting of Pennsylvania’s determinations for both the 1997 annual and 2006 24-hour PM_{2.5} standards that onroad emissions of PM_{2.5} and nitrogen oxides (NO_x) are insignificant contributors to PM_{2.5} concentrations in the Liberty-Clairton Area for transportation conformity purposes. In the Final Rules section of this **Federal Register**, EPA is approving Pennsylvania’s SIP submittal as a direct final rule without prior proposal

because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The publication of this document starts a 30-day public comment period on the adequacy of the submitted motor vehicle emission inventories. This comment period is concurrent with the comment period on this direct final rulemaking action. Any comments on the motor vehicle emission inventories should be submitted to the docket for this rulemaking. A detailed rationale for the approval is set forth in the direct final rule. Additionally, a more detailed description of the state submittal and EPA’s evaluation is included in the Technical Support Documents (TSDs) prepared in support of this rulemaking action. A copy of the TSDs are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or is also available electronically within the Docket for this rulemaking action. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be

withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2015–0470 by one of the following methods:

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

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

C. *Mail: EPA–R03–OAR–2015–0470*, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2015–0470. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 16, 2015.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2015–24873 Filed 10–1–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0513; FRL–9934–95–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Limited Maintenance Plan for the St. Louis Nonclassifiable Maintenance Area for the 8-Hour Carbon Monoxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri relating to the Ten Year Limited Maintenance Plan for the St. Louis area for the 8-Hour Carbon Monoxide (CO) National Ambient Air Quality Standard (NAAQS). On April 8, 2014, the Missouri Department of Natural Resources (MDNR) submitted to EPA a second 10-year maintenance plan for the St. Louis area for the CO NAAQS. This maintenance plan addresses maintenance of the CO NAAQS for a second 10-year period beyond the original redesignation. In accordance with the requirements of the Clean Air Act (CAA), EPA is approving the revision because the State adequately demonstrates that the St. Louis Maintenance area will maintain air quality standards for CO through the year 2022.

DATES: Comments on this proposed action must be received in writing by November 2, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0513, by mail to Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7718, or by email at *brown.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2015-25038 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[GN Docket No. 12-354; Report No. 3029]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by Bruce Oberlies, on behalf of Wireless Innovation Forum; Jon M. Peha on behalf of Jon M. Peha; Chuck Powers, on behalf of Motorola Solutions, Inc.; Brian M. Josef, on behalf of CTIA-THE WIRELESS ASSOCIATION; John T. Scott, III, on behalf of Verizon; Tom Stroup, on behalf of Satellite Industry Association; Rick Kaplan, on behalf of NATIONAL ASSOCIATION OF BROADCASTERS; and Brian Hendricks, on behalf of Nokia Networks (D/B/A Nokia Solutions and Network US LLC).

DATES: Oppositions to the Petitions must be filed on or before October 19, 2015. Replies to an opposition must be filed on or before October 13, 2015.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Powell, Wireless Telecommunications Bureau, (202) 418-1613, email: paul.powell@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3029, released September 22, 2015. The full text of the Petitions is available for viewing and copying in Room CY-B402, 445 12th Street SW., Washington, DC or may be accessed online via the Commission's Electronic Comment Filing System at <http://apps.fcc.gov/ecfs/>. The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A) because this notice does not have an impact on any rules of particular applicability.

Subject: Commercial Operations in the 3550-3650 MHz Band, published at 80 FR 36163, June 23, 2015, in GN Docket 12-354, and published pursuant to 47 CFR 1.429(e). *See also* § 1.4(b)(1) of the Commission's rules.

Number of Petitions Filed: 8.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015-25001 Filed 10-1-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05-25, RM-10593; DA 15-1037]

Wireline Competition Bureau Further Extends Comment Deadlines in Special Access Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply deadlines.

SUMMARY: In this document, the Federal Communications Commission's (Commission's) Wireline Competition Bureau (Bureau) further extends the deadlines for interested parties to submit comments and reply comments in response to Section IV.B of the Further Notice of Proposed Rulemaking (*Special Access FNPRM*), in the special access proceeding.

DATES: The comment period for the proposed rule published January 11, 2013 (78 FR 2600), has been further extended. Comments are due on or before November 20, 2015; reply comments are due on or before December 11, 2015.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christopher Koves, Pricing Policy Division, Wireline Competition Bureau,

202-418-8209 or Christopher.Koves@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, WC Docket No. 05-25, RM-10593, DA 15-1037, released September 17, 2015. This document does not contain information collection(s) subject to the Paperwork Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden[s] for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002. The full text of this document may be downloaded at the following Internet address: https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1037A1.docx. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554. To request alternative formats for persons with disabilities (e.g., accessible format documents, sign language, interpreters, CARTS, etc.), send an email to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

Background

On September 17, 2015, the Bureau released a public notice extending the deadlines for filing comments and reply comments in response to Section IV.B of the *Special Access FNPRM*, 78 FR 2600, January 11, 2013, in the Commission's special access rulemaking proceeding until November 20, 2015 and December 11, 2015, respectively. Previous comment period extensions have been published in the **Federal Register**. The latest comment period extension was published in the **Federal Register** on July 14, 2015 (80 FR 40956), to extend the comment and reply comment deadlines to September 25, 2015 and October 16, 2015, respectively. On December 11, 2012, the Commission adopted an order requiring providers and purchasers of special access service and certain entities providing "best efforts" service to submit data and information for a comprehensive evaluation of the special access market. In Section IV.B of the *Special Access FNPRM* accompanying that order, the Commission sought comment on possible changes to its rules for the special access services provided by incumbent local exchange carriers in price cap areas. The Commission set the comment deadlines on this portion of the *Special Access FNPRM* several months after its release, in order to give

interested parties an opportunity to review the information collected before filing comments. The Bureau subsequently extended the comment deadlines since the data was not yet available. For similar reasons, the Bureau hereby further extends the comment and reply deadlines. The Bureau is initiating the process of allowing access to the data collected to authorized parties pursuant to the protective order in this proceeding via the NORC Data Enclave®. Interested parties will not, however, have adequate time to access and review the information collected prior to the current September 25 and October 16, 2015 comment and reply comment deadlines. To provide sufficient time for interested parties to access and review the information collected, the Bureau hereby extends the deadline for filing comments to November 20, 2015, and reply comments to December 11, 2015.

Federal Communications Commission.

Pamela Arluk,

Chief, Pricing Policy Division, Wireline Competition Bureau.

[FR Doc. 2015-25048 Filed 10-1-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15-216; FCC 15-109]

Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on potential updates to the “totality of the circumstances test” for evaluating whether broadcast stations and multichannel video programming distributors (“MVPDs”) are negotiating for retransmission consent in good faith. The document seeks comment generally on the totality of the circumstances test, including whether and how the Commission should update that test. The document also seeks comment on whether there are specific practices that the Commission should identify as evidencing bad faith under the totality of the circumstances test.

DATES: Comments are due on or before December 1, 2015; reply comments are due on or before December 31, 2015.

ADDRESSES: You may submit comments, identified by MB Docket No. 15-216, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission’s Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow or Raelynn Remy of the Policy Division, Media Bureau at (202) 418-2120 or Diana.Sokolow@fcc.gov; Raelynn.Remy@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking, FCC 15-109, adopted and released on September 2, 2015. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission’s copy contractor, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document contains no proposed information collection requirements.

Synopsis

I. Introduction

1. By this Notice of Proposed Rulemaking (*NPRM*), as directed by Section 103(c) of the STELA Reauthorization Act of 2014 (“*STELAR*”),¹ we review the totality of the circumstances test for evaluating whether broadcast stations and multichannel video programming distributors (“*MVPDs*”) are negotiating for retransmission consent in good faith. The Communications Act of 1934, as amended (the “*Act*”), prohibits cable systems and other MVPDs from retransmitting a broadcast station’s signal without the station’s express consent.² This consent is known as “retransmission consent.” The Act and the Commission’s implementing rules require broadcasters and MVPDs to negotiate for retransmission consent in good faith.³ The Commission has adopted a two-part framework for evaluating good faith in this context. First, the Commission has established a list of objective good faith negotiation standards, the violation of which is considered a per se breach of the good faith negotiation obligation.⁴ Second, even if the specific per se standards are met, the Commission may consider whether, based on the totality of the circumstances, a party has failed to negotiate retransmission consent in good faith.⁵ In accordance with Section 103(c) of STELAR, which contemplates that the Commission will conduct a “robust examination” of practices used by parties in retransmission consent negotiations,⁶ we adopt this *NPRM* and seek comment on potential updates to the totality of the circumstances test.

II. Background

2. Congress created the retransmission consent regime in 1992 “to establish a marketplace for the disposition of the rights to retransmit broadcast signals,” but not “to dictate the outcome of the ensuing marketplace negotiations.”⁷ Later, Congress adopted good faith

¹ Congress directed the Commission to “commence a rulemaking to review its totality of the circumstances test for good faith negotiations” by September 4, 2015. See Public Law 113-200, 103(c), 128 Stat. 2059 (2014).

² 47 U.S.C. 325(b)(1)(A).

³ *Id.* 325(b)(3)(C)(ii), (iii); 47 CFR 76.65.

⁴ See 47 CFR 76.65(b)(1).

⁵ See *id.* 76.65(b)(2).

⁶ See Report from the Senate Committee on Commerce, Science, and Transportation accompanying S. 2799, 113th Cong., S. Rep. No. 113-322 at 13 (2014) (“Senate Commerce Committee Report”).

⁷ S. Rep. No. 92, 102nd Cong., 1st Sess. (1991), reprinted in 1992 U.S.C.C.A.N. 1133, 1169.

negotiation requirements in Section 325 of the Act, prohibiting broadcast television stations and MVPDs from “failing to negotiate [retransmission consent] in good faith.”⁸ Section 325 also provides that entering “into retransmission consent agreements containing different terms and conditions, including price terms,” is not a violation of the duty to negotiate in good faith “if such different terms and conditions are based on competitive marketplace considerations.”⁹ The Commission has implemented the good faith negotiation statutory provisions through a two-part framework for determining whether retransmission consent negotiations are conducted in good faith.¹⁰ First, the Commission initially established a list of seven (subsequently nine) good faith negotiation standards, the violation of which is considered a per se breach of the good faith negotiation obligation.¹¹ Second, even if the specific per se standards are met, a complainant may attempt to demonstrate that, based on the totality of the circumstances, a party has failed to negotiate retransmission consent in good faith.¹² In its Good Faith Order, the Commission described the totality of the circumstances test as follows:

The second part of the test is a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith. We do not intend the totality of the circumstances test to serve as a ‘back door’ inquiry into the substantive terms negotiated between the parties. While the Commission will not ordinarily address the substance of proposed terms and conditions or the terms of actual retransmission consent agreements, we will entertain complaints under the totality of the circumstances test

alleging that specific retransmission consent proposals are sufficiently outrageous, or evidence that differences among MVPD agreements are not based on competitive marketplace considerations, as to breach a broadcaster’s good faith negotiation obligation. However, complaints which merely reflect commonplace disagreements encountered by negotiating parties in the everyday business world will be promptly dismissed by the Commission.¹³

3. Since Congress’s enactment of Section 325, we have seen significant changes in the retransmission consent marketplace that have altered the negotiation dynamics between broadcasters and MVPDs. For example, whereas broadcasters in the past typically negotiated with MVPDs for in-kind compensation, broadcasters have increasingly sought and received monetary compensation in exchange for retransmission consent.¹⁴ Moreover, in contrast to the video programming landscape that existed in 1992, when consumers typically had a single cable operator as their only video service option, consumers seeking to purchase video programming service today generally are able to choose among multiple MVPDs.¹⁵ The increase in competition among MVPDs has improved broadcasters’ leverage in retransmission consent negotiations with MVPDs.¹⁶ MVPDs that face competition have stronger incentives to negotiate retransmission consent agreements with broadcast stations because much broadcast network television programming continues to be “must-have” programming for MVPDs and an MVPD that is unable to reach a retransmission consent agreement with a broadcast station may permanently lose subscribers to rival MVPDs—including subscribers to its associated

voice and broadband services.¹⁷ In addition, broadcast licensees that are affiliated with other programming networks may have additional leverage because they can integrate their retransmission consent negotiations with carriage of the other networks,¹⁸ and any negotiation impasses could result in the MVPD’s loss of those other networks as well as the broadcast stations. Further, consumers today are increasingly accessing video programming from online video distributors that deliver content via the Internet.¹⁹ As a consequence of these marketplace changes, retransmission consent fees have steadily grown and are projected to increase further, thereby applying upward pressure on consumer prices for MVPD video programming services. Moreover, “negotiations [for] retransmission consent have become significantly more complex in recent years, and . . . in some cases one or both parties to a negotiation may be engaging in tactics that push those negotiations toward a breakdown and result in consumer harm from programming blackouts.”²⁰

4. In March 2014, the Commission, in a separate proceeding regarding retransmission consent, adopted an order strengthening its retransmission consent rules to provide that joint negotiation by stations that are ranked among the top four stations in a market as measured by audience share and are not commonly owned constitutes a per se violation of the good faith negotiation requirement.²¹ The Commission intended its action to facilitate the fair and effective completion of retransmission consent negotiations.²² Through Section 103 of STELAR, which was enacted on December 4, 2014, Congress subsequently revised Section 325 of the Act to “prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market . . . to grant retransmission consent under this section to a[n MVPD], unless such stations are directly or indirectly under common de jure control permitted

¹³ *Good Faith Order*, 65 FR at 15564, para. 32 (footnote omitted).

¹⁴ *See Amendment of the Commission’s Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 79 FR 28615, 28616, para. 2 (2014) (“*2014 Joint Negotiation Order*”); *Time Warner Cable Inc. et al. Petition for Rulemaking to Amend the Commission’s Rules Governing Retransmission Consent*, MB Docket No. 10–71, at 15 (filed Mar. 9, 2010). Prior to the exchange of monetary compensation, cable operators typically compensated broadcasters for consent to retransmit the broadcasters’ signals through in-kind compensation, such as carriage of additional channels of the broadcaster’s programming on the cable system or advertising time. *See Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 76 FR 17071, 17072, para. 2 (2011) (“*2011 NPRM*”).

¹⁵ *See Amendment to the Commission’s Rules Concerning Effective Competition; Implementation of Section 111 of the STELA Reauthorization Act*, Report and Order, 80 FR 38001, paras. 3, 4 (2015).

¹⁶ *See 2011 NPRM*, 76 FR at 17072, para. 2 & 17077, para. 14.

¹⁷ *See, e.g., Joe Flint, Time Warner Cable Loses 306,000 Subscribers, Cites Fight With CBS*, *LA Times*, Oct. 31, 2013; Duane Dudeck, *Time Warner Cable Lost Subscribers During WTMJ Blackout*, *Journal Sentinel*, Dec. 3, 2013; Yinka Adegoke, *Cablevision Blames Fox Blackout for Subscriber Losses*, *Reuters*, Feb. 16, 2011.

¹⁸ *See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Sixteenth Report (“*Sixteenth Competition Report*”).

¹⁹ *See Sixteenth Competition Report*.

²⁰ *See Senate Commerce Committee Report* at 13.

²¹ *See 2014 Joint Negotiation Order*.

²² *Id.*, 79 FR at 28615, para. 1.

⁸ 47 U.S.C. 325(b)(3)(C).

⁹ *Id.* In 1999, Congress enacted the Satellite Home Viewer Improvement Act (“SHVIA”), which required television stations to negotiate retransmission consent with MVPDs in good faith and included the “competitive marketplace considerations” provision. Public Law 106–113, 113 Stat. 1501 (1999). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Public Law 108–447, 118 Stat. 2809 (2004) (referred to as the Satellite Home Viewer Extension and Reauthorization Act, or “SHVERA”).

¹⁰ *See Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 65 FR 15559 (2000) (“*Good Faith Order*”).

¹¹ 47 CFR 76.65(b)(1).

¹² *See* 47 CFR 76.65(b)(2).

under the regulations of the Commission.”²³ The Commission adopted an order implementing this provision, replacing the previous rule regarding joint negotiation with language consistent with the new statute.²⁴

5. In addition to the joint negotiation provision, Section 103 requires the Commission to take certain further actions related to retransmission consent. First, Section 103 revised Section 325 of the Act to “prohibit a television broadcast station from limiting the ability of a[n MVPD] to carry into the local market . . . of such station a television signal that has been deemed significantly viewed . . . unless such stations are directly or indirectly under common de jure control permitted by the Commission.”²⁵ The Commission implemented this provision by adding a new per se good faith negotiation standard to its rules.²⁶ Second, Section 103 directed the Commission to “commence a rulemaking to review its totality of the circumstances test for good faith negotiations under clauses (ii) and (iii) of section 325(b)(3)(C) of the Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)).”²⁷ This *NPRM* commences the rulemaking to review and, if necessary, update the totality of the circumstances test.²⁸ In the single instance in which the Media Bureau has found a violation of the good faith negotiation requirement, it determined that the cable operator breached its duty to negotiate in good faith based on the totality of the circumstances test.²⁹ The cable operator claimed during negotiations that its retransmission consent agreement with one station permitted it to carry the other broadcast stations at issue, but the Media Bureau found that its failure to provide evidence of a valid retransmission consent agreement permitting such

carriage was a breach of its duty to negotiate in good faith.³⁰

III. Discussion

6. In accordance with Congress’s directive in Section 103(c) of STELAR, we seek comment below on any potential updates we should make to the totality of the circumstances test to ensure that the conduct of broadcasters and MVPDs during negotiations for retransmission consent and after such negotiations have broken down meet the good faith standard in Section 325 of the Act.³¹ In Section III.A, we seek comment generally on the totality of the circumstances test, including whether and how we should update that test. In Section III.B, we seek comment on whether there are specific practices that we should identify as evidencing bad faith under the totality of the circumstances test.³² Consistent with Congress’s intent in Section 103(c) of STELAR, our goal in this proceeding is to provide further guidance to negotiating parties about the totality of the circumstances test, if necessary, to benefit consumers of video programming service by facilitating successful negotiations and avoiding disruptions in service to consumers.³³

A. Totality of the Circumstances Test in General

7. First, we ask whether there is a need to update the totality of the circumstances test. How is the retransmission consent market currently functioning? Is there a market failure, and if so, what is its source? Are there issues with the current totality of the circumstances test that warrant change? We seek comment on this. We invite comment on any elaboration of the totality of the circumstances test we can provide that will help to guide negotiations to a successful conclusion. Section 76.65(b)(2) of our rules permits a party to a retransmission consent

negotiation to “demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that [the other party] breached its duty to negotiate in good faith.”³⁴ How can the Commission most effectively address complaints that do not allege per se violations but that involve behavior that is asserted to be inconsistent with good faith? Does the “current process for filing bad faith allegations” based on the totality of the circumstances test, including the legal standards and evidentiary burdens, help to promote bona fide negotiations and protect consumers?³⁵ If not, how can we change our good faith rules in a way that will ensure that both parties to a negotiation offer bona fide terms and conditions for carriage? If the Commission provides additional guidance on conduct that will be considered evidence of bad faith under the totality of the circumstances test, would this help facilitate productive retransmission consent negotiations? Alternatively, should the totality of the circumstances test be eliminated or replaced? Commenters that advocate replacement of the totality of the circumstances test should specify the test that we should consider in its place.

8. How effective has our totality of the circumstances test been? Although it was originally designed to give the Commission flexibility to take account of any unique facts underlying a particular retransmission consent dispute, should we modify the test to make it more specific? Is it possible to maintain the flexibility of the totality of the circumstances test, while at the same time giving additional guidance to the parties to retransmission consent negotiations about certain conduct that we consider evidence of bad faith negotiation? When we last sought comment on this issue in 2011,³⁶ some commenters stated that providing more specificity for the totality of the circumstances test would promote a more competitive marketplace,³⁷ and others stated that more specificity is unnecessary.³⁸ Are there certain practices that the Commission should consider to be evidence of bad faith in evaluating the totality of the circumstances, or is that test best left as

²³ Pub. L. 113–200, 103(a); 47 U.S.C. 325(b)(3)(C).

²⁴ The Commission found that the statutory prohibition on joint negotiation is broader than, and thus supersedes, the Commission’s previous prohibition. *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 80 FR 11,328, 11,329, paras. 4, 5 (2015) (“*STELAR Sections 101, 103 and 105 Order*”).

²⁵ Public Law 113–200, 103(b); 47 U.S.C. 325(b)(3)(C).

²⁶ *STELAR Sections 101, 103, and 105 Order*, 80 FR at 11,329, para. 5.

²⁷ Public Law 113–200, 103(c).

²⁸ We note that we previously initiated a rulemaking proceeding on retransmission consent issues in 2011 and certain issues in that proceeding remain pending. See 2011 *NPRM*. To the extent certain pleadings filed in the 2011 rulemaking are relevant to this proceeding, we refer to them herein.

²⁹ See Letter to Jorge L. Bauermeister, 22 FCC Rcd 4933, 4934 (MB 2007).

³⁰ Bauermeister, 22 FCC Rcd 4933.

³¹ See Senate Commerce Committee Report at 13.

³² Pursuant to the totality of the circumstances test, the Commission may consider all of the facts that are brought before it regarding a retransmission consent negotiation to determine whether there is a breach of the duty to negotiate in good faith. See, e.g., *Good Faith Order*, 65 FR 15564, para. 32. Although in this *NPRM* we seek comment on whether there are certain practices and/or conduct that should be considered evidence of bad faith under the totality of the circumstances test, until this rulemaking is complete we will continue to apply the presumptions established in the 2000 *Good Faith Order*. See *Good Faith Order*, 65 FR at 15567, paras. 56 through 58. Thus, the fact that we are seeking comment on potential updates to the totality of the circumstances test does not preclude us from concluding, in a particular case, that certain practices or conduct is a breach of the good faith duty today.

³³ See Senate Commerce Committee Report at 13.

³⁴ 47 CFR 76.65(b)(2).

³⁵ See Senate Commerce Committee Report at 13.

³⁶ 2011 *NPRM*, 76 FR at 17079, paras. 31 through 33.

³⁷ See, e.g., Comments of CenturyLink on the 2011 *NPRM* at 7 (filed May 27, 2011) (“CenturyLink *NPRM* Comments”).

³⁸ See, e.g., Comments of Barrington Broadcasting Group, LLC, et al. on the 2011 *NPRM* at 20 (filed May 27, 2011) (“Joint Broadcasters *NPRM* Comments”).

a general provision to capture those actions and behaviors that we do not now foresee but that may in particular future cases impede retransmission consent negotiations? To the extent that we are able to provide more guidance to MVPDs and broadcasters, what specific negotiation practices do parties engage in that should be considered evidence of bad faith under the totality of the circumstances test?³⁹ In adopting the Good Faith Order, the Commission concluded that Congress intended it to “follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement,” and the Commission discussed labor law precedents in that order.⁴⁰ We invite comment on whether more recent labor law precedents, or precedents from other areas of law, may be useful in revising the totality of the circumstances test.⁴¹

9. Section 325 of the Act provides, among other things, that “it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different [MVPDs] if such different terms and conditions are based on competitive marketplace considerations.”⁴² In implementing this provision in 2000, the Commission provided the following examples of bargaining proposals that are presumptively consistent with competitive marketplace considerations:

1. Proposals for compensation above that agreed to with other MVPDs in the same market;
2. Proposals for compensation that are different from the compensation offered by other broadcasters in the same market;
3. Proposals for carriage conditioned on carriage of any other programming, such as a broadcaster’s digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market;⁴³

4. Proposals for carriage conditioned on a broadcaster obtaining channel positioning or tier placement rights;

5. Proposals for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media; and

6. Proposals that allow termination of retransmission consent agreement based on the occurrence of a specific event, such as implementation of SHVIA’s satellite must carry requirements.⁴⁴

We seek comment on whether, in light of changes that have occurred in the video programming marketplace since 2000, these bargaining proposals should remain presumptively consistent with competitive marketplace considerations under the totality of the circumstances test.⁴⁵ Should the Commission amend, delete from, or add to this list?⁴⁶ At the time the Commission adopted the totality of the circumstances test, the good faith negotiation requirement applied only to broadcasters, but in 2004 Congress applied it to MVPDs as well. Should any practices or bargaining proposals be added to this list to account for application of the good faith requirement to the conduct of MVPDs?

10. The Commission also previously stated that “[c]onsiderations that are designed to frustrate the functioning of a competitive market are not ‘competitive marketplace considerations.’”⁴⁷ Although the Commission found it “more difficult to develop a . . . list of proposals that indicate an automatic absence of competitive marketplace considerations,”⁴⁸ it concluded that the following proposals are presumptively inconsistent with competitive marketplace considerations:

1. Proposals that specifically foreclose carriage of other programming services by the MVPD that do not substantially duplicate the proposing broadcaster’s programming;
2. Proposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station or that result from an exercise of

market power by other participants in the market (e.g., other MVPDs) the effect of which is to hinder significantly or foreclose MVPD competition;

3. Proposals that result from agreements not to compete or to fix prices; and

4. Proposals for contract terms that would foreclose the filing of complaints with the Commission.⁴⁹

11. The Commission explained that these examples are illustrative and are not intended to be exclusive of other bargaining proposals that may be inconsistent with competitive marketplace considerations.⁵⁰ We ask commenters whether we should consider any revisions to the list of bargaining proposals that are presumptively inconsistent with competitive marketplace considerations under the totality of the circumstances test.⁵¹ Should any practices or bargaining proposals be added to this list to account for the 2004 extension of the good faith negotiation requirement to the conduct of MVPDs? Should this list be revised or expanded to account for any of the practices or proposals discussed in Section III.B. *infra*? Are there practices or proposals that standing alone would not violate the good faith negotiation requirement but that in combination with other factors could violate the totality of the circumstances test? Are there particular negotiating practices that tend to result in a breakdown in negotiations, and if so, how, if at all, should the totality of the circumstances test be changed to account for those practices? How can we best ensure that any revisions to the totality of the circumstances test will not hinder a party’s ability to tailor its proposals to the competitive environment?⁵² Should any of the factors considered under the totality of the circumstances test be codified in our rules? In keeping with Congress’s directive, we seek to provide the industry with further guidance that would provide more certainty as to what constitutes good faith in retransmission consent negotiations, and thereby help facilitate productive negotiations.

³⁹ See *infra* Section III.B (seeking comment on specific practices that potentially evidence a failure to negotiate in good faith under the totality of the circumstances test).

⁴⁰ *Good Faith Order*, 65 FR at 15560, para. 6.

⁴¹ See *Ex Parte* Letter of CenturyLink, Consolidated Communications, Inc., FairPoint Communications, Inc., ITTA, Mediacom Communications Corp., NTCA, Public Knowledge and TDS Telecommunications Corp. in MB Docket No. 10–71 at 4, 5 (filed Aug. 18, 2015) (“Joint Parties *Ex Parte* Letter”).

⁴² 47 U.S.C. 325(b)(3)(C).

⁴³ See *infra* Section III.B (asking whether a broadcaster’s requirement that broadcast stations and cable networks be bundled as part of the same agreement should violate the good faith negotiation requirement).

⁴⁴ *Good Faith Order*, 65 FR at 15567, para. 56.

⁴⁵ See *ACA Ex Parte* Letter in MB Docket No. 10–71 at 2 (filed July 31, 2015) (urging the Commission to reexamine its existing presumptions that certain types of conduct are consistent with competitive marketplace considerations) (“ACA July 31, 2015 *Ex Parte* Letter”).

⁴⁶ See, e.g., Comments of the American Public Power Association on the 2011 NPRM at 26 (filed May 27, 2011) (“APPA Group NPRM Comments”); Comments of Sinclair Broadcast Group, Inc. on the 2011 NPRM at 19 (filed May 27, 2011); Comments of the National Association of Broadcasters on the 2011 NPRM at 51 (filed May 27, 2011); Comments of Nexstar Broadcasting, Inc. on the 2011 NPRM at 18 (filed May 27, 2011).

⁴⁷ *Good Faith Order*, 65 FR at 15567, para. 58.

⁴⁸ *Id.* at para. 57.

⁴⁹ *Id.* at para. 58.

⁵⁰ *Id.* at 15567, nn.123, 125.

⁵¹ See, e.g., Comments of Cox Enterprises, Inc. on the 2011 NPRM at 9 (filed May 27, 2011); Comments of DISH Network L.L.C. on the 2011 NPRM at 25, 26 (filed May 27, 2011) (“DISH Network NPRM Comments”).

⁵² Reply Comments of CBS Corporation on the 2011 NPRM at 21 (filed June 27, 2011).

B. Specific Practices That Potentially Evidence a Failure To Negotiate in Good Faith Under the Totality of the Circumstances Test

12. We seek comment on whether there are specific practices that we should identify as evidencing bad faith negotiation under the totality of the circumstances test. Do broadcasters or MVPDs engage in particular conduct or demand types of contract terms that we should consider as evidence of bad faith under the totality of the circumstances test? Commenters that advocate the inclusion of additional conduct and/or practices under the totality of the circumstances test should explain the legal and policy bases for a Commission finding that such conduct and/or practices are evidence of bad faith or should be deemed presumptively inconsistent with competitive marketplace considerations. Interested parties have identified a number of practices that broadcasters or MVPDs have engaged in during retransmission consent negotiations (or after a breakdown in negotiations) that, they assert, evidence bad faith under the totality of the circumstances test. We discuss those practices below.

13. First, parties have urged the Commission to address the practice by broadcasters of preventing consumers' online access to the broadcaster's programming as an apparent tactic to gain leverage in a retransmission consent dispute.⁵³ In certain recent retransmission consent impasses, broadcasters have prevented subscribers from accessing their video content over the Internet during retransmission consent negotiations.⁵⁴ The legislative history regarding Section 103(c) of STELAR indicates that Congress was

concerned about such practices and directed the Commission to examine in this proceeding "the role digital rights and online video programming have begun to play in retransmission consent negotiations."⁵⁵ Such online access restrictions prevent all of an MVPD's broadband subscribers, *i.e.*, regardless of whether those subscribers are located in markets where the MVPD and broadcaster have reached an impasse in negotiations, from accessing the online video programming that the broadcaster otherwise makes generally available when the broadcaster and the MVPD are engaged in a retransmission consent dispute.⁵⁶ In addition, this practice affects the MVPD's broadband subscribers even if those subscribers do not also subscribe to the MVPD's video service.⁵⁷ We seek comment on whether such a practice during retransmission consent disputes should be considered evidence of bad faith under the totality of the circumstances test.⁵⁸ We acknowledge that, even where a broadcaster has prevented access to its programming online, many consumers can obtain access to the signal for free over the air. How, if at all, is using this online practice as a tactic to gain negotiating leverage more egregious or harmful to consumers than other practices used to gain leverage in retransmission consent discussions? Should causing consumers harm to enhance negotiating leverage generally be a factor that we should consider as evidence of bad faith under the totality of the circumstances test?⁵⁹ We note that, in an analogous context, some news organizations that distribute content via newspapers and the Internet limit access to their online content to paid subscribers. To the extent online access restrictions are reasonable in that context, what distinguishes such restrictions from those that are imposed in cases of preventing online access in this context, *i.e.*, where a broadcaster distributes its programming content via an MVPD and online? Are there issues of statutory authority or constitutional

issues that should be considered in this context?

14. In addition to broadcasters preventing online access, parties have expressed concern about broadcasters' relinquishing to third parties their right to grant retransmission consent and similar practices. For example, should certain network involvement in retransmission consent negotiations be a factor suggesting bad faith under the totality of the circumstances test? We understand that some network affiliation agreements give the network the right to approve its affiliate's retransmission consent agreement with an MVPD, and some MVPDs and consumer groups have argued that this practice has hindered the progress of retransmission consent negotiations. What are the appropriate parameters of network involvement in retransmission consent negotiations? Would it be appropriate for a network to negotiate on behalf of its affiliates, and if so, to what extent? Should it be considered evidence of bad faith for a broadcaster to give any third party the right to approve its retransmission consent agreement? As noted, the statute now precludes joint negotiation by non-commonly owned stations in the same local market;⁶⁰ should it be considered evidence of bad faith under the totality of the circumstances test if a broadcaster jointly negotiates with, or entrusts retransmission consent negotiations to,

⁶⁰ As noted above, Congress in Section 103 of STELAR revised Section 325 of the Act to "prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market . . . to grant retransmission consent . . . unless such stations are directly or indirectly under common *de jure* control permitted under the regulations of the Commission," Pub. L. 113–200, 103(a); 47 U.S.C. 325(b)(3)(C)(iv), and the Commission codified this language in its rules nearly verbatim. See 47 CFR 76.65(b)(1)(viii). We note that Congress's inclusion of the term "*de jure* control" in Section 103 of STELAR was intended to ensure that only those stations that come within the scope of this term as defined by the Commission (*e.g.*, same market stations owned by an entity that holds over 50 percent of the stations' voting stock) would be permitted to negotiate jointly for retransmission consent. See, *e.g.*, *Application of Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8513 (1995) (*de jure* control typically is determined by whether a shareholder owns more than 50 percent of the voting shares of a corporation); *Metromedia, Inc.*, 98 FCC 2d 300, 305, 306 (1984) (*de jure* control is ownership of over 50 percent of a corporation's voting stock); *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, Report and Order, 49 FR 19482, 19490, n.47, 19491 (1984) (a voting ownership interest exceeding 50% reflects the line of *de jure* control). Thus, stations operating under joint sales agreements ("JSAs"), local marketing agreements ("LMAs"), or similar "sidecar" arrangements, even if attributable, cannot jointly negotiate retransmission consent with a station in the same market owned by the broker because they are not "under common *de jure* control."

⁵³ See American Television Alliance ("ATVA") *Ex Parte* Letter in MB Docket No. 10–71 at 3 (filed July 17, 2015) ("ATVA *Ex Parte* Letter"). In 2014, Mediacom Communications Corporation ("Mediacom") filed a Petition in which it requested, among other things, that the Commission prohibit the practice of preventing subscribers' online access. See Mediacom Communications Corporation Petition for Rulemaking, RM–11728, at iii, iv, 13, 17 (filed July 21, 2014) ("Mediacom Petition"). Commenters were divided on whether the Commission should address this practice. Some commenters asserted that we should prohibit this practice because it uses anti-consumer behavior as leverage in retransmission consent negotiations, which they argue is inconsistent with an obligation to negotiate in good faith. Others argued that preventing online access is an appropriate tool in retransmission consent negotiations and that a broadcaster may be unable to ascertain which of an MVPD's broadband customers also subscribes to the MVPD's video service.

⁵⁴ For example, during a retransmission consent dispute between CBS and Time Warner Cable ("TWC") in 2013, CBS prevented TWC's broadband customers from accessing CBS programming online, even if the broadband customers did not subscribe to TWC for video programming.

⁵⁵ Senate Commerce Committee Report at 13.

⁵⁶ See Mediacom Reply Comments at 19 (filed Oct. 14, 2014).

⁵⁷ See NTC Comments on Mediacom Petition at 6; Reply Comments of Cequel Communications, LLC d/b/a Suddenlink Communications in RM–11728, at 4 (filed Oct. 14, 2014); TDS Comments on Mediacom Petition at 6.

⁵⁸ We understand that when a broadcaster prevents an MVPD's broadband subscribers from accessing the broadcaster's programming online, it may be unable to identify which broadband subscribers are also video subscribers.

⁵⁹ See ACA July 31, 2015 *Ex Parte* Letter at 2. See also Comments of National Consumers League on the 2011 NPRM at 1 ("NCL NPRM Comments").

any non-commonly owned entity regardless of the geographic market in which that entity operates?⁶¹

15. We also invite comment on how a broadcaster's insistence on bundling broadcast signals with other broadcast stations or cable networks into the retransmission consent agreement should be treated under the totality of the circumstances test. We note that early retransmission consent agreements typically provided for noncash payment to broadcasters in the form of carriage of additional programming. If a broadcaster requires MVPDs to purchase less popular programming in order to purchase more desired programming, the MVPDs may be forced to pay for programming that they do not want and may in turn pass those costs onto consumers. And while broadcasters and other programmers sometimes offer MVPDs both a bundled price and standalone prices for particular programming, some MVPDs assert that the prices for the standalone options may be so high that the only economically sound option is to accept the bundled offer. Although the Commission, in the Good Faith Order, concluded that the bundling of broadcast and non-broadcast programming in retransmission consent agreements is a practice that is presumptively consistent with good faith bargaining,⁶² it also stated that "[c]onduct that is violative of national policies favoring competition—that is, for example, intended to gain or sustain a monopoly, is an agreement not to compete or fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard"⁶³ The Commission has specifically "clarified] that tying is not consistent with competitive marketplace considerations if it would violate the antitrust laws."⁶⁴ Have circumstances changed such that bundling of broadcast and non-broadcast programming should not be presumptively consistent with good faith bargaining under any circumstances?⁶⁵ What type of showing

must an MVPD complainant make to demonstrate that bundling in a particular case violates antitrust laws? We also seek comment on whether and to what extent a broadcaster's insistence on bundling a local broadcast signal with specific types of programming such as regional sports networks (or other "must have" programming), multicast programming, duplicative stations, and/or significantly viewed stations should factor into our assessment of whether the broadcaster has negotiated in good faith under the totality of the circumstances test.⁶⁶ In addition, we seek comment on whether a broadcaster's insistence on bundling a local broadcast signal with one or more prospective programming channels⁶⁷ should be considered evidence of bad faith under the totality of the circumstances test. With regard to the bundling of prospective channels, how can an MVPD assess the reasonableness of a broadcaster's proposed carriage fees for a bundled offering that contains a programming channel that has not yet been launched or whose carriage is conditioned on future events? Is it consistent with good faith bargaining for a broadcaster to insist on MVPD carriage of untested programming channels as a condition of carrying a local broadcast signal? If we decide that a broadcast station's attempt to tie carriage of its affiliated programming to carriage of a broadcast station is a factor suggesting a failure to negotiate in good faith, how would we analyze the legitimacy of a standalone offer? The American Television Alliance, for example, suggests that the stand-alone offer be "a real economic alternative to a bundle of broadcast and non-broadcast programming."⁶⁸

16. Parties have identified a number of other negotiating practices that, they assert, are inconsistent with the statutory duty to bargain in good faith. We seek comment on whether any of these practices should factor into our assessment of whether a negotiating entity has breached its duty to negotiate in good faith under the totality of the circumstances test. In particular, parties assert that the following practices raise concerns about whether a party has met its obligation to negotiate retransmission consent in good faith: (i) A broadcaster's insistence on contract expiration dates,

or threats to black out a station signal, in the time period just prior to the airing of a "marquee" sports or entertainment event;⁶⁹ (ii) a broadcaster's preventing an MVPD from temporarily importing an out-of-market signal in cases where the broadcaster has blacked out its local signal after negotiations failed to produce an agreement by the contract expiration date;⁷⁰ (iii) a broadcaster's demand that an MVPD place limits on its subscribers' use of lawful devices and functionalities; (iv) a broadcaster's demand that MVPDs pay per-subscriber fees not only for viewers of the broadcaster's retransmitted signal, but also for subscribers that receive the broadcaster's signal over-the-air or who receive an MVPD's Internet or voice service, but not its video service;⁷¹ (v) an MVPD's or broadcaster's refusal to provide "information substantiating reasons for positions taken when requested to in the course of bargaining";⁷² (vi) an MVPD's or broadcaster's engaging in "surface bargaining," *i.e.*, conduct designed to delay negotiations, but that does not necessarily constitute an outright refusal to bargain;⁷³ (vii) an MVPD-affiliated broadcaster's "discriminat[ion] in the prices, terms and conditions [for] retransmission consent among or between MVPDs based on vertical competitive effects";⁷⁴ (viii) an MVPD's or broadcaster's demanding or negotiating retransmission consent based on "most favored nation" provisions;⁷⁵ (ix) a broadcaster's demand for tier placement commitments, which compel MVPDs to place their affiliated networks in the

⁶⁹ See ATVA *Ex Parte* Letter at 3, 4; ACA July 24, 2015 *Ex Parte* Letter at 2. See also Comments of Consumer Action on the 2011 NPRM at 1 ("Consumer Action Comments").

⁷⁰ See ATVA *Ex Parte* Letter at 4. Although Section 103 of STELAR amended Section 325 of the Act to "prohibit a television broadcast station from limiting the ability of [an MVPD] to carry into the local market . . . of such station a television signal that has been deemed significantly viewed . . . or any other television broadcast signal such distributor is authorized to carry," this provision would not permit an MVPD to import a non-significantly viewed signal in cases where the MVPD were not "authorized to carry" the signal, with certain exceptions. 47 U.S.C. 325(b)(3)(C) (as amended by Section 103 of STELAR). ATVA proposes that we deem it a failure to negotiate in good faith for a broadcaster not to authorize such carriage either through waiver of the right to prevent importation of distant signals (in the case of satellite carriers) or through exercise of network non-duplication or syndicated exclusivity rights (in the case of cable and telecommunications MVPDs).

⁷¹ ATVA *Ex Parte* Letter at 5.

⁷² See ACA July 24, 2015 *Ex Parte* Letter at 1. See also Joint Parties *Ex Parte* Letter at 4.

⁷³ *Id.* at 2.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁶¹ See ATVA *Ex Parte* Letter at 4, 5.

⁶² See *Good Faith Order*, 65 FR at 15567, para. 56.

⁶³ *Id.* at para. 58.

⁶⁴ See also Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Reciprocal Bargaining Obligation, Report and Order, 70 FR 40216, 40219, para. 15 (2005) ("Reciprocal Bargaining Order") ("[W]e clarify that tying is not consistent with competitive marketplace considerations if it would violate the antitrust laws.").

⁶⁵ See Reply Comments of Public Knowledge and New America Foundation on the 2011 NPRM at 6, 7.

⁶⁶ See ATVA *Ex Parte* Letter at 3; ACA *Ex Parte* Letter in MB Docket No. 10–71 at 2, 3 (filed July 24, 2015) ("ACA July 24, 2015 *Ex Parte* Letter").

⁶⁷ By prospective programming channel, we refer to a programming channel that has not yet been launched or a station or network that may be acquired in the future. See ACA July 24, 2015 *Ex Parte* Letter at 2.

⁶⁸ See ATVA *Ex Parte* Letter at 3.

most popular programming packages;⁷⁶ (x) a broadcaster's imposition of minimum penetration requirements, which require MVPDs to guarantee that broadcaster-affiliated cable networks will reach a specified percentage of customers;⁷⁷ (xi) a broadcaster's failure to make an initial contract proposal at least 90 days prior to the existing contract's expiration;⁷⁸ (xii) a broadcaster's preventing an MVPD from disclosing rates, terms and conditions of a contract proposal or agreement to the Commission, a court of competent jurisdiction, and/or other state or federal governmental entities in connection with a formal retransmission consent complaint or other legal or administrative proceeding;⁷⁹ (xiii) a broadcaster's discrimination in price among MVPDs in a market absent a showing of direct and legitimate economic benefits associated with such price differences;⁸⁰ (xiv) an MVPD's or broadcaster's failure to negotiate terms and conditions for retransmission consent based on actual local market conditions;⁸¹ and (xv) an MVPD's or broadcaster's attempt to manufacture a retransmission consent dispute in the hope of encouraging government intervention.⁸² We also seek comment on any other practices that should be considered evidence of bad faith under the totality of the circumstances test.

17. How, if at all, should any of the above practices figure into our assessment of whether the broadcaster or MVPD has breached its duty to negotiate retransmission consent in good faith under the totality of the circumstances test? With regard to the

second practice noted above (concerning importation of distant broadcast signals), we note that there could be situations where an MVPD is denied the right to carry a significantly viewed signal by a distant broadcast station that is precluded from granting out-of-market carriage of its signal due to restrictions in a network affiliation agreement.⁸³ Does Section 325(b)(3)(C)(v) of the Act, as added by Section 103(b) of STELAR (which, as noted above, generally prohibits a broadcast station from limiting the ability of an MVPD "to carry into the local market . . . of such station . . . a television signal that has been deemed significantly viewed. . . .") require the significantly viewed station to consent to carriage of its signal by the MVPD in retransmission consent negotiations or does it only govern retransmission consent negotiations between local stations and the MVPD?⁸⁴ If this section does not apply, we note that the Commission, in implementing the reciprocal bargaining provisions of Section 325, found that "it is incumbent on broadcasters subject to . . . contractual limitations [in a network affiliation agreement] that have been engaged by an out-of-market MVPD to negotiate retransmission consent of its signal to at least inquire with its network whether the network would waive the limitation with regard to the MVPD in question."⁸⁵ Given this statement, in cases where a significantly viewed station refuses out-of-market carriage of its signal without first asking the network whether it would consider waiving its right to enforce contractual restrictions on such carriage, should the broadcaster's refusal continue to be probative evidence of whether it is negotiating in bad faith under the totality of the circumstances test?⁸⁶

⁷⁶ See Cablevision July 31, 2015 *Ex Parte* Letter at 3, 5; ITTA *Ex Parte* Letter in MB Docket No. 10–71 at 1, 2 (filed Aug. 7, 2015) ("ITTA August 7, 2015 *Ex Parte* Letter"); Mediacom Petition at 10 through 12 (identifying certain other tactics used by programmers to force bundling of multiple channels on widely penetrated tiers).

⁷⁷ See Cablevision July 31, 2015 *Ex Parte* Letter at 3 through 5 (asserting that, in order to broaden the reach of their programming, broadcasters have used tying practices in conjunction with tier placement and minimum penetration requirements, and that these practices collectively harm consumers). Cablevision further asserts that the good faith standard mandates that broadcasters omit basic tier customers from the denominator used to assess whether minimum penetration requirements have been met in contracts for bundled programming. *Id.* at 5.

⁷⁸ See ITTA *Ex Parte* Letter in MB Docket No. 10–71 at 2 (filed Aug. 13, 2015) ("ITTA August 13, 2015 *Ex Parte* Letter").

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Comments of Block Communications, Inc. in MB Docket No. 10–71 at 8, 9 (filed Aug. 14, 2015) ("Block Comments").

⁸² See NAB *Ex Parte* Letter in MB Docket No. 10–71 at 1 (filed July 13, 2015); NAB *Ex Parte* Letter at 2 (filed July 24, 2015); NAB *Ex Parte* Letter at 1 (filed August 25, 2015).

⁸³ See Comments of ACA on the 2011 NPRM at 55 through 58 (filed May 27, 2011); ACA *Ex Parte* Letter in MB Docket No. 10–71 at 4 (filed Aug. 28, 2015).

⁸⁴ We note that Congress intended Section 103(b) of STELAR "to be interpreted broadly by the FCC to ensure that a television broadcast station is not able to limit MVPD carriage of signals that it is permitted to carry pursuant to the Communications Act. . . ." See Senate Commerce Committee Report at 13.

⁸⁵ See *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligation*, Report and Order, 70 FR 40216, 40223, para. 35 (2005) ("Reciprocal Bargaining Order").

⁸⁶ Although Section 76.65(b)(vi) of our rules provides that the "[e]xecution by a Negotiating Entity of an agreement with any party, a term or condition of which, requires that such Negotiating Entity not enter into a retransmission consent agreement with any other television broadcast station or [MVPD]" violates the duty to negotiate retransmission consent in good faith, we note that Section 76.65(b)(vi) was intended to prohibit

18. We note that although most of the alleged bad faith practices discussed in this *NPRM* are attributed by commenting parties to broadcasters, Section 325(b)(3)(C) of the Act imposes a duty to negotiate retransmission consent in good faith reciprocally on broadcasters and MVPDs, and the Commission has interpreted this statutory obligation to subject broadcasters and MVPDs equally to the totality of the circumstances test and the per se violations of good faith in Section 76.65 of our rules.⁸⁷ Thus, we propose that any practices that we find to be indicative of bad faith under the totality of the circumstances test or to be per se violations of the duty to negotiate in good faith apply to both broadcasters and MVPDs (to the extent such practices are engaged in by both broadcasters and MVPDs).⁸⁸ and we seek comment on that proposal. Parties asserting that certain practices should be deemed bad faith only when engaged in by MVPDs or by broadcasters should explain how such an interpretation is consistent with the text of Section 325(b)(3)(C) of the Act, which imposes a reciprocal duty to bargain in good faith.

19. Finally, we invite comment on how an MVPD's demand for online distribution rights, or a broadcaster's refusal to grant such rights, should be treated under the totality of the circumstances test. Online distribution rights are important because consumers today are increasingly accessing video programming from online video distributors that deliver content via the Internet. We understand that online distribution rights have been a critical factor in recent retransmission consent negotiations. Are there any circumstances in which an MVPD's demands with respect to online rights, or a broadcaster's unwillingness to offer such rights, should be considered evidence of bad faith under the totality of the circumstances test?⁸⁹

20. In the alternative to considering any of the above factors, or additional factors that commenters raise, pursuant to the totality of the circumstances test,

collusion between a broadcaster and an MVPD that contemplates non-carriage of the broadcaster's signal by another MVPD, and was not intended "to affect the ability of a network affiliate agreement to limit redistribution of network programming." See *id.*, 70 FR at 40223, para. 34.

⁸⁷ See *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligation*, Report and Order, 70 FR 40218, para. 13 (2005).

⁸⁸ For example, demanding that an MVPD place limits on its subscribers' use of lawful devices and functionalities (set forth in (iii) above) appears to be a practice that can be attributed only to broadcasters.

⁸⁹ See ACA July 24, 2015 *Ex Parte* Letter at 3.

we ask commenters to consider whether any of the factors mentioned above should instead be considered additional per se violations of the duty to negotiate retransmission consent in good faith.⁹⁰ Commenters should explain their reasoning for considering particular conduct or practices either in the context of the totality of the circumstances test or as a candidate for a per se rule, and the statutory authority for a Commission finding that any such practices should be regulated under the totality of the circumstances test or as a per se rule.⁹¹

IV. Procedural Matters

A. Regulatory Flexibility Act

21. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),⁹² the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).⁹³ In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.⁹⁴

1. Need for, and Objectives of, the Proposed Rules

22. In the Notice of Proposed Rulemaking (“NPRM”), as directed by Section 103 of the STELA Reauthorization Act of 2014 (“STELAR”),⁹⁵ we review the totality of the circumstances test for evaluating whether broadcast stations and multichannel video programming distributors (“MVPDs”) are negotiating for retransmission consent in good faith. The Communications Act of 1934, as

amended (the “Act”), prohibits cable systems and other MVPDs from retransmitting a broadcast station’s signal without the station’s express consent.⁹⁶ This consent is known as “retransmission consent.” The Act and the Commission’s implementing rules require broadcasters and MVPDs to negotiate for retransmission consent in good faith.⁹⁷ The Commission has adopted a two-part framework for evaluating good faith in this context. First, the Commission has established a list of objective good faith negotiation standards, the violation of which is considered a per se breach of the good faith negotiation obligation.⁹⁸ Second, even if the specific per se standards are met, the Commission may consider whether, based on the totality of the circumstances, a party failed to negotiate retransmission consent in good faith.⁹⁹ In accordance with STELAR, we adopt this NPRM and seek comment on the scope of the totality of the circumstances test.

2. Legal Basis

23. The proposed action is authorized pursuant to Sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and Section 103 of the STELA Reauthorization Act of 2014, Public Law 113–200, Section 103, 128 Stat. 2059 (2014).

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.¹⁰⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰² A small business concern is one which: (1)

Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁰³ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

25. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (“NAICS”) defines “Wired Telecommunications Carriers” as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”¹⁰⁴ The SBA has developed a small business size standard for wireline firms within the broad economic census category, “Wired Telecommunications Carriers.”¹⁰⁵ Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁰⁶ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.¹⁰⁷ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

26. *Cable Television Distribution Services.* Since 2007, these services

⁹⁰ See, e.g., Cablevision July 31, 2015 *Ex Parte* Letter at 4, 5.

⁹¹ See *id.* at 5 through 7.

⁹² See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

⁹³ See 5 U.S.C. 603(a).

⁹⁴ See *id.*

⁹⁵ Congress directed the Commission to “commence a rulemaking to review its totality of the circumstances test for good faith negotiations” by September 4, 2014. See Public Law 113–200, 103(c), 128 Stat. 2059 (2014).

⁹⁶ 47 U.S.C. 325(b)(1)(A).

⁹⁷ *Id.* 325(b)(3)(C)(ii), (iii); 47 CFR 76.65.

⁹⁸ See 47 CFR 76.65(b)(1).

⁹⁹ See *id.* 76.65(b)(2).

¹⁰⁰ 5 U.S.C. 603(b)(3).

¹⁰¹ *Id.* 601(6).

¹⁰² *Id.* 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 5 U.S.C. 601(3).

¹⁰³ 15 U.S.C. 632.

¹⁰⁴ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers.” <http://www.census.gov/naics/2007/def/ND517110.HTM-N517110>.

¹⁰⁵ 13 CFR 121.201 (NAICS code 517110).

¹⁰⁶ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007–2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5 http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁰⁷ *Id.*

have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁰⁸ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹⁰⁹ Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

27. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rate regulation rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹¹⁰ According to SNL Kagan, there are 1,258 cable operators.¹¹¹ Of this total, all but 10 incumbent cable companies are small under this size standard.¹¹² In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹³ Current Commission records show 4,584 cable systems

nationwide.¹¹⁴ Of this total, 4,012 cable systems have fewer than 20,000 subscribers, and 572 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

28. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹¹⁵ There are approximately 56.4 million incumbent cable video subscribers in the United States today.¹¹⁶ Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹¹⁷ Based on available data, we find that all but 10 incumbent cable operators are small under this size standard.¹¹⁸ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹¹⁹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

29. Direct Broadcast Satellite ("DBS") Service. DBS service is a nationally distributed subscription service that delivers video and audio programming

via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"¹²⁰ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.¹²¹ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹²² Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.¹²³ Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The 2002 definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.¹²⁴ Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.¹²⁵ Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

30. Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs). SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via

¹⁰⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml.

¹⁰⁹ *Id.*

¹¹⁰ 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 60 FR 35,854, 35,859 (1995).

¹¹¹ Data provided by SNL Kagan to Commission Staff upon request on March 25, 2014. Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12–203, Fifteenth Report (2013) ("15th Annual Video Competition Report").

¹¹² SNL Kagan, U.S. Multichannel Top Cable MSOs (2014). We note that when this size standard (i.e., 400,000 or fewer subscribers) is applied to all MVPD operators, all but 14 MVPD operators would be considered small. *15th Annual Video Competition Report*, paras. 27, 28 (subscriber data for DBS and Telephone MVPDs). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, 77 FR 40,276, 40,287, para. 37 (2011) (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

¹¹³ 47 CFR 76.901(c).

¹¹⁴ The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on July 1, 2014. A cable system is a physical system integrated to a principal headend.

¹¹⁵ 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn.1 through 3.

¹¹⁶ See NCTA, Industry Data, Cable Video Customers (2012).

¹¹⁷ 47 CFR 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the Definition of Small Cable Operator, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

¹¹⁸ See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012).

¹¹⁹ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

¹²⁰ See 13 CFR 121.201, NAICS code 517110 (2007). The 2007 NAICS definition of the category of "Wired Telecommunications Carriers" is in paragraph 5, above.

¹²¹ 13 CFR 121.201, NAICS code 517110 (2007).

¹²² U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹²³ *Id.*

¹²⁴ 13 CFR 121.201; NAICS code 517510 (2002).

¹²⁵ See *15th Annual Video Competition Report*, para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* paras. 27, 110, 111.

terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, "Wired Telecommunications Carriers,"¹²⁶ which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.¹²⁷ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹²⁸ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹²⁹ Therefore, under this size standard, the majority of such businesses can be considered small.

31. *Home Satellite Dish ("HSD") Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers.¹³⁰ The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year.¹³¹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more

employees.¹³² Therefore, under this size standard, the majority of such businesses can be considered small.

32. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹³³ In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹³⁴ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.¹³⁵ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.¹³⁶ The Commission offered three levels of

bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.¹³⁷ Auction 86 concluded in 2009 with the sale of 61 licenses.¹³⁸ Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

33. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based EBS. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." ¹³⁹ The SBA has

¹²⁶ See 13 CFR 121.201, NAICS code 517110 (2007).

¹²⁷ 13 CFR 121.201, NAICS code 517110 (2007).

¹²⁸ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007–2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2^{http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml}.

¹²⁹ *Id.*

¹³⁰ 13 CFR 121.201, NAICS code 517110 (2007).

¹³¹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007–2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2^{http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml}.

¹³² *Id.*

¹³³ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 60 FR 36,524, 36,525, para. 7 (1995).

¹³⁴ 47 CFR 21.961(b)(1).

¹³⁵ 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

¹³⁶ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 74 FR 38,018 (2009).

¹³⁷ *Id.* at 8296.

¹³⁸ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice (2009).

¹³⁹ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers," (partial definition) ^{http://www.census.gov/naics/2007/def/ND517110.HTM-N517110}. Examples of this category are: Broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television ("CCTV") services; VoIP providers, using own operated wired telecommunications

developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁴⁰ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹⁴¹ Therefore, under this size standard, the majority of such businesses can be considered small entities. In addition to Census data, the Commission's internal records indicate that, as of September 2012, there were 2,241 active EBS licenses. The Commission estimates that of these 2,241 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.¹⁴²

34. Fixed Microwave Services.

Microwave services include common carrier,¹⁴³ private-operational fixed,¹⁴⁴ and broadcast auxiliary radio services.¹⁴⁵ They also include the Local Multipoint Distribution Service (LMDS),¹⁴⁶ the Digital Electronic Message Service (DEMS),¹⁴⁷ and the 24 GHz Service,¹⁴⁸ where licensees can choose between common carrier and non-common carrier status.¹⁴⁹ At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services.

infrastructure; direct-to-home satellite system ("DTH") services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services ("MMDS").

¹⁴⁰ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2 <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁴¹ *Id.*

¹⁴² The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4) through 601(6).

¹⁴³ See 47 CFR part 101, subparts C and I.

¹⁴⁴ See 47 CFR part 101, subparts C and H.

¹⁴⁵ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

¹⁴⁶ See 47 CFR part 101, subpart L.

¹⁴⁷ See 47 CFR part 101, subpart G.

¹⁴⁸ See *id.*

¹⁴⁹ See 47 CFR 101.533, 101.1017.

There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.*, an entity with no more than 1,500 persons.¹⁵⁰ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.¹⁵¹ For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 11,163 firms that operated that year.¹⁵² Of those, 10,791 had fewer than 1,000 employees, and 372 firms had 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

35. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.¹⁵³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,¹⁵⁴ OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."¹⁵⁵ The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the

¹⁵⁰ 13 CFR 121.201, NAICS code 517210.

¹⁵¹ 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

¹⁵² U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009) http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=8&-ds_name=EC0700A1&-skip=700&-ds_name=EC0751SSSZ5&-lang=en.

¹⁵³ 47 U.S.C. 571(a)(3), (4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, para. 135 (2000) ("13th Annual Video Competition Report").

¹⁵⁴ See 47 U.S.C. 573.

¹⁵⁵ U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers." <http://www.census.gov/naics/2007/def/ND517110.HTM-N517110>.

entire year.¹⁵⁶ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.¹⁵⁷ Therefore, under this size standard, the majority of such businesses can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.¹⁵⁸ The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities.

36. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. . . . These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers."¹⁵⁹ The SBA has developed a small business size standard for this category, which is: All such businesses having \$38.5 million dollars or less in annual revenues.¹⁶⁰ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁶¹ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.¹⁶² Thus, under this

¹⁵⁶ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5 http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁵⁷ *Id.*

¹⁵⁸ See *13th Annual Video Competition Report*, para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

¹⁵⁹ U.S. Census Bureau, 2007 NAICS Definitions, "515210 Cable and Other Subscription Programming." <http://www.census.gov/naics/2007/def/ND515210.HTM-N515210>.

¹⁶⁰ 13 CFR 121.210; 2012 NAICS code 515210.

¹⁶¹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ5 http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁶² *Id.*

size standard, the majority of such businesses can be considered small entities.

37. *Small Incumbent Local Exchange Carriers*. We have included small incumbent local exchange carriers in this present RFA analysis. A “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁶³ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁶⁴ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

38. *Incumbent Local Exchange Carriers (“ILECs”)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁵ Census data for 2007 shows that there were 3,188 firms that operated for the entire year.¹⁶⁶ Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees.¹⁶⁷ Therefore, under this size standard, the majority of such businesses can be considered small entities.

39. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), “Shared-Tenant Service Providers,” and “Other Local Service Providers.”* Neither the Commission nor the SBA has developed a small business

size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶⁸ Census data for 2007 shows that there were 31,996 establishments that operated that year.¹⁶⁹ Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.¹⁷⁰ Therefore, under this size standard, the majority of such businesses can be considered small entities.

40. *Television Broadcasting*. “This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA defines a television broadcasting station as a small business if such station has no more than \$38.5 million in annual receipts. The 2007 U.S. Census reports that in 2007, 808 television broadcasting firms operated during that year. Of that number, 709 had annual receipts of less than \$25 million. Twenty-nine firms operated with annual receipts from \$25 million to \$50 million, but the Census does not specify the number of stations in that category that had annual receipts of \$38.5 million or less. Based on this data, the Commission concludes that a majority of television stations is small under the applicable SBA size standard.

41. The Commission has estimated the number of licensed commercial television stations to be 1,390.¹⁷¹ According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of

an estimated 1,298 commercial television stations¹⁷² in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (“NCE”) television stations to be 391.¹⁷³ We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁷⁴ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

42. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

43. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,388.¹⁷⁵ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s Media Access Pro Television Database, as of March 28, 2012, about 950 of an estimated 1,300 commercial television

¹⁶³ 15 U.S.C. 632.

¹⁶⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small-business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 CFR 121.102(b).

¹⁶⁵ 13 CFR 121.201 (2007 NAICS code 517110).

¹⁶⁶ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ5 http://factfinder.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

¹⁶⁷ *Id.*

¹⁶⁸ 13 CFR 121.201 (2007 NAICS code 517110).

¹⁶⁹ U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, “Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census,” NAICS code 517110, Table EC0751SSSZ2 <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

¹⁷⁰ *Id.*

¹⁷¹ See News Release, “Broadcast Station Totals as of December 31, 2010,” 2011 WL 484756 (dated Feb. 11, 2011) (“Broadcast Station Totals”) http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.

¹⁷² We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*; however, we are using BIA’s estimate for purposes of this revenue comparison.

¹⁷³ See *Broadcast Station Totals*, *supra*.

¹⁷⁴ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 121.103(a)(1).

¹⁷⁵ See *Broadcast Station Totals as of December 31, 2013*, Press Release (MB rel. Jan. 8, 2014) (“Jan. 8, 2014 Broadcast Station Totals Press Release”) <https://www.fcc.gov/document/broadcast-station-totals-december-31-2013>.

stations (or approximately 73 percent) had revenues of \$14 million or less.¹⁷⁶ We therefore estimate that the majority of commercial television broadcasters are small entities.

44. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁷⁷ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent.

45. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.¹⁷⁸ These stations are non-profit, and therefore considered to be small entities.¹⁷⁹

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. The *NPRM* does not seek comment on specific reporting or recordkeeping requirements. Rather, in Section III.A the *NPRM* broadly seeks comment on any elaboration of the totality of the circumstances test it can provide that will help guide negotiations to a successful conclusion. Then in Section III.B the *NPRM* seeks comment on whether there are specific practices that we should identify as evidencing bad faith under the totality of the circumstances test. The resolution of these issues could affect all entities that negotiate retransmission consent, including small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”¹⁸⁰

48. Enhancing the successful completion of retransmission consent negotiations would benefit both broadcasters and MVPDs, including those that are smaller entities, as well as MVPD subscribers. Given that improvements to the totality of the circumstances test would have such an effect, making such improvements would benefit both smaller and larger entities, and thus an analysis of alternatives is unnecessary. We note additionally that the *NPRM* broadly seeks comment on any elaboration of the totality of the circumstances test it can provide that will help guide negotiations to a successful conclusion, and it asks whether there are specific practices that we should identify as evidencing bad faith under the totality of the circumstances test. These inquiries are wide-ranging, and we encourage commenters to indicate whether we should consider any alternatives that would minimize any adverse impact on small businesses while maintaining the benefits to the retransmission consent process.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

49. None.

B. Paperwork Reduction Act

50. This *NPRM* proposes no new or modified information collection requirements. In addition, therefore, it does not propose any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.

C. Ex Parte Rules

51. This proceeding shall be treated as a “permit-but-disclose” proceeding in

accordance with the Commission’s ex parte rules.¹⁸¹ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

D. Filing Requirements

52. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

¹⁷⁶ We recognize that this total differs slightly from that contained in *Jan. 8, 2014 Broadcast Station Totals Press Release*; however, we are using BIA’s estimate for purposes of this revenue comparison.

¹⁷⁷ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 121.103(a)(1).

¹⁷⁸ See *Jan. 8, 2014 Broadcast Station Totals Press Release*.

¹⁷⁹ See generally 5 U.S.C. 601(4), (6).

¹⁸⁰ 5 U.S.C. 603(c)(1) through (c)(4).

¹⁸¹ 47 CFR 1.1200 *et seq.*

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300

East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

53. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

54. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

55. *Additional Information.* For additional information on this proceeding, contact Diana Sokolow or Raelynn Remy of the Media Bureau, Policy Division, Federal

Communications Commission, (202) 418-2120, Diana.Sokolow@fcc.gov; Raelynn.Remy@fcc.gov.

V. Ordering Clauses

56. *Accordingly, it is ordered* that, pursuant to the authority found in Sections 4(i), 4(j), 303(r), and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 325, and Section 103 of the STELA Reauthorization Act of 2014,¹⁸² this Notice of Proposed Rulemaking *is adopted*.

57. *It is further ordered* that, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015-24843 Filed 10-1-15; 8:45 am]

BILLING CODE 6712-01-P

¹⁸² Public Law 113-200, Section 111, 128 Stat. 2059 (2014). 47 U.S.C. 543(o)(1).

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0060]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Pork-Filled Pasta Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of pork-filled pasta products into the United States.

DATES: We will consider all comments that we receive on or before December 1, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0060>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0060> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be

sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of pork-filled pasta products, contact Dr. Magde S. Elshafie, Staff Veterinarian, National Import Export Services, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 851-3332. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Pork-Filled Pasta Products.

OMB Control Number: 0579-0214.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals, animal products, and other articles to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, chapter 1, subchapter D, parts 91 through 99, of the Code of Federal Regulations (CFR).

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal diseases, including swine vesicular disease (SVD). Section 94.12 of the regulations contains, among other things, specific processing, recordkeeping, and certification requirements for pork-filled pasta products exported to the United States from regions affected with SVD.

The regulations require, among other things, that the pork-filled pasta products be accompanied by a certificate stating that the product has been handled and processed according to the requirements set forth in the

regulations. This certificate must be issued and signed by an official of the national government of the region in which the pork-filled pasta products were processed.

In addition, the processing facility where the pork-filled pasta products are produced must maintain original records for a minimum of 2 years for each lot of pork or pork products used. The records must include the date the cooked or dry-cured pork product was received in the processing facility, the lot number or other identification marks, the health certificate that accompanied the cooked or dry-cured pork from the slaughter/processing facility to the meat-filled pasta product processing facility, and the date the pork or pork product used in the pasta either started dry-curing (if the product used is a dry-cured ham) or the date the product was cooked (if the product used is a cooked pork product). The records must also include the number of packages, the number of hams or cooked pork products per package, and the weight of each package. These records would provide important information in any traceback investigation that may need to be conducted by officials of the region of origin of the pork-filled pasta product or by officials of the USDA.

The information collection activities of a certificate and recordkeeping were approved by the Office of Management and Budget (OMB) under control number 0579-0214. However, when comparing the regulations with the information collection activities, we found that cooperative service agreement and signage were omitted from previous information collections. The operator of a foreign processing establishment must enter into a cooperative service agreement with APHIS stating that: (1) The establishment agrees to process pork in accordance with the regulations; (2) the establishment will allow APHIS representatives unannounced entry into the establishment to inspect the facility, operations, and records of the establishment; and (3) the establishment will pay for the costs of the associated inspections and be current on the payments. Also, any storage room area reserved for pork or pork products eligible for export to the United States must, among other things, be marked by signs. These additions have increased the estimated annual number of

responses from 3 to 5 and the estimated total annual burden on respondents from 3 hours to 5 hours.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Officials of the national government of the region in which the pork-filled pasta is processed and operators of pork filled pasta product processing facilities.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 2.5.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25084 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0063]

International Trade Data System Test Concerning the Electronic Submission to the Automated Commercial Environment of Data Using the Partner Government Agency Message Set

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS), in coordination with U.S. Customs and Border Protection (CBP), has developed a pilot plan to test and assess the International Trade Data System for the electronic submission of data required by APHIS Animal Care, Biotechnology and Regulatory Services, Plant Protection and Quarantine, and Veterinary Services for processing in the Automated Commercial Environment (ACE). The pilot test will use the APHIS Partner Government Agency (PGA) Message Set and the Automated Broker Interface to transmit, and ACE to process, trade data required for the importation of plants, animals, and their products regulated by APHIS. Under this test, PGA Message Set data may be filed only at certain ports.

DATES: The test will commence no earlier than October 2, 2015, and will continue until concluded by publication of a notice ending the test. Participants should consult the PGA Pilot Rollout Plan, available at <http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>, to determine which ports are operational and the date they become operational. Comments will be accepted through the duration of the test.

ADDRESSES: You may submit comments by the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0063>.

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS-2015-0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

- **Email:** Send your comment to Ms. Josephine Baiamonte, ACE Business Office, Office of International Trade, U.S. Customs and Border Protection, DHS, 1400 L Street, NW., 2nd floor, Washington, DC 20229-1225 at josephine.baiamonte@cbp.dhs.gov. In the subject line of the email, please

indicate, "Comment on PGA Message Set Test FRN."

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment or Automated Broker Interface transmissions, contact your assigned CBP client representative. Interested parties without an assigned client representative should direct their questions to Mr. Steven Zaccaro, U.S. Customs and Border Protection, DHS, 1400 L Street NW., 2nd floor, Washington, DC 20229-1225; steven.j.zaccaro@cbp.dhs.gov.

For PGA-related questions, contact Ms. Emi Wallace, U.S. Customs and Border Protection, DHS, 1400 L Street NW., 2nd floor, Washington, DC 20229-1225; emi.r.wallace@cbp.dhs.gov.

For APHIS Program-related questions, contact Ms. Cindy Walters, APHIS Liaison for Automated Commercial Environment, International Trade Data System, Management and Program Analyst, Quarantine Policy and Analysis Staff, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20720; 301-851-2273; Cindy.L.Walters@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2170, December 8, 1993; see 19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions or test new automated

procedures. Each release will begin with a test and will end with mandatory use of the new ACE feature and, where applicable, the retirement of the corresponding legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

The Automated Broker Interface (ABI) allows participants to electronically file required import data with CBP and transfers that data into ACE.

International Trade Data System

This test is in furtherance of the International Trade Data System (ITDS), which is authorized by section 405 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act, Pub. L. 109-347). The purpose of ITDS, as defined by section 405 of the SAFE Port Act, is to eliminate redundant information filing requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

II. Partner Government Agency Message Set

The Partner Government Agency (PGA) Message Set is the data needed to satisfy the PGA reporting requirements. For purposes of this test, the subject PGA is the Animal and Plant Health Inspection Service (APHIS). ACE enables the message set by acting as the "single window" for the submission of trade-related data required by the PGAs only once to CBP. This data must be submitted at any time prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Entry/ Cargo Release or Entry Summary. The data will be validated and made available to the relevant PGAs involved in import, export, and transportation-related decision making. The data will be used to fulfill merchandise entry and entry summary requirements. Also, by virtue of being electronic, the PGA Message Set will reduce the need for the submission and subsequent handling of paper documents. All PGA Message Set participants are required to use a software program that has completed ACE certification testing for the PGA Message Set.

Test participants may use the Document Imaging System (DIS) to electronically transmit the following forms and documents required by APHIS:

- APHIS 2006, U. S. Veterinary Biological Product Permit;
- APHIS VS 17-29, Declaration of Importation;
- APHIS VS 17-32, Application for Inspection and Dipping;
- Producers and Manufacturers Statements (sometimes called STATs); and
- Validation documentation, including all documents required to determine entry suitability, such as bills, packing lists, invoices, ingredients lists, and proofs of origin, among others.

For information regarding the use of DIS, and for updates to the list of PGA forms and documents which may be transmitted to ACE using DIS, please visit the DIS tab at: <http://www.cbp.gov/trade/ace/features> or the APHIS Web site at <http://www.aphis.usda.gov/import-export/itds>.

Upon initiation of this test, CBP will accept electronically for ACE processing data filed by test participants at specified ports through the ABI. The data elements required for ACE processing are the same as those currently submitted in ACS or provided using paper APHIS forms. These data elements are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for APHIS. These technical specifications, including the CATAIR chapters can be found online at <http://www.cbp.gov/trade/ace/catair>.

CBP intends to expand ACE to cover all entry types and will publish a notice in the **Federal Register** announcing the expansion. In addition, CBP will make the announcement on its Web site and will reach out to entry filers via the Cargo Systems Messaging Service (CSMS). Trade members may subscribe to CSMS to receive email notifications from CBP regarding important information. For information about subscribing to CSMS, please go to: http://apps.cbp.gov/csms/csms.asp?display_page=1.

Once CBP announces that ACE is required for all import entry types, parties in this test will be required to file some or all APHIS forms for all entry types at test operational ports using either ACE, ABI, or DIS, as designated on the CBP Web site. APHIS will still collect some paper documentation, such as phytosanitary certificates, and health certificates for live animals and animal products, due to Office of Management and Budget (OMB) requirements. Information about the ways in which data may be submitted is available on the CBP Web site at <http://www.cbp.gov/document/guidance/ace-cargo-release-business-transformation-process-document>. The

entry filing at the pilot project ports will continue until the pilot project is completed or when participation is ended.

Participants should consult the CBP Web site to determine which ports are operational for the test and the date that they become operational: <http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>. Test participants and interested parties should continue to consult the CBP Web site for changes to the list of ports that are operational for this test.

III. The APHIS Test

APHIS participation in this test will include selected forms and data required for admissibility determinations based on APHIS regulations. Under this test, APHIS required data will be transmitted electronically to ACE using the appropriate submission method. Information about this and other APHIS ITDS pilot projects can be found on the APHIS Web site at <http://www.aphis.usda.gov/import-export/itds>.

This test will cover all modes of transport at the selected port(s), and all plants, animals, and plant and animal products when imported at one of the selected ports.

The import filing process for APHIS will require the submission of specifically designated information. The core submission will include DIS and paper submission for certain items due to OMB requirements. The designated PGA Message Set will be used to collect specified information that is required by APHIS. The PGA Message Set data will be submitted to ACE system through the use of the ABI at the time of the entry filing in addition to the CBP required import Entry or Entry Summary data. Examples of the kind of data that will be submitted as part of the PGA Message set are: Importer name, port of arrival, country of origin, quantity, commodity name, scientific name, and permit numbers.

We will accept applications starting October 2, 2015 and will continue to accept applications throughout the duration of the test. Any party seeking to participate in this test must provide to APHIS, in its request to participate, the name of its organization, its point of contact for the pilot, and contact information (phone number and email address). Submit your request to participate in this test by sending an email to ace.itds@aphis.usda.gov. In the subject line, please indicate, "Request to Participate in APHIS PGA Message Set Test." Participants must also contact their assigned CBP client representative to ensure readiness to participate in a

pilot (see **FOR FURTHER INFORMATION CONTACT** above for instructions for contacting CBP if you do not have an assigned client representative). CBP will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit their application.

At this time, PGA Message Set data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the CBP Web site at <http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>.

This test covers communication and coordination among the agencies and the filers of data through the PGA Message Set for the importation of plants, animals, and plant and animal products regulated by APHIS. Entry data submissions will be subject to validation edits and any applicable PGA business rules programmed into ACE. Once all of the PGAs have concluded their review of the shipment, issued a "May Proceed," and have unset any remaining holds, CBP will send a single U.S. Government release message to the filer indicating that CBP has conditionally released the goods.

IV. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. Participation in this test is not confidential and upon a written Freedom of Information Act request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25082 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0049]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Baby Corn and Baby Carrots From Zambia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of baby corn and baby carrots from Zambia into the continental United States.

DATES: We will consider all comments that we receive on or before December 1, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0049>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0049> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of baby corn and baby carrots from Zambia, contact Mr. Hesham Abuelnaga, Trade Director, PIM, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851-2010. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Baby Corn and Baby Carrots From Zambia.

OMB Control Number: 0579-0284.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-73).

In accordance with § 319.56-43, baby corn and baby carrots from Zambia are subject to certain conditions before entering the continental United States to prevent the introduction of plant pests into the United States. The regulations include requirements for the use of a phytosanitary certificate issued by the national plant protection organization (NPPO) of Zambia stating that the commodity was inspected and found free of certain pests.

The information collection activity of a phytosanitary certificate was approved by the Office of Management and Budget (OMB) under control number 0579-0284. However, when we compared the regulations with this collection activity, we found that inspection of production sites was omitted. Therefore, we have added inspection of production sites to this collection.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.4 hours per response.

Respondents: Importers and exporters of baby corn and baby carrots and the NPPO of Zambia.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 1.67.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 14 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25085 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0044]

Notice of Request for Extension of Approval of an Information Collection; Importation of Shelled Peas From Kenya

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of shelled peas from Kenya.

DATES: We will consider all comments that we receive on or before December 1, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0044>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2015-0044, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0044> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of shelled peas from Kenya, contact Mr. Hesham Abuelnaga, Trade Director, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851-2010. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Shelled Peas From Kenya.

OMB Control Number: 0579-0302.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–73).

Under these regulations, shelled peas from Kenya are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require that shipments of peas be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Kenya with an additional declaration stating that the peas have been shelled and washed in accordance with § 319.56–45 and have been inspected and found free of certain plant pests.

We are asking the Office of Management and Budget (OMB) to

approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Importers and the Kenyan NPPO.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1.

Estimated total annual burden on respondents: 1 hour. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-25088 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. APHIS–2015–0066]

Notice of Request for Approval of an Information Collection; Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection concerning packaging and labeling for products approved in accordance with the Virus-Serum-Toxin Act.

DATES: We will consider all comments that we receive on or before December 1, 2015.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0066>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2015–0066, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0066> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on packaging and labeling requirements for products approved under the Virus-Serum-Toxin Act, contact Dr. Donna L. Malloy, Section Leader, Operational Support, Center for Veterinary Biologics Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 851–3426. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION: *Title:* Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling.

OMB Control Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: Under the Virus-Serum-Toxin Act (the Act, 21 U.S.C. 151–159) and regulations issued under the Act, the Animal and Plant Health Inspection Service (APHIS) grants licenses or permits for biological products which are pure, safe, potent, and efficacious when used according to label instructions.

The regulations in 9 CFR part 112, “Packaging and Labeling” (referred to below as the regulations), prescribe requirements for the packaging and labeling of veterinary biological products including requirements applicable to final container labels, carton labels, and enclosures. The main purpose of the regulations in part 112 is to regulate the packaging and labeling of veterinary biologics in a comprehensive manner, which includes ensuring that labeling provides adequate instructions for the proper use of the product, including vaccination schedules, warnings, and cautions. Complete labeling (either on the product or accompanying the product) must be reviewed and approved by APHIS in accordance with the regulations in part 112 prior to their use.

On January 13, 2011, we published in the **Federal Register** (76 FR 2268–2277, Docket No. APHIS–2008–0008) a proposal¹ to amend the regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice. Among other things, for labels for export, we proposed to require licensees and permittees to complete, and submit to APHIS, the Transmittal of Labels and Circulars or Outlines form (APHIS Form 2015), maintain label records, and for labels that do not comply with APHIS regulations for packaging and labeling, to provide written authorization statements from foreign veterinary officials of the importing country stating that the labels for export comply with the requirements of their country (importing country).

When we listed the above information collection activities in the proposed rule, we inadvertently did not obtain approval from the Office of Management and Budget (OMB). By this notice, we are asking OMB to approve our use of this information collection for 3 years and to assign an OMB control number.

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0008>.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1058 hours per response.

Respondents: Foreign veterinary authorities and U.S. importers and exporters of veterinary biological products.

Estimated annual number of respondents: 200.

Estimated annual number of responses per respondent: 8.5.

Estimated annual number of responses: 1,700.

Estimated total annual burden on respondents: 180 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of September 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–25078 Filed 10–1–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Farm Service Agency**

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Farm Service Agency, USDA.

ACTION: 30-Day notice of submission of information collection approval from

the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Agriculture (USDA), Farm Service Agency (FSA) has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted by November 2, 2015.

ADDRESSES: Written comments may be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Ruth Brown (202) 720-8958 or Charlene Parker (202) 720-8681.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic

clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of June 10, 2015 (80 FR 32929). [Insert summary of comments and response, if applicable].

Farm Service Agency 0560—New

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households.

Average Expected Annual Number of activities: [Agency Estimate].

Respondents: 5,000.

Annual responses: 5,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 5,000.

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 Office of Management and Budget control number.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-25054 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Nominations Open for the Vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Nominations open for the vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition.

SUMMARY: FNS is seeking nominations for 8 vacancies on the National Advisory Council on Maternal, Infant and Fetal Nutrition (Council). The Council is composed of 24 members. Members of the Council from outside USDA and the U.S. Department of Health and Human Services (HHS) are appointed for 3-year terms. State and local officials may serve only during their official tenure. Parent participants are appointed for 2-year terms. Members appointed from USDA and HHS serve at the pleasure of their respective Secretaries.

The Council studies the operation of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and related programs such as the Commodity Supplemental Food Program (CSFP). Categories of membership are specified by law. To assure a balance of differing views, Council members are drawn from Federal, State and local governments, industry, and organizations with a common interest in the management of WIC and CSFP, including parent participants in both programs.

The vacant positions include:

State CSFP Director

The individual responsible for administering the CSFP at the State level. Has operational knowledge about all aspects of CSFP management.

State Health Officer

The official usually referred to as the health commissioner or director, who heads the State health department. This person is responsible for overseeing a wide range of public health services provided by the State health agency.

State Public Health Nutrition Director

The official of the State health department responsible for directing public health nutrition services, which include the areas of maternal, infant and child nutrition, elderly nutrition, and nutrition for persons with developmental disabilities and chronic diseases.

Official From a State Agency Serving Predominantly Indians

Individual responsible for WIC Program Operations for an Indian Tribal Organization. WIC authorizing legislation allows Indian tribes, bands or groups that are recognized by the Department of Interior to operate as State agencies independent of geographic WIC State agencies.

Local CSFP Project Director

The individual responsible for administering the CSFP at the local level. Has operational knowledge about all aspects of CSFP management.

CSFP Parent Participant

A pregnant, postpartum or breastfeeding woman, or the parent/guardian of an infant and/or child participating in CSFP.

Person Involved at the Retail Sales Level of Food

An individual from a company or organization involved in retail food sales.

Expert in Drug Abuse Education and Prevention

An individual experienced in alcohol abuse education and prevention, especially in the areas of screening, counseling and referring for treatment of pregnant and postpartum women.

Section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786), mandates the Council and authorizes the Secretary of Agriculture to appoint the members. The White House Liaison Office is responsible for vetting every candidate who applies for membership to the Council. In order to be appointed by the Secretary of Agriculture to serve on a board, council or committee, each applicant must clear all stages of the vetting process. Vetting is a comprehensive personal and professional background investigation that specifically includes, but is not limited to, an analysis of each candidate's criminal history, bankruptcy filings, liens and judgments, affiliations and associations, lobbyist status, and prior involvement with USDA.

This process is used to ensure that the finest candidates are selected to represent the interests of the United States Department of Agriculture. Individuals and organizations who wish to nominate experts for this or any other USDA advisory committee should submit a letter to the Secretary listing these individuals' names and business address, phone, and email contact information. These individuals may be contacted now or in the future to determine their interest in serving as a committee member.

Candidates who wish to be considered for membership on the Council should submit an AD-755 application form and resume to the Secretary of Agriculture. Cover letters should be addressed to the Secretary of Agriculture. All nomination materials should be mailed in a single, complete package and postmarked by November 2, 2015 to: Thomas Vilsack, Secretary,

U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250 at the attention of Robin Young, DFO, USDA/FNS/SFPD. The application form and more information about advisory committees can be found at http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=advisory_committees.xml.

FNS has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on these advisory committees. We encourage and welcome nominations for qualified female, minority, or disabled candidates.

Dated: September 18, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015-25052 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE**Forest Service****Idaho Roadless Area Boundary Modification; Caribou-Targhee National Forest**

AGENCY: Forest Service, USDA.

ACTION: Notice of final Idaho Roadless Area boundary modification.

SUMMARY: The Forest Service, U.S. Department of Agriculture (USDA), is modifying the boundary of the West Mink Idaho Roadless Area on the Caribou-Targhee National Forest to relocate and expand the Gibson Jack Trailhead and also to incorporate the area bordering another trail that was previously excluded from the Roadless Area. These modifications are pursuant to 36 CFR 294.27(b).

DATES: These modifications are effective October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Idaho Roadless Coordinator Anne Davy at (406) 329-3314. Additional information concerning this modification, including the corrected map, may be obtained on the Internet at <http://www.fs.usda.gov/detail/roadless/idahoroadlessrule/?cid=stelprdb5382399>. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following modification changes the boundary of the West Mink Idaho Roadless area. Approximately 11.4 acres

are removed from the West Mink Roadless Area allow for the relocation and expansion of the Gibson Jack Trailhead. This modification also adds 18 acres to the Roadless Area by incorporating an area (or "cherry stem") that was originally carved out of the Roadless Area. This 18 acre area follows a closed Forest Service road that has since been converted to a motorized trail. These boundary modifications result in a net increase of 6.6 acres.

The Idaho Roadless Rule authorizes modifications to the maps of lands identified in 36 CFR§ 294.22(c), including but not limited to, additions, removals, or modifications of the designations and management classifications listed in 36 CFR§ 294.29 based on changed circumstances or public need. The Chief of the Forest Service may issue modifications after a 45-day public notice and opportunity to comment.

The Forest Service published notice of the proposed boundary modification in the **Federal Register** on July 8, 2015 for a 45-day public comment period. The Forest Service presented the modifications to the State of Idaho's Roadless Rule Advisory Commission on June 28, 2012 and the Governor of Idaho recommended the Forest Service proceed with the modification on August 29, 2013.

Consideration of Comments

The Forest Service received one comment on the proposed boundary modification. The Idaho Department of Parks and Recreation supported the proposed modification because it would result in a net gain to the roadless area and would improve parking at the Gibson Jack trailhead.

Modifications to Relocate and Expand the Gibson Jack Trailhead

West Mink Idaho Roadless Area #151. Approximately 11.4 acres are removed from the roadless area to allow for the construction of a new trailhead that will improve public access and safety for trail users, meet recreation demand, and improved the area's manageability for the Caribou-Targhee. In addition, 18.0 acres are added to the roadless area by incorporating a Forest Service trail into the roadless area. These changes result in a 6.6-acre increase in backcountry restoration-themed acres.

Dated: September 28, 2015

Thomas L. Tidwell

Chief, Forest Service.

[FR Doc. 2015-25136 Filed 10-1-15; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****San Bernardino National Forest, California, Proposed North-South Project EIR/EIS**

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a joint Environmental Impact Report/ Environmental Impact Statement for the North-South Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, notice is hereby given that the San Bernardino National Forest (Forest Service), together with the California Public Utilities Commission (CPUC), intend to prepare a joint Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Southern California Gas Company (SoCal Gas) and San Diego Gas and Electric (SDG&E) proposed North-South Project.

DATES: All scoping comments must be received by November 23, 2015. The draft environmental impact statement is expected June 2016 and the final environmental impact statement is expected December 2016.

ADDRESSES: You may submit comments to Eric Chiang, California Public Utilities Commission, and Jody Noiron, Forest Supervisor, San Bernardino National by any of the following methods:

Email: North-South@ene.com.

Mail: Public Scoping Comments, RE: North-South Project, 505 Sansome Street, Suite 300, San Francisco, CA 94111.

Fax: (415) 398-5326.

FOR FURTHER INFORMATION CONTACT:

Information can be requested by leaving a voice message at (844) 277-2475, or by checking the project Web site at <http://www.cpuc.ca.gov/Environment/info/ene/n-s/northsouth.html>.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The primary components of the Proposed Project include the construction of a 36-inch-diameter natural gas transmission pipeline and the rebuilding of the Adelanto Compressor Station. The pipeline would be primarily constructed within existing public and private rights-of-way. The Adelanto to Moreno pipeline would be approximately 65 miles in length and would begin at the Adelanto Compressor Station in the

high desert city of Adelanto and would proceed in a southerly direction through the Cajon Pass and the San Bernardino National Forest, terminating at the Moreno Pressure Limiting Station in the City of Moreno Valley. Approximately eight miles of the proposed pipeline and associated temporary construction areas cross lands subject to Forest Service jurisdiction. The balance of the alignment crosses through non-federal land in San Bernardino and Riverside Counties along public roads.

The Adelanto Compressor Station would be rebuilt with approximately 30,000 horsepower (HP) of compression in order to accommodate the design throughput. Additional Proposed Project components include: (i) Installation of additional pressure limiting equipment at Moreno Pressure Limiting Station and Whitewater Pressure Limiting Station, (ii) installation of pressure limiting equipment at the proposed Shaver Summit Pressure Limiting Station near the City of Indio and at the Desert Center Compressor Station near the community of Desert Center, and (iii) installation of 16 main line block valves.

Purpose and Need for Action

The Forest Service must respond to SoCalGas and SDG&E's application for a new natural gas transmission pipeline in the Cajon Pass designated utility corridor in a manner that is consistent with the Forest Service special use regulations (36 CFR part 251 Subpart B), the Mineral Leasing Act of 1920, as amended, and the Land Management Plan (LMP). The Forest Service purpose and need will guide the development of alternatives considered on National Forest System lands.

The Cajon Pass corridor has a long history of serving as a major utility and transportation corridor into southern California. It was designated as a utility corridor when the LMP was revised in 2006, and was included as a "Section 368" corridor by the LMP amendment signed by the Natural Resources and Environment Under Secretary of Agriculture in 2009. Designated corridors are the primary agency alternative for siting energy transmission projects.

Permits issued by the Forest Service are required by law to be consistent with the LMP. The LMP identifies suitable uses within various land use zones, describes desired conditions based on the LMP goals and objectives, and sets resource management standards. The joint EIR/EIS will evaluate the consistency of the proposed project and any alternatives with the LMP. Based on an initial review of the

proposed project, project specific LMP amendments may be required to resolve potential conflicts with the plan Land Use Zones and the plan standards associated with riparian areas, scenery management, and the Pacific Crest Trail.

Proposed Action

The Forest Service proposed action would authorize the construction, operation, and maintenance of a 36-inch-diameter natural gas transmission line, associated valve stations, and access roads on National Forest System lands within the San Bernardino National Forest. Temporary work areas or areas needed for pre-construction surveys, including geological explorations, would also be authorized. The pipeline Right-of-Way would be authorized by a 50 year permit or easement under the authority of the Mineral Leasing Act.

Possible Alternatives

The EIR/EIS will describe and evaluate the comparative merits of a reasonable range of alternatives to the proposed action. Alternatives to be analyzed in the EIR/EIS will be developed during the environmental review process and will consider input received during scoping, and will include the no action alternative as required by law.

Responsible Official

The Responsible Official for the Forest Service decision is Randy Moore, Regional Forester, Pacific Southwest Region. Jody Noiron, Forest Supervisor, San Bernardino National Forest, will be the Forest Service official responsible for conducting the environmental review.

Nature of Decision To Be Made

The CPUC has independent jurisdiction over the entire project, and will determine if SoCalGas' and SDG&E's application for authority to recover North-South Project revenue requirements in customer rates, and for approval of related cost allocation and rate design proposals, is in the public interest, and if so, under what conditions the authority would be granted. If the CPUC approves the proposed project, the Forest Service will decide whether or not to authorize the portions of the project on National Forest System lands, and if so, under what conditions.

Preliminary Issues

The Forest Service and CPUC have identified potential issues and impacts to the existing environment that require a detailed analysis in the EIR/EIS. Those

issues and impacts include aesthetics, air quality, biological resources, heritage resources, paleontological resources, greenhouse gas emissions, fire, water quality, land use, noise, public services, recreation, socioeconomic and environmental justice, roadless areas (Cajon Roadless Area), and transportation. No determinations have yet been made as to the significance of these potential impacts; such determinations will be made in the environmental analysis conducted in the EIR/EIS after the issues are considered thoroughly. This overview is presented to assist the public and agencies in preparing written scoping comments.

Permits or Licenses Required

SoCalGas and SDG&E would be required to obtain any applicable discretionary and ministerial permits from federal, state, and local agencies prior to construction of the project. Those permits could include, but are not limited to, permits or certificates required by the Clean Water Act and administered by the United States Army Corps of Engineers and the State and Regional Water Resource Control Boards, permits related to the Clean Air Act administered by the State or Regional Air Quality Control Boards, and wildlife and habitat related permits administered by the United States Fish and Wildlife Service and California Department of Fish and Wildlife.

Invitation to Cooperating Agencies

The Forest Service invites federal, state, or local agencies and tribes to join as cooperating agencies. Requests for cooperating agency status may be submitted to Forest Supervisor Jody Noiron, San Bernardino National Forest, 602 S. Tippecanoe Ave., San Bernardino, CA 92408.

Scoping Process

The CPUC and Forest Service are initiating the joint CEQA/NEPA scoping process with this Notice of Intent and associated Joint Notice of Preparation/Scoping Notice. The comments received during scoping will help guide the development of the EIR/EIS. Three public meetings will be held during the scoping process to answer questions about the proposed project and to accept comments on the scope of the analysis. Meetings will be held at the following dates and locations:

1. October 27, 2015 from 6 to 8:30 p.m. at San Geronio High School, 2299 Pacific Street, San Bernardino, CA
2. October 28, 2015 from 6 to 8:30 p.m. at the Courtyard Marriott, 9619 Mariposa Road, Hesperia, CA

3. October 29, 2015 from 6 to 8:30 p.m. at the Moreno Valley Conference and Recreation Center, 14075 Frederick Street, Moreno Valley, CA

It is important that reviewers provide their comments at such times and in such a way that they are useful to the CPUC and Forest Service preparation of the EIR/EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received during scoping, including names and addresses of those who comment, will be part of the public record for this proposed project. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Forest Service with the ability to provide the respondent with subsequent environmental documents and will not provide the respondent standing to participate in subsequent administrative or judicial review of the Forest Service decision. This project will follow the predecisional administrative review process pursuant to 36 CFR 218, Subparts A and B.

Dated: September 28, 2015.

Jody Noiron,

Forest Supervisor, San Bernardino National Forest, USDA Forest Service.

[FR Doc. 2015-25095 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Utility Service

Submission for OMB Review; Comment Request

September 28, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (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, New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: 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) 720-8681.

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.

Rural Utilities Service

Title: 7 CFR 1744-E, Borrower Investments—Telecommunications Loan Program.

OMB Control Number: 0572-0098.

Summary of Collection: The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101-624, authorized qualified Rural Utilities Service (RUS) borrowers to make investments in rural development projects without the prior approval of the RUS Administrator, provided, however that such investments do not cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. RUS requests that the borrower submit (1) a description of the rural development project and type of investment; (2) a reasonable estimate of the amount the borrower is committed to provide to the project including future expenditures; and (3) a pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to determine that the "excess" or proposed "excess" investments will not impair the borrower's ability to repay the loan or cause financial hardship.

Need and Use of the Information: RUS will collect information to consider whether or not to approve a borrower's request to make an investment in a rural development project when such an investment would cause the borrower to

exceed its allowable investment level. If this information was not collected, RUS could not thoroughly assess the economic impact of such an investment.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-25053 Filed 10-1-15; 8:45 am]

BILLING CODE 3410-15-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a planning meeting of the Connecticut Advisory Committee to the Commission will convene at 1:00 p.m. (EDT) on Thursday, October 28, 2015, by teleconference. The purpose of the planning meeting is for the Committee to discuss civil rights topics and potential projects and vote on an issue for the Committee to examine in a 2016 briefing meeting.

Interested members of the public may listen to the discussion by calling the following toll-free conference call number 1-888-587-0615 and conference call code: 682009#. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800-977-8339 and providing the operator with the above conference call number and conference call code.

Members of the public are invited to submit written comments; the

comments must be received in the regional office by Monday, November 30, 2015. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376-7548, or emailed to Evelyn Bohor at ero@usccr.gov. Persons who desire additional information may contact the Eastern Regional Office at (202) 376-7533.

The activities of this advisory committee, including records and documents discussed during the meeting, will be available for public viewing, as they become available at: <https://database.faca.gov/committee/meetings.aspx?cid=239>. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, www.usccr.gov, or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Administrative Matters

Barbara Delaviez, Deputy Director, Eastern Regional Office and Designated Federal

Official

Discussion of Potential Civil Rights topics

Alex A. Knopp, Chair

Vote to Select a Topic

CT State Advisory Committee

DATES: Thursday, October 28, 2015 at 1:00 p.m. (EDT).

ADDRESSES: The meeting will be held via teleconference:

Public Call Information:

Conference Call-in Number: 1-888-587-0615; Conference Call ID code: 682009#.

TDD: Dial Federal Relay Service 1-800-977-8339 and give the operator the above conference all-in number and conference call code.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis at ero@usccr.gov, or 202-376-7533.

Dated: September 28, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015-25034 Filed 10-1-15; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kentucky Advisory Committee for a Meeting To Welcome New Members of the Committee and Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kentucky (State) Advisory Committee will hold a meeting on Thursday, October 22, 2015, for the purpose of welcoming new members to the committee and discussing potential projects.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 1-888-481-2877, conference ID: 900515. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also invited to make statements during the scheduled open period of the agenda. Alternatively, the public can submit written comments; the comments must be received in the regional office by October 16, 2015. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562-7005, or emailed to Regional Director, Jeffrey Hinton at jhinton@usccr.gov. Persons who desire additional information may contact the Southern Regional Office at (404) 562-7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Kentucky Advisory Committee link. Persons interested in the work of this

Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Southern Regional Office at the above email or street address.

DATES: The meeting will be held on Thursday, October 22, 2015, at 1:00 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 1-888-481-2877, conference ID: 900515.

Agenda

Welcome and Introductions of new advisory committee members
Dr. Betty Griffin, Chair
Kentucky Advisory Committee discussion of potential project topics
Dr. Betty Griffin, Chair
Open Comment
Advisory Committee
Public Participation
Adjournment

Dated: September 28, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015-25035 Filed 10-1-15; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina (State) Advisory Committee (SAC) for a meeting to discuss potential project topics.

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the North Carolina (State) Advisory Committee will hold a meeting on Wednesday, October 21, 2015, for the purpose of discussing potential project topics.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888-397-5352, conference ID: 793192. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal

Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also invited to make statements during the scheduled open comment period of the agenda. Alternatively, the public can submit written comments; the comments must be received in the regional office by October 16, 2015. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562-7005, or emailed to Regional Director, Jeffrey Hinton at jhinton@usccr.gov. Persons who desire additional information may contact the Southern Regional Office at (404) 562-7000.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Southern Regional Office at the above email or street address.

DATES: The meeting will be held on Wednesday, October 21, 2015, at 1:00 p.m. EST.

ADDRESSES: The meeting will be by teleconference. Toll-free call-in number: 888-397-5352, conference ID: 793192.

Agenda

Welcome and Introductions
Matty Lazo- Chadderton, Chair
North Carolina Advisory Committee discussion of potential project topics
Matty Lazo- Chadderton, Chair
Open Comment
Advisory Committee
Public Participation
Adjournment

Dated: September 28, 2015.

David Mussatt, Chief,

Regional Programs Unit.

[FR Doc. 2015-25036 Filed 10-1-15; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-938]

Citric Acid and Certain Citrate Salts from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2014

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

DATES: *Effective Date:* October 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3874.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2015, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the countervailing duty order on citric acid and certain citrate salts (citric acid) from the People's Republic of China (PRC) for the period of January 1, 2014, through December 31, 2014.¹ In May and June 2015, the Department received timely requests,² in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), for an administrative review of this countervailing duty order from the Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC (collectively, "the petitioners"); Laiwu Taihe Biochemistry Co., Ltd. (Taihe); and RZBC Co., Ltd./RZBC Import & Export Co., Ltd./RZBC (Juxian) Co., Ltd. (collectively, "RZBC Group").³ On July 1, 2015, the Department published in the **Federal Register** a notice of initiation with respect to Taihe and RZBC Group.⁴

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 24898 (May 1, 2015).

² Because the last day of the anniversary month fell on a weekend, we note that the last day parties could timely request an administrative review of orders with May anniversary dates was June 1, 2015. Therefore, the petitioners' review request dated June 1, 2015, was timely filed.

³ See letters requesting an administrative review from the Taihe, RZBC Group, and the petitioners, dated May 28, May 29, and June 1, 2015, respectively.

⁴ See *Initiation of Antidumping Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015).

In July 2015, the petitioners, Taihe, and RZBC Group withdrew their administrative review requests.⁵

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioners, Taihe, and RZBC Group each withdrew their requests for review by the 90-day deadline. Therefore, we are rescinding the administrative review of the countervailing duty order on citric acid from the PRC covering the period January 1, 2014, through December 31, 2014.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: September 25, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–25166 Filed 10–1–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2013–2014

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

SUMMARY: On April 6, 2015, the Department of Commerce (Department) published its preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand covering the period of review (POR) March 1, 2013, through February 28, 2014.¹ This review covers two producers and/or exporters of the subject merchandise, Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai), and Pacific Pipe Company Limited (Pacific Pipe). For the final results, we continue to find that Saha Thai and Pacific Pipe did not sell subject merchandise to the United States at below normal value during the POR. The final results are listed in the section entitled “Final Results of Review” below.

DATES: *Effective date:* October 2, 2015

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski at (202) 482–1395; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2015, we invited parties to comment on the *Preliminary Results*. Saha Thai submitted a case brief on August 20, 2015. No other parties submitted case briefs or rebuttal briefs for this proceeding.

The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches

or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as “standard pipe” or “structural tubing” are hereinafter designated as “pipes and tubes.” The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

We have analyzed the comments submitted by Saha Thai. In its case brief, Saha Thai made several arguments objecting to the Department’s differential pricing analysis. The Department has used the standard A-to-A method to calculate Saha Thai’s weighted-average dumping margin (unchanged from the *Preliminary Results*).² Therefore, it is not necessary to address the comments raised by Saha Thai in a separate Issues and Decision Memorandum.

Changes Since the Preliminary Results

We made changes to Pacific Pipe’s calculation for the final results. Specifically, we (1) used updated sales and cost of production databases, (2) adjusted the home market sales cost of production databases based on minor corrections at verification, (3) revised Pacific Pipe’s reported per-unit costs to correspond to the reported total cost of manufacturing of the merchandise under consideration, and (4) revised Pacific Pipe’s general and administrative expense rate.³ We made no changes to Saha Thai’s calculations.

Final Results of Review

The final weighted-average dumping margins for the period March 1, 2013,

² See Memorandum to the File, “Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes From Thailand: Saha Thai Steel Pipe (Public) Company, Ltd. Preliminary Analysis Memorandum” (March 31, 2015) at page 2.

³ See Memorandum to the File, “Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes From Thailand: Saha Thai Steel Pipe (Public) Company, Ltd. Final Analysis Memorandum” dated concurrently with this notice; see also Memorandum to Neal M. Halper, Director, Office of Accounting, “Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes & Tubes From Thailand, Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Pacific Pipe Public Company Limited” dated concurrently with this notice.

⁵ See the letter withdrawing request for an administrative review from RZBC Group, dated July 2, 2015; see also the letters withdrawing requests for an administrative review from the petitioners and Taihe, dated July 31, 2015.

¹ See *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 18354 (April 6, 2015) (*Preliminary Results*).

through February 28, 2014, are as follows:

Producer/Exporter	Weighted-average dumping margin (percent)
Saha Thai Steel Pipe (Public) Company, Ltd	0.00
Pacific Pipe Company Limited	0.00

Assessment Rates

In accordance with 19 CFR 351.106(c)(2) and the *Final Modification for Reviews*,⁴ the Department will instruct CBP to liquidate appropriate entries for Saha Thai and Pacific Pipe without regard to antidumping duties.

The Department clarified its “automatic assessment” regulation on May 6, 2003.⁵ This clarification applies to entries of subject merchandise during the POR produced by Saha Thai and Pacific Pipe for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of circular welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Saha Thai and Pacific Pipe will be 0.00 percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the

manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation, then the cash deposit rate will be the “all-others” rate of 15.67 percent established in the LTFV investigation.⁶ These deposit rates, when imposed, shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

The Department is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 25, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–25168 Filed 10–1–15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820, A–588–843, A–580–829, A–469–807, A–583–828]

Stainless Steel Wire Rod From Italy, Japan, the Republic of Korea, Spain, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on stainless steel wire rod (SSWR) from Italy, Japan, the Republic of Korea (Korea), Spain, and Taiwan would be likely to lead to continuation or recurrence of dumping at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: *Effective Date:* October 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Stephen Bailey or Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2015, the Department published the notice of initiation of the third sunset reviews of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).¹ On May 15, 2015, the Department received a Notice of Intent to Participate in these reviews from Carpenter Technology Corporation (Carpenter), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i). Carpenter claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of a domestic-like product in the United States. On June 1, 2015, we received a complete substantive response for each review from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).²

¹ See *Initiation of Five-Year (“Sunset”) Reviews*, 80 FR 24900 (May 1, 2015).

² See June 1, 2015, letters from the petitioners regarding “Five-Year (3rd Sunset) Review of the Antidumping Duty Orders on Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, and Taiwan Substantive Response.”

⁴ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

⁵ For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

⁶ See *Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986).

We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of these orders.

Scope of the Orders

The merchandise subject to these orders is SSWR. The products subject to these orders are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.³

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1),(2) and (3) of the Act, we determine that revocation of the antidumping duty orders on SSWR from Italy, Japan, Korea, Spain, and Taiwan

would be likely to lead to continuation or recurrence of dumping up to the following weighted-average margin percentages:

Country	Weighted-average margin (percent)
Italy	11.25
Japan	33.58
Korea	28.44
Spain	2.71
Taiwan	2.22

Notification to Interested Parties

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: August 27, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. History of the Orders
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2015-25151 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

Certain Tissue Paper Products From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (the Department) finds that revocation of the antidumping duty order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Sunset Review" section of this notice.

DATES: *Effective Date:* October 2, 2015.

FOR FURTHER INFORMATION: Terre Keaton Stefanova or Brian Smith, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2005, the Department published the antidumping duty order on tissue paper from the PRC.¹ On June 1, 2015, the Department published the notice of initiation of the second sunset review of the antidumping duty order on tissue paper from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On June 15, 2015, the Department received a Notice of Intent to Participate in this review from the following domestic producers of tissue paper: Seaman Paper Company of Massachusetts, Inc., Eagle Tissue LLC, Flower City Tissue Mills Co. and Garlock Printing & Converting Inc. (collectively, "the petitioners"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers or wholesalers of a domestic like product in the United States. On June 30, 2015, we received a complete substantive response from the petitioners within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).³ We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department

³ A full description of the scope of the orders is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Stainless Steel Wire Rod from Italy, Japan, the Republic of Korea, Spain, and Taiwan" (Issues and Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products From the People's Republic of China*, 70 FR 16223 (March 30, 2005) (Order).

² See *Initiation of Five-Year ("Sunset") Review*, 80 FR 31012 (June 1, 2015).

³ See June 30, 2015, letter from the petitioners regarding "Certain Tissue Paper Products from the People's Republic of China: Substantive Response to Notice of Initiation."

conducted an expedited (120-day) sunset review of this order.

Scope of the Order

The merchandise subject to the order is certain tissue paper products. The merchandise subject to the order is classifiable under subheadings: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40.2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043 and 2003.10.0047 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.⁴

Analysis of Comments Received

All issues raised in this review, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the order were revoked, are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the

antidumping duty order on tissue paper from the PRC would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be at weighted-average margins up to 112.64 percent.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: September 25, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. History of the Order
- V. Legal Framework
- VI. Discussion of the Issues
 - A. Likelihood of Continuation or Recurrence of Dumping
 - B. Magnitude of the Margins Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2015–25153 Filed 10–1–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology, U.S. Department of Commerce.

Title: Community Resilience Panel.

OMB Control Number: 0693–XXXX.

Form Number(s): None.

Type of Request: Notice, regular submission, information collection.

Number of Respondents: 200.

Average Hours Per Response: .25 Hr.

Burden Hours: 50.

Needs and Uses: The Panel is established under a contract to support NIST in its role under the NIST authorities set forth in 15 U.S.C. 272(b)(10), (c)(12) and (c)(15) and to fulfill NIST's responsibilities described in the President's Climate Action Plan of 2013. The Panel will identify, describe, and prioritize guidance for comprehensive community resilience planning across the United States. The Panel membership form asks the applicant to provide his/her name, title, address, telephone, email address, organization, education, relevant work experience, standards developing experience, professional associations, stakeholder and standing committee areas of interest, as well as other relevant experience and areas of interest. The information provided by the applicants will be used to determine the background and skills of the Panel applicants. This information will also allow the Panel Administrator to organize the Panel and select leaders who will use their expertise and experience in a consensus process.

Affected Public: Organizations and individuals associated with the following stakeholder categories: Business and Industry, Building Construction and Safety, Community Planning, Community Social Institutions, Communications, Energy, Transportation and Water/Wastewater Systems, Facility Operations and Maintenance, Federal, Tribal, Regional, State and Local Governments, Insurance/Reinsurance, Public Health and Healthcare, Education and Research, Relief Services, Standards Development and Vulnerable Populations.

Frequency: Once.

Respondent's Obligation: Each respondent will provide information one time that will be used for Panel membership and leadership determinations.

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

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

⁴ A full description of the scope of the order is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China" (Issues and Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

Dated: September 28, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-25006 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE061

Marine Mammals; File No. 19257

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Ann M. Zoidis, Cetos Research Organization, 11 Des Isle Avenue, Bar Harbor, ME 04609, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*) and other cetacean species.

DATES: Written, telefaxed, or email comments must be received on or before November 2, 2015.

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. 19257 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. 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 and Conservation 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: Rosa L. González or Carrie Hubbard, (301) 427-8401.

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 parts 222-226).

The applicant proposes to address a variety of questions regarding population size, habitat use, and behavior of baleen and odontocete species using passive acoustic monitoring, suction cup tagging, biopsy sampling, underwater photography/videography, and photo ID during vessel surveys in Hawaii and the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands). The research would target humpback whales as well as 25 other species of whales and dolphins. Species may undergo all methodologies (except right whales, which will not be tagged). Incidental harassment for all species is also requested. Research would take place throughout the year. The permit is requested for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 23, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015-24976 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE176

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 45 in-person workshop for Gulf of Mexico Vermilion Snapper.

SUMMARY: The SEDAR 45 assessment of the Gulf of Mexico Vermilion Snapper will consist of one in-person workshop and a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 45 in-person workshop will be held from 1 p.m. on November 17, 2015 until 12 p.m. on November 19, 2015.

ADDRESSES: *Meeting address:* The SEDAR 45 Workshop will be held at the Courtyard Miami Coconut Grove, 2649 South Bayshore Drive, Miami, FL, 33133, 800-321-2211.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. An assessment data set and associated documentation will be developed during the workshop.

2. Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

3. Using datasets selected, participants will develop population models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

4. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 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 the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 29, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015-25110 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE196

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Outreach and Education Advisory Panel (OEAP) will meet.

DATES: The meeting will be held on October 30, 2015, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at CFMC Office, 270 Munoz Rivera Avenue, Suite 401 San Juan, Puerto Rico 00918.

FOR FURTHER INFORMATION CONTACT:

Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The OEAP will meet to discuss the items contained in the following agenda:

10 a.m.–4 p.m.

- Call to Order
- Adoption of Agenda
- OEAP Chairperson's Report:
 - OEAP Members
 - Outreach priorities for 2015–20
 - Conduct 2 MREP training sessions in USVI and PR (Eastern coast)
 - Initiate campaign for Sustainable Seafood Campaign partnering with TNC and UPRSG
 - Calendars
 - Produce Fact Sheets/Infographics/ small posters on:
 - New lobster traps
 - Octopus life cycle
 - Forage fish
 - Handling Fresh Tuna fish
 - Essential Fish Habitats
 - Status of:
 - Island-based FMPs
 - Newsletter
 - Web site
 - 2016 Calendar
 - CFMC Brochure
 - USVI activities
 - PR Commercial Fisheries Project (PEPCO)—Helena Antoun
 - MREP-Caribbean: Helena Antoun
- Other Business

The OEAP meeting will convene on October 30, 2015, from 10 a.m. until 4 p.m. The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolón,

Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766-5926, at least 5 days prior to the meeting date.

Dated: September 29, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015-25112 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE197

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 46 Data/Assessment workshop for Caribbean Data-limited Species.

SUMMARY: The SEDAR 46 assessment of Caribbean Data-limited Species will consist of one in-person workshop and a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 46 Workshop will be held from 1 p.m. on November 2, 2015 until 12 p.m. on November 6, 2015.

ADDRESSES:

Meeting address: The SEDAR 46 Data/Assessment Workshop will be held at the Verdanza Hotel, 8020 Tartak Street, Isla Verda, PR 00979, 1-787-625-9044 or 1-787-253-9000.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571-4366l; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION:

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential

datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. An assessment data set and associated documentation will be developed during the Workshop.
2. Participants will evaluate proposed data and select species for further analysis.
3. Using datasets selected, participants will develop population models using data-limited methodologies to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.
4. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 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 the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 29, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015-25113 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE022

Marine Mammals; File No. 19590

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Terrie Williams, Ph.D., University of California at Santa Cruz, Long Marine Lab, Center for Ocean Health, 100 Shaffer Road, Santa Cruz, CA 95060, to conduct research on captive marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; fax (301) 713-0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301) 427-8401.

SUPPLEMENTARY INFORMATION: On July 28, 2015, notice was published in the **Federal Register** (80 FR 44938) that a request for a scientific research permit had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (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.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes research activities to compare the energetic and cardiovascular responses and diving physiology of odontocetes and pinnipeds to determine key physiological factors including captive bottlenose dolphins (*Tursiops truncatus*) and temporarily held non-

releasable Hawaiian monk seals (*Neomonachus schauinslandi*) at Long Marine Lab. Additional captive marine mammals may be added through cooperative agreements with accredited zoological institutions in the U.S. Other species from rehabilitation and stranding programs in the U.S. may be added opportunistically. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 15, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015-24975 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Sanctuary System Business Advisory Council: Public Meeting

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Sanctuary System Business Advisory Council (Council). The meeting is open to the public, and participants may provide comments at the appropriate time during the meeting.

DATES: The meeting will be held Monday, October 19, 2015, from 9:00 a.m. to 5:00 p.m. EST. An opportunity for public comment will be provided at 4:35 p.m. EDT. These times and the agenda topics described below are subject to change.

ADDRESSES: The meeting will be held in the New England Aquarium's Harborside Learning Lab. The lab is located on the ground floor of the Boston Harbor Garage, which is located

adjacent to the Aquarium at 70 E India Row, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT:

Rebecca Holyoke, Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301-713-7264, Fax: 301-713-0404; email: rebecca.holyoke@noaa.gov).

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Keys, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustain healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. The Sanctuary System Business Advisory Council (Council) has been formed to provide advice and recommendations to the Director regarding the relationship of the ONMS with the business community. Additional information on the Council can be found at <http://sanctuaries.noaa.gov/management/ac/welcome.html>.

Matters To Be Considered: The meeting will provide an opportunity for council representatives to hear how the ONMS is defining its strategic vision, planning for its 50th anniversary, and continuing on a path to engage users and the public in general through new initiatives, techniques, and content. Advisory council representatives will be asked to provide feedback on recent and new outreach and strategic campaigns and initiatives. The agenda is subject to change. The agenda is available at <http://beta2.w1.sanctuaries.woc.noaa.gov/management/bac/meetings.html>.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 10, 2015.

John Armor,

Acting Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2015-25096 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE195

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Habitat Protection and Ecosystem-Based Management (Habitat) Advisory Panel (AP) in N. Charleston, SC. The meeting is open to the public.

DATES: The meeting will be held from 9 a.m. until 4:30 p.m. on Tuesday, November 17, 2015, and from 9 a.m. until 4:30 p.m. Wednesday, November 18, 2015.

ADDRESSES:

Meeting address: The meeting will be held at the Florida Fish and Wildlife and Resources Institute (FWRI), Florida Fish and Wildlife Conservation Commission, 100 8th Ave. SE., 3370, St. Petersburg, FL; telephone: (727) 896-8626.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Items to be addressed or sessions to be conducted during the Habitat AP meeting include but not limited to: The review and completion of a redrafted Council Essential Fish Habitat (EFH) Policy Statement on Energy Exploration, Development and Transportation; a presentation on the Florida Artificial Reef Program and discussion on the developing Artificial Reef Policy Statement; a roundtable discussion on issues associated with South Atlantic Climate Variability and Fisheries and South Atlantic Food Webs and Connectivity for possible future policy statement development; and a Panel member working session highlighting regional research program activities and facilitating the update of Volume V of Fishery Ecosystem Plan (FEP) II,

Regional Programs and Data Needs and associated appendices presenting Council, State, Commission and partner research, monitoring and data needs. Other status reports will focus on regional ecosystem modelling, threats to EFH, and EFH updates associated with FEP II development.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: September 29, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015-25111 Filed 10-1-15; 8:45 am]

BILLING CODE 3510-22-P

COMMISSION OF FINE ARTS

Commission of Fine Arts Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 15 October 2015, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington DC, 20001-2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: www.cfa.gov. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U S Commission of Fine Arts, at the above address; by emailing cfastaff@cfa.gov; or by calling 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated 21 September 2015, in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2015-24448 Filed 10-1-15; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase from People Who are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products from the Procurement List that was previously furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective:* 11/2/2015.

ADDRESSES: Committee for Purchase From People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On 9/4/2015 (80 FR 53501-53502), the Committee for Purchase from People Who are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8415-01-485-6637—Woodland with

Logo
8415-01-485-6713—Woodland with Logo
8415-01-485-6750—Woodland with Logo
8415-01-485-6755—Woodland with Logo
8415-01-485-6757—Woodland with Logo
8415-01-485-6760—Woodland with Logo
8415-01-485-6771—Woodland with Logo
8415-01-485-6777—Woodland with Logo
8415-01-485-8131—Desert with Logo
8415-01-485-8134—Desert with Logo
8415-01-485-8137—Desert with Logo
8415-01-485-8138—Desert with Logo
8415-01-485-8140—Desert with Logo
8415-01-485-8143—Desert with Logo
8415-01-485-8144—Desert with Logo
8415-01-485-8145—Desert with Logo
8415-00-NSH-1100—Desert without Logo
8415-00-NSH-1101—Desert without Logo
8415-00-NSH-1102—Desert without Logo
8415-00-NSH-1103—Desert without Logo
8415-00-NSH-1104—Desert without Logo
8415-00-NSH-1105—Desert without Logo
8415-00-NSH-1106—Desert without Logo
8415-00-NSH-1107—Desert without Logo
8415-00-NSH-1108—Desert without Logo
8415-00-NSH-1109—Desert without Logo
8415-00-NSH-1110—Desert without Logo
8415-00-NSH-1112—Desert without Logo
8415-00-NSH-1113—Desert without Logo
8415-00-NSH-1114—Desert without Logo
8415-00-NSH-1115—Woodland without Logo
8415-00-NSH-1116—Woodland without Logo
8415-00-NSH-1117—Woodland without Logo
8415-00-NSH-1118—Woodland without Logo
8415-00-NSH-1119—Woodland without Logo
8415-00-NSH-1120—Woodland without Logo
8415-00-NSH-1121—Woodland without Logo
8415-00-NSH-1122—Woodland without Logo
8415-00-NSH-1123—Woodland without Logo

8415-00-NSH-1124—Woodland without Logo
8415-00-NSH-1125—Woodland without Logo
8415-00-NSH-1126—Woodland without Logo
8415-00-NSH-1127—Woodland without Logo
8415-00-NSH-1128—Woodland without Logo
Mandatory Source(s) of Supply:
Southeastern Kentucky
Rehabilitation Industries, Inc.,
Corbin, KY
Contracting Activity: W6QK ACC-APG
Natick, Natick, MA

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2015-25104 Filed 10-1-15; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously furnished by such agency.

DATES: *Comments Must Be Received on or Before:* 11/2/2015.

ADDRESSES: Committee for Purchase from People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to provide the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type: Custodial Service
 Service is Mandatory For: DoDEA, Domestic Dependent Elementary and Secondary Schools, Andersen Elementary and Middle Schools, Andersen AFB, 1600 Ponape Avenue, Yigo, GU
 District Superintendent's Office, Naval Hospital Base, 101 Johnson Road, Agana Heights, GU
 Guam High School, Naval Hospital Base, Agana Heights, GU
 Commander William C. McCool
 Elementary/Middle School, US Naval Base Guam, 311 Amaryllys Avenue, Sumay, GU
 Mandatory Source(s) of Supply: iCAN Resources, Inc., Dededo, GU
 Contracting Activity: Dept of Defense Education Activity (DODEA), Dodds Pacific Director's Office, APO, AP
 Service Type: Janitorial Service
 Service is Mandatory For: USDA Forest Service, Salmon/Cobalt Ranger District, Salmon-Challis National Forest, 311 McPherson Street, Salmon, ID
 Mandatory Source(s) of Supply: Development Workshop, Inc., Idaho Falls, ID
 Contracting Activity: Department of Agriculture, Forest Service, Caribou-Targhee National Forest, Idaho Falls, ID
 Service Type: Landscaping Service
 Service is Mandatory For: GSA PBS Region 1, John F. Kennedy Federal Building, 25 New Sudbury Street, Boston, MA
 Mandatory Source(s) of Supply: Work, Incorporated, Dorchester, MA
 Contracting Activity: GSA/Public Buildings Service, Boston, MA

Deletion

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Custodial Service, Isle Royale National Park & Ranger III Vessel, 800 East Lakeshore Drive, Houghton, MI
 Mandatory Source(s) of Supply: Goodwill Industries of Northern Wisconsin & Upper Michigan, Inc., Marinette, WI
 Contracting Activity: Dept of the Interior, National Park Service, MWR Regional Contracting, Omaha, NE

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015-25103 Filed 10-1-15; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Open House—Draft Environmental Impact Statement for Updated Water Control Manuals for the Apalachicola-Chattahoochee-Flint River Basin

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the U.S. Army Corps of Engineers, Mobile District (USACE), has released the Draft Environmental Impact Statement (DEIS) and will conduct open house style meetings and accept comments on the Draft DEIS for the update of the Apalachicola-Chattahoochee-Flint Basin (ACF) Water Control Master Manual (Master Manual).

DATES: Comments on the DEIS are due not later than December 1, 2015.

ADDRESSES: Submit comments as indicated in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Sumner at telephone (251) 694-3857.

SUPPLEMENTARY INFORMATION: The Master Manual includes appendices prepared for individual projects in the ACF Basin and is the guide used by USACE to operate a system of five federal reservoir projects in the basin—Buford Dam and Lake Lanier, West Point Dam and Lake, Walter F. George Lock and Dam and Lake, George W. Andrews Lock and Dam and Lake, and Jim Woodruff Lock and Dam and Lake Seminole.

The purpose and need for the federal action is to determine how federal projects in the ACF Basin should be operated for their authorized purposes, in light of current conditions and applicable law, and to implement those operations through updated water control plans and manuals. The proposed action will result in an updated Master Manual and individual project water control manuals (WCMS) that comply with existing USACE regulations and reflect operations under existing congressional authorizations, taking into account changes in basin hydrology and demands from years of growth and development, new/rehabilitated structural features, legal developments, and environmental issues. The action includes updates to account for a June 28, 2011, decision of the 11th Circuit Court of Appeals.

On May 16, 2000, the Governor of the State of Georgia submitted a formal request to the Assistant Secretary of the Army (Civil Works) to adjust the operation of Lake Lanier, and to enter into agreements with the State or water supply providers to accommodate increases in water supply withdrawals from Lake Lanier and downstream at Atlanta over the next 30 years, culminating in total gross withdrawals of 705 million gallons per day (mgd)—297 mgd from Lake Lanier and 408 mgd downstream by the year 2030. The Assistant Secretary of the Army (Civil Works) in 2002 denied Georgia's request. The 2011 decision of the 11th Circuit Court of Appeals ordered USACE to reconsider whether it has the legal authority to operate the Buford project to accommodate Georgia's request. USACE provided a legal opinion concluding that it has sufficient authority under applicable law to accommodate that request, but noted that any decision to take action on Georgia's request would require a separate analysis. On January 11, 2013, the Governor of the State of Georgia provided updated demographic and water demand data to confirm the continued need for 705 mgd to meet Georgia's water needs from Lake Lanier and the Chattahoochee River to approximately the year 2040 rather than 2030 as specified in the 2000 request.

USACE's objectives for the Master Manual are to develop a Water Control Plan that meets the existing water resources needs of the basin, fulfills its responsibilities in operating for the authorized project purposes, and complies with all pertinent laws. The DEIS presents the results of USACE's analysis of the environmental effects of the Proposed Action Alternative (PAA) that the USACE believes accomplishes these objectives.

USACE evaluated an array of potential water management alternatives and optional water supply amounts during the Master Manual update process, resulting in the selection of the PAA. Additional information on the components of the PAA can be found at <http://www.sam.usace.army.mil/Missions/PlanningEnvironmental/ACFMasterWaterControlManualUpdate/ACFDocumentLibrary.aspx>. One alternative available to USACE is to continue with current operations. This approach is termed the No Action Alternative (NAA). The PAA would update the water control plans and manuals for the ACF Basin as directed by Secretary of the Army Pete Geren on January 30, 2008. Additionally, the PAA would provide for releases from Buford Dam to satisfy Georgia's 2040 need of

408 mgd from the Chattahoochee River for Metro Atlanta and would reallocate storage in Lake Lanier of 189,497 acre-feet to satisfy a portion of Georgia's 2040 need and support average annual water supply withdrawals of up to 165 mgd.

Document Availability

The DEIS and appendices are available to the public for review in the following formats:

- Online as PDF documents at <http://www.sam.usace.army.mil/Missions/PlanningEnvironmental/ACFMasterWaterControlManualUpdate/ACFDocumentLibrary.aspx>.

- As a CD when requested in writing to: Commander, U.S. Army Corps of Engineers, Mobile District, Attn: PD-EI (ACF-EIS), P.O. Box 2288, Mobile, AL 36628.

- A limited number of CD copies will also be available at the DEIS public meetings.

Public Review and Comment

The public comment period will commence with the publication of this notice and will end 60 days after its publication. USACE recognizes that the decisions made concerning revisions to the water control operations at USACE projects within the ACF Basin will have wide-ranging effects and encourages the public to submit comments on the content of the DEIS. All persons and organizations that have a potential interest in the proposed action, including minority, low-income, disadvantaged, and Native American groups, are urged to participate in this NEPA environmental analysis process by reviewing the DEIS and submitting comments for consideration.

Comments may be submitted via the following methods:

- Onsite at open houses through comment forms;
- Verbally through the court reporter at public meetings;
- By emailing acf-wcm@usace.army.mil;

- By letter addressed to: Commander, U.S. Army Corps of Engineers, Mobile District, Attn: PD-EI (ACF-DEIS), P.O. Box 2288, Mobile, AL 36628.

Further information regarding the update of the Master Manual, including all available documents, background and historical information, and updates is available online at the Web site given above.

Open Houses

Open houses are scheduled to be held at the following locations and times:

- Monday, October 26, 2015, 4:00 p.m.–7:00 p.m. Eastern time, Gainesville Civic Center, 830 Green Street NE., Gainesville, GA 30501.

- Tuesday, October 27, 2015, 4:00 p.m.–7:00 p.m. Eastern time, West Point Depot, 500 3rd Avenue, West Point, GA. 31833.

- Wednesday, October 28, 2015, 4:00 p.m.–7:00 p.m. Central time, James S. Clark Center, 333 E. Broad Street, Eufaula AL, 36027.

- Thursday, October 29, 2015, 4:00 p.m.–7:00 p.m. Eastern time, Bainbridge State College, Charles H. Kirbo Regional Center, 2500 E. Shotwell Street (US Highway 84), Bainbridge, GA 39819.

- Monday, November 9, 2015, 4:00 p.m.–7:00 p.m., Apalachicola National Estuarine Research Reserve, 108 Island Drive, Eastpoint, FL 32328.

Next Steps

All comments will be catalogued and reviewed after the 60-day public comment period. The final EIS (FEIS) is scheduled to be completed and filed with the USEPA in 2016. The Record of Decision, if appropriate, will be signed following the FEIS and the Master Manual is scheduled to be approved in March 2017.

Dated: September 23, 2015.

Jon J. Chytka,

Colonel, District Commander, Mobile District, U.S. Army Corps of Engineers.

[FR Doc. 2015–25057 Filed 10–1–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Notice of Interim Approval for Southeastern Power Administration Cumberland System

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of interim approval.

SUMMARY: The Deputy Secretary of Energy confirmed and approved, on an interim basis, Rate Schedules CBR–1–I, CSI–1–I, CEK–1–I, CM–1–I, CC–1–J, CK–1–I, CTV–1–I, CTVI–1–B, and Replacement-3. The rates were approved on an interim basis through September 30, 2020. The new rates take effect on October 1, 2015, and are subject to confirmation and approval on a final basis by the Federal Energy Regulatory Commission (Commission).

DATES: Approval of the rate schedules on an interim basis is effective October 1, 2015, through September 30, 2020.

FOR FURTHER INFORMATION CONTACT: Virgil G. Hobbs, III, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3838.

SUPPLEMENTARY INFORMATION: On December 22, 2011, the Commission confirmed and approved on a final basis Wholesale Power Rate Schedules CBR–1–H, CSI–1–H, CEK–1–H, CM–1–H, CC–1–I, CK–1–H, CTV–1–H, CTVI–1–A, and Replacement-3 for the period from October 1, 2011, to September 30, 2013 (137 FERC ¶ 62,249). On July 10, 2013, the Deputy Secretary approved an extension of the rate schedules through September 30, 2015 (78 FR 42764).

The Southeastern Power Administration's power marketing policy (58 FR 41762, Aug. 5, 1993) provides peaking capacity, along with 1500 kilowatt-hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operations of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern has not been able to provide full peaking capacity to these customers. A revised interim operating plan for the Cumberland System provides these customers with energy that includes a proportional percentage of normal marketed capacity.

A current repayment study using present rates shows that revenues will not be adequate to meet repayment criteria. A revised study with a revenue requirement increase of \$3,900,000, or about seven percent, shows that the rates established in this notice will be adequate to meet repayment criteria. The rate schedules have been developed to cover the differing marketing arrangements in the Cumberland System under normal operation conditions. The Rate Schedules CBR–1–I, CSI–1–I, and CM–1–I, include rates for customers who receive 1500 kilowatt-hours of energy annually for each kilowatt of capacity. Rate Schedule CEK–1–I is for East Kentucky Power Cooperative, which receives a fixed quantity of energy annually from projects connected to the TVA transmission system plus the output of the Laurel Project. Rate Schedule CK–1–I is for customers in Kentucky who receive 1800 kilowatt-hours of energy annually for each kilowatt of capacity. Rate Schedule CC–1–J is for customers on the Duke Energy Progress, Western Division, (formerly Carolina Power & Light, Western Division). Rate Schedule CTV–1–I is for TVA and TVPPA. Rate Schedule CTVI–1–B is for customers inside the TVA system who choose a power supplier other than TVA.

Dated: September 25, 2015.

Elizabeth Sherwood-Randall,
Deputy Secretary.

DEPARTMENT OF ENERGY

DEPUTY SECRETARY

In the Matter of: Southeastern Power
Administration Cumberland System Rates

Rate Order No. SEPA-59

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern or SEPA) were transferred to and vested in the Secretary of Energy. DOE Delegation Order No. 00-037.00A, effective October 25, 2013, granted the Deputy Secretary authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to this delegation.

Background

On December 22, 2011, the Commission issued an order approving Rate Schedules CBR-1-H, CSI-1-H, CEK-1-H, CM-1-H, CC-1-I, CK-1-H, CTV-1-H, CTVI-1-A, and Replacement-3 on a final basis for the sale of power from the Cumberland System (137 FERC ¶ 62,249). On July 10, 2013, the Deputy Secretary of the Department of Energy issued an order extending the rate schedules through September 30, 2015. The power marketing policy (58 FR 41762, Aug. 5, 1993) provides peaking capacity, along with 1500 kilowatt-hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operations of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern has not been able to provide full peaking capacity to these customers. A revised interim operating plan for the Cumberland System provides these customers with energy and reduced capacity.

Public Notice and Comment

Notice of a proposed rate adjustment was published in the **Federal Register** May 28, 2015 (80 FR 30451). The notice advised interested parties of a public information and comment forum to be held in Nashville, Tennessee, on June 30, 2015. Comments were received from twelve sources pursuant to this notice.

The comments have been condensed into the following seven major categories:

1. Dam Safety Act
2. Rate Development Authority
3. Rate Term
4. Rate Competitiveness
5. Revenue Requirement Mitigation
6. Capital Cost Recovery
7. Transmission Arrangements

Southeastern's response follows each comment.

1. Dam Safety Act

Comment: To prevent detrimental and long-term consequences related to the shifting of inappropriate and/or unnecessary costs to Cumberland System hydropower preference customers, we politely request a permanent 15 percent cost allocation to be used in order to provide closure to the uncertainty of the applicability of the Dam Safety Act for repairs to Wolf Creek and Center Hill. . The record the Corps of Engineers has developed reveals the repairs at Wolf Creek and Center Hill Projects were pursued in an expedited manner in the interest of protecting the safety of lives and property downstream of Wolf Creek and Center Hill. The Corps of Engineers repaired the Wolf Creek Project and will fix the Center Hill Project consistent with state of the art criteria to protect safety. As such, hydropower customers should not be saddled with the full cost of over \$1 billion in repairs. The Dam Safety Act acknowledges this broad benefit and allows repair costs to be fairly allocated among all beneficiaries Southeastern retains the right to structure a proposed rate which allows for the consideration of the cost reimbursement provisions of the Dam Safety Act. The Corps of Engineers' refusal to abide by the statutory provisions of the Dam Safety Act creates liability for the federal family because of the agency's admitted and flagrant disavowal of its statutory duty. There is no legal consequence for Southeastern if it develops a rate using the Dam Safety Act as appropriate guidance.

Response: Under section 1203 of the Water Resources Development Act of 1986, otherwise known as the Dam Safety Act, Congress capped the percentage of dam repair costs that may be assigned to project purposes (such as hydropower) at 15 percent. This cap applies to dam modification costs, "the cause of which results from new hydrologic or seismic data or changes in the state-of-the-art design or construction criteria deemed necessary for safety purposes". 33 U.S.C. 467n(a). The Dam Safety Act requires that dam

safety repair costs be recovered within thirty years of completion of the work. If the Dam Safety Act is not applied, 100 percent of all costs are assigned to project purposes for cost recovery but the thirty-year cost recovery requirement does not attach. Southeastern continues to discuss, analyze and seek guidance on the issue from other relevant agencies.

Southeastern is finalizing a rate calculation that applies the cost sharing provision of the Dam Safety Act to the repair costs at Wolf Creek and Center Hill. However, Southeastern wishes to make clear that interagency discussions of this issue remain ongoing. If, as a result of those discussions, other relevant federal agencies provide a factual and legal basis for a contrary determination, the applicability of the Dam Safety Act would be reconsidered. Any such reconsideration would be the subject of an additional notice and comment process.

2. Rate Development Authority

Comment: SEPA and the Department of Energy have explicit responsibility to ensure unauthorized costs are not passed on to the power customers. This authority exists to ensure all appropriate costs are recovered in the rates.

Response: Southeastern agrees that it retains full authority to ensure that the rates for power will be the lowest possible rates consistent with sound business principles within the meaning of Section 5 of the Flood Control Act of 1944.

Comment: There is no genuine question whether the proposed rate has been promulgated pursuant to authority squarely vested within the administrative PMA. Furthermore, because the rate established pursuant to this process presents a legal obligation for the customers, i.e., the level of payment that must be submitted in exchange for the delivery of electricity, there's no question that the rate-making exercise should be considered the development of a rule for purposes of applying fundamental tenets of administrative law.

Response: Southeastern determines the power rates regarding surplus energy from Corps projects are consistent with the rulemaking requirements of the Administrative Procedure Act. Southeastern is finalizing a rate calculation that applies the cost sharing provision of the Dam Safety Act to the repair costs at Wolf Creek and Center Hill. However, Southeastern wishes to make clear that interagency discussions of this issue remain ongoing. If, as a result of those

discussions, other relevant federal agencies provide a factual and legal basis for a contrary determination, the applicability of the Dam Safety Act would be reconsidered. Any such reconsideration would be the subject of an additional notice and comment process.

Comment: Southeastern retains the right to structure a proposed rate which allows for the consideration of the cost reimbursement provisions of the Dam Safety Act.

[Commenter] believes there is no legal consequence for Southeastern if it develops a rate using the Dam Safety Act as appropriate guidance.

Response: Southeastern has a statutory duty to balance the recovery of costs of the Corps projects in a reasonable number of years while providing the lowest possible rates to preference customers consistent with sound business principles. Southeastern is finalizing a rate calculation that applies the cost sharing provision of the Dam Safety Act to the repair costs at Wolf Creek and Center Hill. However, Southeastern wishes to make clear that interagency discussions of this issue remain ongoing. If, as a result of those discussions, other relevant federal agencies provide a factual and legal basis for a contrary determination, the applicability of the Dam Safety Act would be reconsidered. Any such reconsideration would be the subject of an additional notice and comment process.

Comment: The Corps of Engineers' refusal to abide by the statutory provisions of the Dam Safety Act creates liability for the federal family because of the agency's admitted and flagrant disavowal of its statutory duty.

The Corps of Engineers has no legal authority to recover the costs of its dam safety program from hydropower customers.

Response: Recovery of the costs of the Corps of Engineers projects from surplus power is within the authority of Department of Energy as provided by the Flood Control Act of 1944 and the Department of Energy Organization Act. Southeastern is finalizing a rate calculation that applies the cost sharing provision of the Dam Safety Act to the repair costs at Wolf Creek and Center Hill. However, Southeastern wishes to make clear that interagency discussions of this issue remain ongoing. If, as a result of those discussions, other relevant federal agencies provide a factual and legal basis for a contrary determination, the applicability of the Dam Safety Act would be reconsidered. Any such reconsideration would be the

subject of an additional notice and comment process.

3. Rate Term

Comment: [Commenter] respectfully requests this rate is extended for five years to ensure accurate planning and reliability. There's no legal impediment for Southeastern to issue a five-year rate consistent with DOE Regulation RA6120.2. [Commenter] will ask Southeastern to revise the proposal for a five-year rate.

Response: Southeastern agrees a five-year term for the rate schedules is appropriate for the following reasons. Southeastern updates the repayment study used to develop and support the rate schedules annually to incorporate the latest cost information provided and to incorporate actual operating results. If the update of the repayment study demonstrates that the rates are not adequate to recover costs, Southeastern can initiate a rate adjustment. A five-year rate can be modified before the term of the rate schedules expires. A five-year term for the rate schedules will not interfere with Southeastern's ability to recover required costs.

4. Rate Competitiveness

Comment: Even the current rate proposal is too high to provide an economic product. SEPA rates with the proposed increase would be basically out of the market for most of our customers that have alternatives. The increased cost and declining economic viability of this power have been a major concern for the past several years. Coupled with more frequent reductions in Cumberland System power production and decreases in hydropower unit availability, these increases in cost are aggravating and jeopardizing the future of this program.

Response: Consistent with applicable law, Southeastern strives to ensure that the rates for Cumberland System power remain competitive with the customers' resource alternatives. Marketing arrangements in the Cumberland System cover diverse markets and include diverse products. The existing marketing arrangements have been in place since the power marketing policy for the Cumberland System was established in 1983.

Southeastern has incorporated a true-up mechanism in these rate schedules to reduce the initial rate adjustment to a seven percent increase in the revenue requirement. This has been included to improve the competitiveness of the rate.

5. Revenue Requirement Mitigation

Comment: [Commenter] would propose an approach where we pay our

fair share of the operation and maintenance costs and the recovery of capital [investment] making it more reflective of the rates being set on actual costs instead of a 50-year projection.

SEPA is setting a rate for 50 years with no consideration for a potential increase in the future. We would propose paying for the capital [investment] when it becomes used and useful.

Response: The Power Marketing Administrations prepare repayment studies used to establish rates following the guidance of DOE Order RA6120.2 (Order). The Order defines the power system's repayment period to extend to the final year allowed under the cost recovery criteria for amortization of the original investment in all projects included in the power repayment study. The Order further provides future replacement costs will be included in the studies. The remaining investment in the Cumberland System includes investment placed in service with a 50-year service life. The Order requires future replacement cost estimates to be included in the repayment study as well. Southeastern believes the repayment study used to develop these proposed rate schedules complies with DOE Order RA6120.2.

Comment: [Commenter] recommends that SEPA review the methodology used in the repayment study to determine the proposed rate to:

One, use forced payments to reduce the magnitude of large required payments; and

Two, for large required payments, use the concept of planned capitalized deficits to spread the costs of those required single-year payments over a five-year period.

Response: The comment refers to the approach used within the repayment study used to develop an optimized plan for repayment of the federal investment. Forced payments are normally used to override the normal priority of repayment when a lower-interest rate investment is reaching its required repayment date. Under highest interest first repayment, Southeastern defers repayment of the lowest interest rate investment to the extent possible while meeting repayment criteria. This achieves a lower revenue requirement.

Capitalized deficits are incurred when Southeastern does not have sufficient revenue to cover annual operating expenses and interest or meet a required payment. Generally, Southeastern does not plan to incur capitalized deficits as part of rate adjustment. The proposed rates do not include capitalized deficits, which would be inconsistent with the

general requirement of DOE Order RA6120.2.

6. Capital Cost Recovery

Comment: [Commenter] suggests SEPA explore capital cost recovery alternatives within its rate-making authority with the goal remaining to keep rates as low as possible for as long as possible. SEPA should consider a true-up rate as an alternative.

Response: Southeastern staff proposed to employ an annual true-up to alter the rate each April accounting for actual hydropower investment completed and placed in service the prior fiscal year. A similar mechanism proved successful in the Kerr-Philpott System to address planned infrastructure rehabilitation. Comments supported or were silent with regard to enacting a true-up and Southeastern proposes to affect a true-up instrument to improve Federal hydropower's competitiveness in the energy market.

7. Transmission Arrangements

Comment: We would suggest SEPA explore an agreement with TVA that more closely resembles the transmission service that SEPA now receives from TVA, delivering power to discrete delivery points from a network of resources or generation resources. We think the service you've received for years has been more of a network service.

Response: Southeastern will discuss transmission service options with TVA in an effort to secure the most economical delivery method for our customers.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in August, 2015, for the Cumberland System, shows that with the rates established in this notice, all system power costs are paid within the 50-year repayment period, as required by existing law and DOE Order RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of

1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635-6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2015, attached Wholesale Power Rate Schedules CBR-1-I, CSI-1-I, CEK-1-I, CM-1-I, CC-1-I, CK-1-I, CTV-1-I, CTVI-1-B, and Replacement-3. The rate schedules shall remain in effect on an interim basis through September 30, 2020, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: September 25, 2015.
Elizabeth Sherwood-Randall,
Deputy Secretary.

Wholesale Power Rate Schedule CBR-1-I

Availability: This rate schedule shall be available to Big Rivers Electric Corporation and the City of Henderson, Kentucky (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of

the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate:

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month

Initial Base Energy Charge: 12.35 mills per kilowatt-hour

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission: The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points of delivery with other electric systems for the benefit of customers outside the TVA System, as agreed by contract between the Administrator and TVA.

	Percent
Big Rivers Electric Corporation	32.660
City of Henderson, Kentucky	2.202

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be

determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate:

The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): \$3.115 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 1.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right)$$

Wholesale Power Rate Schedule CSI-1-I

Availability: This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and Tennessee Valley Authority (TVA).

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised

Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: The Customer will pay 5.138 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points of delivery with other electric systems for the benefit of customers outside the TVA System, as agreed by contract between the Administrator and TVA.

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission

credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): \$3.115 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA

border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The

Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his

control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{l} \text{Number of kilowatts unavailable} \\ \text{for at least 12 hours in any calendar day} \end{array} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right)$$

Wholesale Power Rate Schedule CEK-1-I

Availability: This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery: The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The Customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Tennessee Valley

Authority (TVA) on its side of the delivery point.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission: The Customer will pay 31.192 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points of delivery with other electric systems for the benefit customers outside the TVA System, as agreed by contract between the Administrator and TVA.

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be

scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. The Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described in the true-up section of this rate schedule.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.664 per kilowatt/month of total contract demand.

Initial Base Energy Charge: 11.612 mills per kilowatt-hour

True-up Adjustment: The base demand charge and base energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at

midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right)$$

Wholesale Power Rate Schedule CM-1-I

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association, Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder

will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery: The points of delivery will be at interconnection points of the Tennessee Valley Authority (TVA) system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Rate Alternatives: Southeastern Power Administration (Southeastern) is

including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours

of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points of delivery with other electric systems for the benefit of customers outside the TVA System, as agreed by contract between the Administrator and TVA.

	Percent
Mississippi Delta Energy Agency	2.058
Municipal Energy Agency of Mississippi	3.447
South Mississippi EPA	9.358

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): \$3.115 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service.

Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced $\frac{1}{12}$ for each month of that year prior to initial delivery of such capacity.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced

in accordance with the following formula:

$$\left(\begin{array}{l} \text{Number of kilowatts unavailable} \\ \text{for at least 12 hours in any calendar day} \end{array} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right)$$

Wholesale Power Rate Schedule CC-1-J

Availability: This rate schedule shall be available to public bodies and cooperatives served through the facilities of Duke Energy Progress (formerly known as Carolina Power & Light Company), Western Division (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Duke Energy Progress, Western Division.

Points of Delivery: The points of delivery will be at interconnecting points of the Tennessee Valley Authority (TVA) system and the Duke Energy Progress, Western Division system. Other points of delivery may be as agreed upon.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the

Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$2.165 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

TVA Transmission Charge: The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points

of delivery with other electric systems for the benefit of customers outside the TVA System, as agreed by contract between the Administrator and TVA.

	Percent
French Broad EMC	1.713
Haywood EMC	0.501
Town of Waynesville	0.355

Duke Energy Progress Transmission Charge: The Customer will pay a ratable percent listed below of the charge for transmission service furnished by Duke Energy Progress, Western Division.

	Percent
French Broad EMC	66.667
Haywood EMC	19.512
Town of Waynesville	13.821

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each

increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually at the TVA Border): \$3.546 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000, and adjusted for Duke Energy Progress delivery. The adjustment under the current contract is 14,000/12,300, or 13.821 percent.

CP&L Transmission Charge: \$1.546 per kilowatt/month of total contract demand (As of February 2015 and provided for illustrative purposes.)

The Duke Energy Progress transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Duke Energy Progress contract.

Energy to be Furnished by the Government: The Government will sell to the Customers and the Customers will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Duke Energy

Progress (less applicable losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Duke Energy Progress, Western Division transmission system.

Wholesale Power Rate Schedule CK-1-I

Availability: This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery: The points of delivery will be at interconnecting points between the Tennessee Valley Authority (TVA) system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Billing Month:

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions

on the operation of the Center Hill Project imposed by the U. S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: The Customers will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the TVA as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of customers outside the TVA System or interconnection points of delivery with other electric systems for the benefit of customers outside the TVA System, as agreed by contract between the Administrator and TVA.

	Percent
City of Barbourville	0.404
City of Bardstown	0.412
City of Bardwell	0.099
City of Benham	0.046
City of Corbin	0.477
City of Falmouth	0.108
City of Frankfort	2.866
City of Madisonville	1.432
City of Nicholasville	0.469
City of Owensboro	4.587
City of Paris	0.250

	Percent
City of Providence	0.226

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually):

\$2.915 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional

energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customers of the amount of the true-up by February 1 of each year.

Transmission Charge: Monthly TVA Transmission Charge divided by 545,000.

Energy To Be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects and the Customer will accept an allocation of 1500 kilowatt-hours of energy for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customers may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced $\frac{1}{12}$ for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Wholesale Power Rate Schedule CTV-1-I

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA) on behalf of members of the Tennessee Valley Public Power Association (hereinafter called TVPPA).

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month: The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year: For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Power Factor: TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised

Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the TVA and TVPPA of the amount of the true-up by February 1 of each year.

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1

of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the TVA and TVPPA of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): \$3.115 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the TVA and TVPPA of the amount of the true-up by February 1 of each year.

Energy to be Made Available: The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Outside Customers), 768,000 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project). The energy requirement of the

Outside Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 240 hours per kilowatt of total Outside Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Outside Customers demand.

In the event that any portion of the capacity allocated to Outside Customers is not initially delivered to the Outside Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced $\frac{1}{12}$ for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Outside Customers plus losses of two percent [2%], and (4) station service energy furnished by TVA.

Each kilowatt of capacity will include 1500 kilowatt-hours of energy per year, which is defined as base energy. Energy received in excess of 1500 kilowatt-hours per kilowatt will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Service Interruption: When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l} \text{Number of kilowatts unavailable} \\ \text{for at least 12 hours in any calendar day} \end{array} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right) \times \left(\frac{\text{Contract Demand}}{880,000 \text{ Kilowatts}} \right)$$

Wholesale Power Rate Schedule CTVI-1-B

Availability: This rate schedule shall be available to customers (hereinafter called the Customer) who are or were formerly in the Tennessee Valley Authority (hereinafter called TVA) service area.

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and the Customer.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Billing Month: The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year: For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Rate Alternatives: Southeastern Power Administration (Southeastern) is including three rate alternatives. All of the rate alternatives have an initial base annual revenue requirement of \$63,500,000, including transmission and non-power revenue. The initial base annual revenue requirement from the sale of capacity and energy is \$50,235,000. The initial base revenue requirements will be subject to annual true-up adjustment described below.

Rate Scenario 1—Revised Interim Operating Plan

The final marketing policy for the Cumberland System was published in the **Federal Register** August 5, 1993 (58 FR 41762). The marketing policy for the Cumberland System of Projects provides peaking capacity, along with 1500 hours of energy annually with each kilowatt of capacity, to customers outside the TVA transmission system. Due to restrictions on the operation of the Center Hill

Project imposed by the U.S. Army Corps of Engineers (Corps) as a precaution to prevent failure of the dam, Southeastern is not able to provide the full allocation of peaking capacity to these customers. Southeastern implemented a Revised Interim Operating Plan for the Cumberland System to provide these customers with a reduced amount of energy and a reduced amount of capacity. The rates under this Scenario 1 will remain in effect for the duration of the Revised Interim Operating Plan. The initial base rates for capacity and energy will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge: \$1.902 per kilowatt per month.

Initial Base Energy Charge: 12.35 mills per kilowatt-hour.

True-up Adjustment: The Base Capacity Charge and Base Energy Charge will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario the adjustment will be for each increase of \$1,000,000 to specific power plant-in-service an increase of \$0.001 per kilowatt per month added to the base capacity charge and 0.02 mills per kilowatt-hour added to the base energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) or other overseeing entity involving the TVA's and other transmission provider's Open Access Transmission Tariff (OATT).

Proceedings before FERC or other overseeing entity involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event,

the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Rate Scenario 2—Modified Revised Interim Operating Plan

This rate alternative will be implemented if a portion of the Cumberland Capacity can be scheduled, though not all the capacity in the published marketing policy can be scheduled. The initial base annual revenue requirement under this alternative is \$63,500,000, including transmission and non-power revenue, the same as the annual revenue requirement in Scenarios 1 and 3. The annual revenue requirement from the sale of capacity and energy is \$50,235,000. This Rate Scenario 2 will receive revenues from capacity that can be scheduled and the remainder from energy, at charges that will be determined at the time. Under Scenario 2, the cost of the TVA transmission credit will be passed to customers outside the TVA System. This rate alternative will be in effect if Southeastern chooses to modify the Revised Interim Operating Plan.

The annual revenue requirement and rates under this scenario 2 will be subject to annual adjustment on April 1 of each year based on transfers of specific power investment to plant-in-service for the preceding Fiscal Year. Under this scenario 2, the adjustment is an increase of \$53,000 per year to the annual revenue requirement for each increase of \$1,000,000 to specific power plant-in-service. Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Rate Scenario 3—Original Cumberland Marketing Policy

The third rate alternative will go into effect once the Corps lifts all restrictions on the operation of the Center Hill Dam and Southeastern returns to operations that support the published marketing policy. The initial base rates for capacity, energy, and additional energy

will be subject to annual true-up adjustment described below.

Monthly Rate: The initial monthly base rate for capacity and energy sold under this rate schedule shall be:

Initial Base Demand charge (includes 1500 hours of energy annually): \$3.115 per kilowatt/month of total contract demand.

Initial Base Energy Charge: None.

Initial Base Additional Energy Charge: 11.612 mills per kilowatt-hour.

True-up Adjustment: The base demand charge and base additional energy charge under this scenario will be subject to annual adjustment on April 1 of each year based on transfers to specific power plant-in-service. Under this scenario 3, the adjustment is for each increase of \$1,000,000 to specific power plant-in-service an increase of \$ 0.003 per kilowatt per month added to the base Capacity rate and an increase of 0.012 mills per kilowatt-hour added to the additional energy rate.

Southeastern will give written notice to the Customer of the amount of the true-up by February 1 of each year.

Transmission Charge: The initial charge for transmission and Ancillary Services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before FERC or other overseeing entity involving the TVA's and other transmission provider's Open Access Transmission Tariff (OATT).

Proceedings before FERC or other overseeing entity involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Energy to be Made Available: The energy will be scheduled by TVA and the Customer will receive their ratable

share, in accordance with the Government-Customer Contract. Energy shall be accounted for, in accordance with agreements with TVA.

The Customer will receive a ratable share of their capacity, in accordance with the Government-Customer Contract.

Service Interruption: When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available. The customer will receive a ratable share of this capacity.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to the Customer will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{l} \text{Number of kilowatts unavailable} \\ \text{for at least 12 hours in any calendar day} \end{array} \right) \times \left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}} \right) \times \left(\frac{\text{Contract Demand}}{880,000 \text{ Kilowatts}} \right)$$

Wholesale Rate Schedule Replacement—3

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Alabama, Georgia, Illinois, Kentucky, North Carolina, Mississippi, Tennessee, and Virginia to whom power is provided pursuant to contracts between the Government and the customer from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest, Cordell Hull, and Laurel Projects (all of such projects being hereinafter called collectively the "Cumberland Projects").

Applicability: This rate schedule shall be applicable to the sale of wholesale energy purchased to meet contract minimum energy sold under appropriate contracts between the Government and the Customer.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under

appropriate contracts between the Government and the Customer.

Monthly Charge: The rate for replacement energy will be a formulaic capacity charge based on the monthly cost to the Government to purchase replacement energy necessary to support capacity in the Cumberland System divided by the capacity available from the Cumberland System, which is 950,000 kilowatts in the published power marketing policy. The capacity rate will be adjusted for any capacity retained by the Customer's transmission facilitator.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system.

[FR Doc. 2015-25102 Filed 10-1-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice sets forth the schedule and summary agenda for a conference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: October 23, 2015, 3:00 p.m. to 3:30 p.m.

ADDRESSES: To receive the call-in information, attendees should register for the conference call on the PCAST Web site, <http://www.whitehouse.gov/ostp/pcast> no later than 12:00 p.m. (ET) on Tuesday, October 21, 2015.

FOR FURTHER INFORMATION CONTACT:

Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>. Questions about the meeting should be directed to Ms. Jennifer Michael at: Jennifer_L_Michael@ostp.eop.gov, (202) 456-4444.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at <http://www.whitehouse.gov/ostp/pcast>. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a public conference call on October 23, 2015, from 3:00 p.m. to 3:30 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to discuss its study of hearing technologies as part of a larger project about technologies to help older Americans live independently as they age. Additional information and the agenda, including any changes that arise, will be posted at the PCAST's Web site at: <http://whitehouse.gov/ostp/pcast>.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on October 23, 2015, at a time specified in the meeting agenda posted on the PCAST Web site at: <http://whitehouse.gov/ostp/pcast>. This public comment period is designed only for substantive commentary on

PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at <http://whitehouse.gov/ostp/pcast>, no later than 12:00 p.m. (Eastern Time) on October 14, 2015. Telephone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (Eastern Time) on October 14, 2015, so the comments may be made available to the PCAST members, for their consideration, prior to the meeting. Information regarding how to submit comments and documents to PCAST is available at: <http://whitehouse.gov/ostp/pcast>, in the section entitled: "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on September 28, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015-25107 Filed 10-1-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy**

[EERE-2015-BT-BC-0001]

Updating and Improving the DOE Methodology for Assessing the Cost-Effectiveness of Building Energy Codes

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE or Department) has updated its methodology for assessing the cost-effectiveness of building energy codes. The Department relies upon this methodology in evaluating both potential code changes and entire new editions of model codes, such as the International Energy Conservation Code (IECC) and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1. DOE developed its methodology through a public process, and reviews its methods regularly to ensure its underlying analysis and assumptions remain valid.

FOR FURTHER INFORMATION CONTACT:

Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW. EE-5B, Washington, DC 20585; (202) 287-1941;

Jeremiah.Williams@ee.doe.gov.

For legal issues, please contact Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW. GC-33, Washington, DC 20585; (202) 586-0669; Kavita.Vaidyanathan@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE issued a recent request for information (RFI) to seek public input on proposed updates to its methodology, and as part of a regular effort to ensure its analysis and underlying assumptions remain valid (80 FR 19974).¹ The Department reviewed and considered each comment received, and has revised its methodology based on feedback resulting from the RFI. Updated methodology reports for residential and commercial buildings, respectively, are available on the DOE Building Energy Codes Program Web site:

- *Residential:* <https://www.energycodes.gov/development/residential/methodology>.

¹ Recent request for information published in the **Federal Register** on April 14, 2015 (Docket No. EERE-2015-BT-BC-0001).

• *Commercial*: <https://www.energycodes.gov/development/commercial/methodology>.

A summary of the changes to the DOE methodology is available in the associated public docket (EERE-2015-BT-BC-0001).² This summary provides a discussion of relevant issues considered in updating the methodology, including:

1. Comments which prompted revisions to the DOE methodology; and
2. Comments not resulting in a revision to the methodology, but which raised legitimate issues for which DOE wishes to provide its rationale for leaving the methodology unchanged.

In addition, a 'redline' document is provided in the public docket.³ This document illustrates specific changes to the DOE methodology reports in underline and strikethrough formatting. The combination of documents is intended to ensure transparency and make the update more easily understood.

More information on the methodology, including the resulting energy and cost analysis, is available on the DOE Building Energy Codes Program Web site: www.energycodes.gov.

Issued in Washington, DC, on September 14, 2015.

David Cohan,

Manager, Building Energy Codes Program, Building Technologies Office, Energy Efficiency & Renewable Energy.

[FR Doc. 2015-25031 Filed 10-1-15; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Amendment to an Approved Agency Information Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget

(OMB) pursuant to the Paperwork Reduction Act of 1995. The proposed collection of information relates to three of DOE's Better Buildings Programs. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before December 1, 2015. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent Andre de Fontaine, EE-5A/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, by fax at 202-586-5234, or by email at andre.defontaine@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andre de Fontaine, EE-5F/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, by fax at 202-586-5234, or by email at andre.defontaine@ee.doe.gov.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) OMB No.1910-5141;
- (2) *Information Collection Request*

Title: Department of Energy Better Buildings Challenge, Better Buildings Alliance, and the Better Buildings, Better Plants Voluntary Pledge Program;

- (3) *Type of Request:* Amendment;

- (4) *Purpose:* This Information

Collection Request applies to three Department of Energy (DOE) voluntary leadership initiatives that fall under the President's Better Buildings Initiative: (1) The Better Buildings Challenge; (2) the Better Buildings, Better Plants Program; and (3) the Better Buildings Alliance. The information being collected is needed so as to include participants in new sub-programs under the Better Buildings Challenge concerning energy efficiency in the multifamily residential and data center sectors, as well as a new water savings

challenge. Additionally, other pre-existing collection forms are being amended for clarity and to reduce burden on respondents. Also, the total number of respondents for individual program areas is being adjusted to align with practical experience and to account for the fact that certain one-time reporting requirements have already been satisfied by a majority of the participants.

The leadership initiatives under the Better Buildings Initiative covered under this Information Collection Request are intended to drive greater energy and water efficiency in the commercial, public, residential, data center, and industrial marketplace to reduce pollution, cut costs, and create jobs. This will be accomplished by highlighting the ways participants overcome market barriers to greater efficiency with replicable solutions. The program will showcase real solutions and partner with industry leaders to better understand policy and technical opportunities. There are three types of information to be collected from primary participants, also referred to as "Partners": (1) Background data, including contact information, a partnership agreement form, logo(s), information needed to support public announcements, updates on participants' showcase projects, and an energy savings goal; (2) Portfolio-wide energy performance information; and (3) Information on market innovations participants are including in their energy efficiency processes. Background data will primarily be used to develop Web site content that will be publically available. Portfolio-wide facility-level energy performance information will be used by DOE to measure the participants' progress in meeting the goals of the program, as well as to aggregate the change in energy performance and related metrics for the entire program. Information on market innovation will be used to highlight successful strategies participants use to overcome challenges, and will be publicly available. Additional background information is being collected from "Allies", financial and utility organizations that make a public commitment to support the energy efficiency marketplace. Background information including name, commitment in terms of dollars committed by financial allies, or percent of commercial customer class committed by utility allies, and a company logo will be used to develop publically available Web site content. Responses to the DOE's Information Collection Request will be voluntary.

² See DOE Cost Summary of changes responding to RFI comments (09022015) found at <http://www.regulations.gov/#!documentDetail;D=EERE-2015-BT-BC-0001-0021>.

³ See Methodology for Evaluating Cost-Effectiveness of Residential Energy Code Changes (REDLINE Version) August, 2015 (PNNL-21294 Rev 1) found at <http://www.regulations.gov/#!documentDetail;D=EERE-2015-BT-BC-0001-0022>.

(5) *Annual Estimated Number of Respondents*: Amending currently approved Information Collection Request (“ICR”) which includes respondents of 550, by reducing by 70, for a total of 480;

(6) *Annual Estimated Number of Total Responses*: Amending currently approved ICR with includes an estimated number of total response of 2,333, by reducing by 1,361, for a total of 972;

(7) *Annual Estimated Number of Burden Hours*: Amending currently approved ICR with an estimated number of burden hours of 4,652, by reducing by 1,932, for a total of 2,720.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: Amending currently approved ICR with an estimated \$183,610, by reducing by \$76,261, for a total reporting and recording cost burden of \$107,349.

Statutory Authority: Section 421 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17081); Section 911 of the Energy Policy Act of 2005, as amended (42 U.S.C. 16191).

Issued in Washington, DC on September 28, 2015.

Maria Vargas,

Director Better Buildings Challenge, Office of Energy Efficiency & Renewable Energy.

[FR Doc. 2015–25106 Filed 10–1–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2455–000]

Koch Energy Services, LLC: Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Koch Energy Services, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission’s eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission’s Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FEROnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–25015 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2679–000]

Latigo Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Latigo Wind Park, LLC’s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant’s request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission’s eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission’s Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FEROnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–25016 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–214–000.

Applicants: Upstate New York Power Producers, Inc., Cayuga Operating Company, LLC, Somerset Operating Company, LLC.

Description: Application of Upstate New York Power Producers, Inc., et al. for Approval Under Section 203 of the Federal Power Act.

Filed Date: 9/25/15.

Accession Number: 20150925–5262.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: EC15–216–000.

Applicants: Buckeye Wind Energy LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Buckeye Wind Energy LLC.

Filed Date: 9/28/15.

Accession Number: 20150928–5244.

Comments Due: 5 p.m. ET 10/19/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2881–022; ER10–2882–022; ER10–2883–022; ER10–2884–022; ER10–2885–022; ER10–2641–022; ER10–2663–022; ER10–2886–022; ER13–1101–017; ER13–1541–016; ER14–787–010; ER14–661–008; ER15–54–002; ER15–55–002; ER15–1475–003; ER15–2593–002.

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, Macho Springs Solar, LLC, SG2 Imperial Valley LLC, Lost Hills Solar, LLC, Blackwell Solar, LLC, North Star Solar, LLC, Desert Stateline LLC.

Description: Notification of Non-Material Change in Status of Alabama Power Company, et al.

Filed Date: 9/28/15.

Accession Number: 20150928–5109.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER12–162–013; ER11–3876–016; ER11–2044–016; ER15–2211–002; ER10–2611–014.

Applicants: Bishop Hill Energy II LLC, Cordova Energy Company LLC,

MidAmerican Energy Company, MidAmerican Energy Services, LLC, Saranac Power Partners, L.P.

Description: Notification of Change in Status of the BHE MBR Sellers.

Filed Date: 9/28/15.

Accession Number: 20150928–5255.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2245–001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: COPT CIRS Compliance Filing for the Migration to Tariff ID 3100 to be effective 7/23/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5001.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2485–001.

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: FPL on Behalf of Cedar Bay Generating Company, Limited Partnership PPA (Tolling) to be effective 9/24/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5221.

Comments Due: 5 p.m. ET 10/5/15.

Docket Numbers: ER15–2721–000.

Applicants: Arizona Public Service Company.

Description: Section 205(d) Rate Filing: Rate Schedule No. 217 Exhibit B.TTT Revision No. 2 to be effective 11/25/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5220.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2722–000.

Applicants: Wheelabrator Saugus Inc.

Description: Baseline eTariff Filing: MBR Application to be effective 11/25/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5222.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2723–000.

Applicants: San Diego Gas & Electric Company.

Description: Compliance filing: Cert of Concurrence LGIA Mesquite Solar 2, SDGE, and CAISO to be effective 10/21/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5223.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2724–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2015–09–25_MMU ROE Adder—Protocol Filing to be effective 1/1/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5224.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2725–000.

Applicants: J.P. Morgan Ventures Energy Corporation.

Description: Section 205(d) Rate Filing: Revision to market-based rate tariff to be effective 11/24/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5226.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2726–000.

Applicants: Utility Contract Funding, L.L.C.

Description: Section 205(d) Rate Filing: Revisions to market-based rate tariff to be effective 11/24/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5228.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2727–000.

Applicants: Phillips 66 Company.

Description: Section 205(d) Rate Filing: Amendments to Market-Based Rate Schedule to be effective 9/26/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5242.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2728–000.

Applicants: Maricopa West Solar PV, LLC.

Description: Baseline eTariff Filing: Baseline—Market-Based Rate Tariff to be effective 11/1/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5247.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2729–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: GIA and Distrib Serv Agmt SunEdison Mission Blv Pomona CA Mission I & II Project to be effective 9/29/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5129.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2730–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: Revised Amended & Restated LGIA with Silver State Solar Power South, LLC to be effective 9/29/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5136.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2731–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2015–09–28_SA 2840 Entergy Arkansas-Stuttgart Solar LLC GIA (J348) to be effective 9/29/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5169.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2732–000.

Applicants: Alabama Power Company.

Description: Section 205(d) Rate Filing: AMEA NITSA Amendment

Filing (Add Eastern Shore Centre Bank B Delivery Point) to be effective 8/28/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5193.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15–2733–000.

Applicants: NorthWestern Corporation.

Description: Section 205(d) Rate Filing; SA 243 8th Revised—NITSA with CHS Inc. to be effective 9/29/2015.

Filed Date: 9/28/15.

Accession Number: 20150928–5239.

Comments Due: 5 p.m. ET 10/19/15.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA15–2–000.

Applicants: Southwestern Public Service Company.

Description: Quarterly Land Acquisition Report and Request for Waiver of Southwestern Public Service Company.

Filed Date: 9/25/15.

Accession Number: 20150925–5296.

Comments Due: 5 p.m. ET 10/16/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–25123 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–004]

North American Electric Reliability Corporation: Notice of Filing

Take notice that on September 18, 2015, the North American Electric

Reliability Corporation (NERC) submitted a compliance filing and report in accordance with the Federal Energy Regulatory Commission's Order (FERC or Commission) in *North American Electric Reliability Corporation*, 148 FERC ¶ 61,214 (2014) (Annual Report Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 19, 2015.

Dated: September 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–25020 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14642–000]

San Diego County Water Authority, City of San Diego; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14642–000

c. *Date Filed:* July 28, 2015

d. *Submitted By:* San Diego County Water Authority and City of San Diego

e. *Name of Project:* San Vicente Pumped Storage Project

f. *Location:* Located near the community of Lakeside within San Diego County, California. The project occupies approximately 47 acres of United States lands administered by the Miramar Marine Corps Air Station.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* 1) Frank Belock, San Diego County Water Authority, 4677 Overland Avenue, San Diego, CA 92123; (858) 522–6600; and 2) Robert Mulvey, City of San Diego, Public Utilities Department, 9192 Topaz Way, San Diego, CA 92123–1117; (858) 292–6418.

i. *FERC Contact:* Claire McGrath at (202) 502–8290; or email at claire.mcgrath@ferc.gov.

j. The San Diego County Water Authority and City of San Diego filed their request to use the Traditional Licensing Process on July 28, 2015. The San Diego County Water Authority and City of San Diego provided public notice of their request on July 28, 2015. In a letter dated September 28, 2015, the Director of the Division of Hydropower Licensing approved the San Diego County Water Authority and City of San Diego's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402. We are also initiating consultation with the California State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the San Diego County Water Authority

and City of San Diego as the Commission's non-federal representatives for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The San Diego County Water Authority and City of San Diego filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 28, 2015.

Kimberly D. Bose,
Secretary.

[FR Doc. 2015-25033 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Combined Notice of Filings

Federal Energy Regulatory Commission

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15-1272-000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Compliance filing Annual Cash-Out Report Period Ending July 31, 2015.

Filed Date: 9/16/15.

Accession Number: 20150916-5047.
Comments Due: 5 p.m. ET 9/28/15.

Docket Numbers: RP15-1273-000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Section 4(d) Rate Filing: Volume No. 2—Niagara Expansion Project to be effective 11/1/2015.

Filed Date: 9/16/15.

Accession Number: 20150916-5134.

Comments Due: 5 p.m. ET 9/28/15.

Docket Numbers: RP15-1274-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Section 4(d) Rate Filing: AFT-E Conversion Language to be effective 10/16/2015.

Filed Date: 9/16/15.

Accession Number: 20150916-5135.

Comments Due: 5 p.m. ET 9/28/15.

Docket Numbers: RP15-1275-000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Section 4(d) Rate Filing: Niagara Expansion Project-Recourse Rate to be effective 11/1/2015.

Filed Date: 9/16/15.

Accession Number: 20150916-5136.

Comments Due: 5 p.m. ET 9/28/15.

Docket Numbers: RP15-1276-000.

Applicants: Trans-Union Interstate Pipeline, L.P.

Description: Section 4(d) Rate Filing: Compliance Filing to Modify Tariff to be effective 10/16/2015.

Filed Date: 9/17/15.

Accession Number: 20150917-5001.

Comments Due: 5 p.m. ET 9/29/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15-990-001.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Compliance filing Settlement—2015—Compliance Filing to be effective 11/1/2015.

Filed Date: 9/15/15.

Accession Number: 20150915-5109.

Comments Due: 5 p.m. ET 9/28/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25008 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15-209-000.

Applicants: CPV Sentinel, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, Expedited Action and Shortened Comment Period of CPV Sentinel, LLC.

Filed Date: 9/23/15.

Accession Number: 20150923-5066.

Comments Due: 5 p.m. ET 10/14/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15-130-000.

Applicants: Saddleback Ridge Wind, LLC.

Description: Notice of Self-Certification of EG or FC of Saddleback Ridge Wind, LLC.

Filed Date: 9/23/15.

Accession Number: 20150923-5102.

Comments Due: 5 p.m. ET 10/14/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-518-004.

Applicants: Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.

Description: Compliance filing: Order 676-H Compliance Filing (FERC Order) to be effective 5/15/2015.

Filed Date: 9/23/15.

Accession Number: 20150923-5141.

Comments Due: 5 p.m. ET 10/14/15.

Docket Numbers: ER15-698-001.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: Tariff Amendment: 20150923 PI EPU IA Update to be effective 1/1/2016.

Filed Date: 9/23/15.

Accession Number: 20150923-5062.

Comments Due: 5 p.m. ET 10/14/15.

Docket Numbers: ER15-2692-000.

Applicants: Criterion Power Partners, LLC.

Description: Baseline eTariff Filing: Rate Schedule 1—Shared Facilities Agreement to be effective 9/23/2015.

Filed Date: 9/22/15.

Accession Number: 20150922–5163.

Comments Due: 5 p.m. ET 10/13/15.

Docket Numbers: ER15–2693–000.

Applicants: Baltimore Power

Company LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 10/30/2015.

Filed Date: 9/23/15.

Accession Number: 20150923–5001.

Comments Due: 5 p.m. ET 10/14/15.

Docket Numbers: ER15–2694–000.

Applicants: Crosswind Transmission, LLC.

Description: Baseline eTariff Filing: Crosswind Transmission and Clear View Transmission & Interconnection Agreement to be effective 11/22/2015.

Filed Date: 9/23/15.

Accession Number: 20150923–5147.

Comments Due: 5 p.m. ET 10/14/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 23, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015–25013 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14276–002; Docket No. AD13–9–000]

FFP Project 92, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 14276–002.

c. *Date filed:* April 16, 2015.

d. *Applicant:* FFP Project 92, LLC.

e. *Name of Project:* Kentucky River Lock and Dam No. 11 Hydroelectric Project.

f. *Location:* The proposed project would be located on the Kentucky River in Estill and Madison Counties, Kentucky, at the existing Kentucky River Lock and Dam No. 11 which is owned by the Commonwealth of Kentucky and operated by the Kentucky River Authority. The project would not affect federal land.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations and Hydropower Regulatory Efficiency Act of 2013.

h. *Applicant Contact:* Kellie Doherty, Rye Development, LLC, 745 Atlantic Avenue, 8th floor, Boston, MA 02111; Telephone (781) 856–2030; kellie@ryedevelopment.com.

i. *FERC Contact:* Sarah Salazar, Telephone (202) 502–6863, and email sarah.salazar@ferc.gov.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 75 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14276–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments

or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed project would be located at the Commonwealth of Kentucky's existing Kentucky River Lock and Dam No. 11, which was originally constructed from 1904 to 1906 by the U.S. Corps of Engineers for the purpose of transportation. There is a single lock chamber with a total length of 148 feet and width of 52 feet on the south end of the dam. However, a concrete bulkhead and miter gates were installed in front of the lock structure and it is no longer being used for navigational purposes. The Kentucky River Authority currently operates the dam to maintain the upriver channel depth and an impoundment to withdraw water for municipal drinking water purposes. The impoundment also serves the purposes of providing opportunities for recreation and habitat for fish and wildlife.

The proposed project would be operated in a run-of-river mode. The proposed project would include: (1) The existing 579-acre impoundment, with a normal pool elevation of 585.60 feet North American Vertical Datum of 1988; (2) the existing 208-foot-long, 35-foot-high fixed crest dam; (3) a new 275-foot-long, 75-foot-wide reinforced concrete intake channel equipped with trashracks with 3-inch bar spacing; (4) a new 140-foot-long, 64.5-foot-wide powerhouse that includes a 30-foot-long, 47-foot-high, 64.5-foot-wide intake and headgate structure built within the existing lock structure; (5) two new horizontal Pit Kaplan turbine generator units each rated at 2.5 megawatts (MW); (6) a new 190-foot-long, 78-foot-wide tailrace; (7) a new 40-foot-long, 40-foot-wide substation; (8) a new 212-foot, 4.16 kilovolt (kV) underground transmission cable from the generators to the new substation and a new approximately 4.5-mile-long, 69-kV overhead transmission line extending from the new substation at the powerhouse to an existing substation located near Waco, Kentucky; and (9) appurtenant facilities. The proposed project would generate about 18,500 megawatt-hours annually, which would be sold to a local utility.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the

"eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely

notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant named in this public notice.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25011 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12551-008]

Salvatore & Michelle Shifrin; Mansfield Hollow Hydro, LLC; Notice of Transfer of Exemption

1. By letter filed November 26, 2014, and supplemented on July 23, 2015, Mansfield Hollow Hydro, LLC (Mansfield Hydro) informed the Commission that the exemption from licensing for the Mansfield Hollow Hydroelectric Project No. 12551, had been transferred to Mansfield Hydro.¹ The project is located on the Natchaug River in Tolland County, Connecticut.

2. The exemption was originally issued to Salvatore and Michelle Shifrin (Shifrins) on June 17, 2009.² The November 26, 2014 letter gave notice that the Shifrins had leased the right to operate the project to Mansfield Hydro. The July 23, 2015 filing contained a copy of the lease showing that all project lands and facilities were also leased to Mansfield Hydro, with exception of the five 100-kilowatt turbines, which Mansfield Hydro owns.

3. The transfer of an exemption does not require Commission approval. Thus, the Shifrins' lease of project properties and operating rights to Mansfield Hydro effectively transferred the exemption to Mansfield Hydro.

4. Mansfield Hydro is the exemptee of the Mansfield Hollow Hydroelectric Project No. 12551. The exemptee's

¹ O'Connell Energy Group made the filing on behalf of Mansfield Hydro, which is owned by O'Connell Development Group, Inc.

² 127 FERC ¶ 62,216, Order Granting Exemption From Licensing (5 MW or Less) (2009).

contact is: Stephen Fisk, General Manager, Mansfield Hollow Hydro, LLC, c/o O'Connell Energy Group, 57 Suffolk Street, Suite 200, Holyoke, MA 01040.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25010 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5596-018]

Town of Bedford, Virginia; Notice of Application for Amendment and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to permanently amend the minimum flow requirement in bypass reach.

b. *Project No.:* 5596-018.

c. *Date Filed:* May 22, 2015.

d. *Applicant:* Town of Bedford, Virginia.

e. *Name of Project:* Bedford Hydroelectric Project.

f. *Location:* The project is located on the James River in Bedford and Amherst Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Charles P. Kolakowski, Town Manager, Town of Bedford, 215 East Main Street, Bedford, VA 24523; telephone: (540) 587-6002.

i. *FERC Contact:* Kurt Powers, telephone: (202) 502-8949, and email address: kurt.powers@ferc.gov.

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance date of this notice by the Commission.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the

Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail a copy to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P-5596-018) on the first page of any comments or motions filed.

k. *Description of Request:* The licensee is requesting to permanently modify the minimum flow required to be released at Bedford Dam under Article 34 from 400 cubic feet per second (cfs) to 150 cfs. The Commission previously approved a request to amend Article 34 on July 14, 2009. That amendment permits the licensee to reduce the minimum flow at the bypass reach from 400 cfs to 200 cfs if the flow of the James River at the project is between 800 and 1,000 cfs for five consecutive days. The licensee states that the proposed permanent modification could generate an additional 2,500 megawatt hours of energy annually, approximately. Pursuant to Article 34, the licensee has obtained concurrence from the Virginia Department of Game and Inland Fisheries for the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25019 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15-1286-000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Non-Conforming Contract—140766 to be effective 10/21/2015.

Filed Date: 9/21/15.

Accession Number: 20150921-5166.

Comments Due: 5 p.m. ET 10/5/15.

Docket Numbers: RP15-1287-000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: Northern Access 2015 to be effective 11/1/2015.

Filed Date: 9/22/15.

Accession Number: 20150922-5116.

Comments Due: 5 p.m. ET 10/5/15.

Docket Numbers: RP15-1288-000.

Applicants: National Fuel Gas Supply Corporation.

Description: § 4(d) Rate Filing: Tuscarora Lateral (Supply CF) to be effective 11/1/2015.

Filed Date: 9/24/15.

Accession Number: 20150924-5067.

Comments Due: 5 p.m. ET 10/6/15.

Docket Numbers: RP15-1289-000.

Applicants: Enable Mississippi River Transmission, L.

Description: 2015 Annual Penalty Revenue Credit Filing of Enable Mississippi River Transmission, LLC under New Docket.

Filed Date: 9/24/15.

Accession Number: 20150924-5071.

Comments Due: 5 p.m. ET 10/6/15.

Docket Numbers: RP15-1290-000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: DPEs—NYFG and UGI to be effective 10/25/2015.

Filed Date: 9/24/15.

Accession Number: 20150924-5134.

Comments Due: 5 p.m. ET 10/6/15.

Docket Numbers: RP15-1291-000.

Applicants: Questar Pipeline Company.

Description: § 4(d) Rate Filing: Statement of Negotiated Rates Version 11.0.0 to be effective 9/25/2015.

Filed Date: 9/25/15.

Accession Number: 20150925-5002.

Comments Due: 5 p.m. ET 10/7/15.

Docket Numbers: RP15-1292-000.

Applicants: North Baja Pipeline, LLC.

Description: § 4(d) Rate Filing: TC Plus Revisions_Cleanup to be effective 10/26/2015.

Filed Date: 9/25/15.

Accession Number: 20150925-5027.

Comments Due: 5 p.m. ET 10/7/15.

Docket Numbers: RP15-1293-000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Pipeline Safety and Greenhouse Gas Cost Adjustment Mechanism—2015 to be effective 11/1/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5133.

Comments Due: 5 p.m. ET 10/7/15.

Docket Numbers: RP15–1294–000.

Applicants: Gas Transmission Northwest LLC.

Description: § 4(d) Rate Filing: Compliance to Docket CP12–494–000—Carty Lateral Project to be effective 12/31/9998.

Filed Date: 9/25/15.

Accession Number: 20150925–5155.

Comments Due: 5 p.m. ET 10/7/15.

Docket Numbers: RP15–1295–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Volume No. 2—Neg. Rate Agrmts with Antero Resources et al. to be effective 11/1/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5233.

Comments Due: 5 p.m. ET 10/7/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15–1147–001.

Applicants: Horizon Pipeline Company, L.L.C.

Description: Compliance filing Compliance Filing—Docket No. RP15–1147 to be effective 9/1/2015.

Filed Date: 9/22/15.

Accession Number: 20150922–5095.

Comments Due: 5 p.m. ET 10/5/15.

Docket Numbers: RP13–886–002.

Applicants: Southern Natural Gas Company, L.L.C.

Description: Compliance filing Rate Case Settlement—2015 Implementation to be effective 11/1/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5212.

Comments Due: 5 p.m. ET 10/7/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/>

[docs-filing/efiling/filing-req.pdf](#). For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 28, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–25125 Filed 10–1–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 25, 2015.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–210–000.

Applicants: Dominion Solar Projects A, Inc., Dominion Solar Projects I, Inc.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Requests for Waivers, Confidential Treatment, Shortened Comment Period and Expedited Action of Dominion Solar Projects A, Inc., et al.

Filed Date: 9/24/15.

Accession Number: 20150924–5216.

Comments Due: 5 p.m. ET 10/15/15.

Docket Numbers: EC15–211–000.

Applicants: American Transmission Company LLC.

Description: Application for Authority to Acquire Certain Facilities Under Section 203 of the Federal Power Act of American Transmission Company LLC.

Filed Date: 9/24/15.

Accession Number: 20150924–5218.

Comments Due: 5 p.m. ET 10/15/15.

Docket Numbers: EC15–212–000.

Applicants: American Transmission Company LLC.

Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the Federal Power Act of American Transmission Company LLC.

Filed Date: 9/24/15.

Accession Number: 20150924–5228.

Comments Due: 5 p.m. ET 10/15/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2044–015; ER10–2475–011; ER10–3246–006; ER10–2474–011; ER12–162–012; ER15–2211–001; ER11–3876–015; ER13–520–004; ER13–521–004; ER13–1441–004; ER13–1442–004; ER12–1626–005; ER13–1266–005; ER13–1267–004; ER13–1268–004; ER13–1269–004; ER13–1270–004; ER13–1271–004;

ER13–1272–004; ER13–1273–004; ER10–2601–004; ER10–2611–013; ER10–2605–008; ER12–922–002.

Applicants: MidAmerican Energy Company, Nevada Power Company, PacifiCorp, Sierra Pacific Power Company, Bishop Hill Energy II LLC, MidAmerican Energy Services, LLC, Cordova Energy Company LLC, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CalEnergy, LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Power Resources, Ltd., Saranac Power Partners, L.P., Yuma Cogeneration Associates, Phillips 66 Company.

Description: Notification of Change in Status of the BHE MBR Sellers.

Filed Date: 9/25/15.

Accession Number: 20150925–5208.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2715–000.

Applicants: Crosswind Transmission, LLC.

Description: § 205(d) Rate Filing: Crosswind and Sunset View

Transmission and Interconnection Agreement to be effective 11/23/2015.

Filed Date: 9/24/15.

Accession Number: 20150924–5148.

Comments Due: 5 p.m. ET 10/15/15.

Docket Numbers: ER15–2716–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Revisions to Fast-Start Resource Pricing and Dispatch to be effective 3/31/2017.

Filed Date: 9/24/15.

Accession Number: 20150924–5175.

Comments Due: 5 p.m. ET 10/15/15.

Docket Numbers: ER15–2717–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Retirement of Attachment C—RTO Mapping Document to be effective 11/25/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5037.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2718–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amended LGIA with Mojave Solar LLC to be effective 9/26/2015.

Filed Date: 9/25/15.

Accession Number: 20150925–5103.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15–2719–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3454, Queue No. X1-094 to be effective 11/17/2015.

Filed Date: 9/25/15.

Accession Number: 20150925-5105.

Comments Due: 5 p.m. ET 10/16/15.

Docket Numbers: ER15-2720-000.

Applicants: WestRock CP, LLC.

Description: § 205(d) Rate Filing: WestRock CP Notice of Succession and Name Change Amendment Filing to be effective 9/26/2015.

Filed Date: 9/25/15.

Accession Number: 20150925-5146.

Comments Due: 5 p.m. ET 10/16/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15-73-000.

Applicants: Portland General Electric Company.

Description: Application of Portland General Electric Company for Authority to Issue Short-term Debt Securities.

Filed Date: 9/25/15.

Accession Number: 20150925-5044.

Comments Due: 5 p.m. ET 10/16/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25014 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2492-013-Maine]

Woodland Pulp LLC: Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Vanceboro Dam Storage Project, located on the East Branch of the St. Croix River Washington County, Maine. The project does not occupy any federal land.

Staff prepared a final environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

FOR FURTHER INFORMATION CONTACT: Michael Watts at (202) 502-6123 or michael.watts@ferc.gov.

Dated: September 23, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25017 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662-027]

FirstLight Hydro Generating Company: Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. Type of Application: Application for Non-Capacity Amendment.
- b. Project No.: 2662-027.
- c. Date Filed: September 15, 2015.
- d. Applicant: FirstLight Hydro Generating Company (licensee).
- e. Name of Project: Scotland Hydroelectric Project.
- f. Location: Windham County, Connecticut.
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. Applicant Contact: Howard Person, Plant Manager, (860) 350-3617, or howard.person@gdfsuezna.com.
- i. FERC Contact: Alicia Burtner, (202) 502-8038, or alicia.burtner@ferc.gov.
- j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-2662-027.

k. Description of Request: The licensee requests a non-capacity

amendment of its November 21, 2013 license. The licensee states that, due to economic shifts, it is no longer economically feasible to add a 1,026 kilowatt (kW) low flow turbine to the existing powerhouse, as proposed during the relicensing process. The licensee instead proposes to replace the existing fixed-blade turbine with a variable pitch Kaplan turbine in order to achieve compliance with instantaneous run-of-river operations and other license requirements. The licensee's proposed amendment would reduce the authorized installed capacity from 3,026 kW to 2,000 kW. The licensee indicates that its proposed amendment would allow for electricity generation over a broader range of inflows, as low as 160 cubic feet per second, while enabling the project to meet its run-of-river operational requirement for the protection of aquatic resources downstream.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the proposed non-capacity amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 23, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25018 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15-2693-000]

Baltimore Power Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Baltimore Power Company LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25022 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER15-2680-000]****Sandstone Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Sandstone Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25021 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. ER15-2704-000]****National Gas & Electric, LLC: Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of National Gas & Electric, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 15, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015-25009 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. PF15-28-000]****National Grid LNG, LLC: Notice of Intent To Prepare an Environmental Document for the Planned Fields Point Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Fields Point Liquefaction Project involving construction and operation of facilities by National Grid LNG, LLC (NGLNG) in Providence, Rhode Island. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 26, 2015.

If you sent comments on this project to the Commission before the opening of this docket on June 22, 2015, you will need to file those comments in Docket No. PF15–28–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned

project and encourage them to comment on their areas of concern.

The following libraries will be provided copies of this notice in English and Spanish:¹

Providence Community Library: Washington Park, 1316 Broad Street, Providence, RI 02905, 401–781–3136.	Providence Community Library: Knight Memorial, 275 Elmwood Avenue, Providence, RI 02907, 401–467–2625.
Cranston Public Library: William Hall Library, 1825 Broad Street, Cranston, RI 02905, 401–781–2450.	Providence Community Library: South Providence, 441 Prairie Avenue, Providence, RI 02905, 401–467–2619.
East Providence Library Branch, 475 Bullocks Pt. Avenue, Riverside, RI 02915, 401–433–4877.	Providence Public Library, Reference Department, 150 Empire Street, Providence, RI 02903, 401–455–8000.
Cranston Public Library: Auburn Branch, 396 Pontiac Avenue, Cranston, RI 02910, 401–781–6116.	Providence Community Library: Fox Point, 90 Ives Street, Providence, RI 02906, 401–331–0390.
Cranston Public Library: Arlington Branch, 1069 Cranston Street, Cranston, RI 02920, 401–944–1662.	East Providence Public Library: Weaver, 41 Grove Avenue, East Providence, RI 02914, 401–434–2453.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally during a FERC scoping meeting. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or efiling@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (www.ferc.gov) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on “*eRegister*.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF15–28–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public scoping meeting its staff will conduct in the project area, scheduled as follows: FERC Public Scoping Meeting, Fields Point Liquefaction Project, October 8, 2015, 6:30 p.m., Juanita Sanchez Educational Complex at the Providence Academy of International Studies High School, 182 Thurbers Avenue, Providence, RI.

We will begin our sign up of speakers at 6 p.m. The scoping meeting will begin at 6:30 p.m. with a description of our environmental review process by Commission staff, after which speakers will be called. The meeting will end once all speakers have provided their comments or at 10:30 p.m., whichever comes first. Please note that there may be a time limit of three minutes to present comments, and speakers should structure their comments accordingly.

If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meetings will be recorded by a court reporter to ensure comments are accurately recorded. Transcripts will be entered into the formal record of the Commission proceeding.

Please note this is not your only public input opportunity; please refer to the review process flow chart in Appendix 1.²

Summary of the Planned Project

NGLNG plans to add liquefaction capability at the existing liquefied

natural gas (LNG) storage facility located at Fields Point in Providence, Rhode Island. The Project would include one new 20 million standard cubic feet per day gas pretreatment and liquefaction system to convert natural gas into LNG by cooling it to –260 °F.

The storage operation at Fields Point has been in existence for approximately 40 years and does not include any liquefaction equipment. The natural gas delivered to the facility via the existing pipeline would be pre-treated, liquefied, and conveyed to the existing storage tank.

A figure showing the general location of the existing and proposed facilities is shown in Appendix 2. If approved, NGLNG plans to begin construction of the Project in late 2016.

Land Requirements for Construction

The existing facility is in an industrial area along the Providence River at 121 Terminal Road. The total land proposed to be disturbed for construction of this project is reported to be approximately 8.91 acres. The liquefaction system would occupy approximately 1.85 acres within the existing facility's footprint.

The Environmental Document Preparation Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us³ to discover and address concerns the public may have about proposals. This

¹ Para los lectores de español, por favor refieran a la traducción en español presentada simultáneamente en el expediente de la FERC con esta convocatoria. El expediente de la FERC se encuentra disponible en el sitio web de la FERC (www.ferc.gov) utilizando el enlace a través de la biblioteca electrónica, al hacer clic en “General Search”, e introducir el número de expediente excluyendo los últimos tres dígitos en el campo

Número de expediente (es decir, PF15–28). Asegúrese de que ha seleccionado un intervalo de fechas adecuado. Además NGLNG puede publicar versiones en español de esta convocatoria en sitios web de noticias en español en el área de Providencia.

² The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this

notice in the mail and are available at www.ferc.gov using the link called “eLibrary” or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

³ “We,” “us,” and “our” refer to the environmental staff of the Commission's Office of Energy Projects.

process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the environmental document. We will consider all filed comments during the preparation of the environmental document.

In the environmental document, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- socioeconomics;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

The environmental document will present our independent analysis of the issues. The environmental document will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the environmental document to the public for an allotted comment period. If the document is published and distributed to the public, we will consider all timely comments on the environmental document before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the

environmental issues related to this project to formally cooperate with us in the preparation of the environmental document.⁴ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁵ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction staging areas, access roads, and the footprint of the planned liquefaction facility). Our environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities

⁴ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, part 1501.6.

⁵ The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

interested in and/or potentially affected by the planned project.

If we publish and distribute the environmental document, copies of it will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

Becoming an Intervenor

Once NGLNG files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, PF15-28). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Finally, public meetings or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: September 25, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25012 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 28, 2015.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13-1991-004; ER13-1992-004.

Applicants: Desert Sunlight 250, LLC, Desert Sunlight 300, LLC.

Description: Supplement to August 6, 2015 Notice of Change in Status of Desert Sunlight 250, LLC and Desert Sunlight 300, LLC.

Filed Date: 9/24/15.

Accession Number: 20150924-5215.

Comments Due: 5 p.m. ET 10/15/15.

Docket Numbers: ER15-2364-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2015-09-28_Prairie Power Attachment O Amendment Filing to be effective 1/1/2016.

Filed Date: 9/28/15.

Accession Number: 20150928-5194.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15-2734-000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing:

Braintree Large Generator

Interconnection Agreement—LGIA—ISONE/BLED-15-01 to be effective 8/27/2015.

Filed Date: 9/28/15.

Accession Number: 20150928-5293.

Comments Due: 5 p.m. ET 10/19/15.

Docket Numbers: ER15-2735-000.

Applicants: Garrison Energy Center LLC.

Description: § 205(d) Rate Filing: Rate Schedule FERC No. 1 to be effective 11/1/2015.

Filed Date: 9/28/15.

Accession Number: 20150928-5296.

Comments Due: 5 p.m. ET 10/19/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 28, 2015.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2015-25124 Filed 10-1-15; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9935-16-Region 4; CERCLA-04-2015-3758]

Blue Ridge Plating Company Superfund Site; Arden, Buncombe County, North Carolina; Notice Of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with the Blue Ridge Plating Company, Inc. and Carolyn Benfield concerning the Blue Ridge Plating Company Superfund Site located in Arden, Buncombe County North Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until November 2, 2015. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet:* www.epa.gov/region4/superfund/programs/enforcement/enforcement.html.

- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

- *Email:* Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT:

Paula V. Painter at 404/562-8887.

Dated: September 2, 2015.

Anita L. Davis,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2015-25134 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9920-73-OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Georgia's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective November 2, 2015 for the State of Georgia's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on October 2, 2015 for the State of Georgia's other authorized programs.

FOR FURTHER INFORMATION CONTACT:

Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1175, seeh.karen@epa.gov.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a

revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On January 14, 2010, the Georgia Department of Natural Resources (GA DNR) submitted an application entitled Georgia Environmental Protection Division Online System for revisions/modifications to its EPA-authorized programs under title 40 CFR. EPA reviewed GA DNR's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Georgia's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 51, 52, 60, 61, 63, 65, 68, 70, 71, 72, 74, 75, 79, 82, 86, 90, 91, 92, 94, 122, 123, 141, 146, 239, 262, 264, 266, 268, 270, 280, 403, and 437, is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans;
Part 60—Standards of Performance For New Stationary Sources;
Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;
Part 65—Consolidated Federal Air Rule, 70—State Operating Permit Programs;
Part 68—Chemical Accident Prevention Provisions;
Part 70—State Operating Permit Programs;
Part 71—Federal Operating Permit Programs;
Part 72—Permits Regulation;
Part 74—Sulfur Dioxide OPT-INS;
Part 75—Continuous Emission Monitoring;

Part 79—Registration of Fuels and Fuel Additives;
Part 82—Protection of Stratospheric Ozone;
Part 86—Control of Emissions from New and IN-USE Highway Vehicles and Engines;
Part 90—Control of Emissions From Nonroad Spark-Ignition Engines at or Below 19 Kilowatts;
Part 91—Control of Emissions From Marine Spark-Ignition Engines;
Part 92—Control of Air Pollution From Locomotives and Locomotive Engines;
Part 94—Control of Emissions From Marine Compression-Ignition Engines;
Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;
Part 142—National Primary Drinking Water Regulations Implementation;
Part 145—State Underground Injection Control Programs;
Part 239—Requirements for State Permit Program Determination of Adequacy;
Part 272—Approved State Hazardous Waste Management Programs;
Part 281—Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks;
Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution;
Part 745—Lead-based Paint Poisoning Prevention in Certain Residential Structures.

GA DNR was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Georgia's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of

the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Georgia's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2015-25119 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2014-0736; FRL-9934-55]

Agency Information Collection Activities; Proposed Renewal; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: "EPA's Safer Choice Partner of the Year Awards Program" and identified by EPA ICR No. 2450.02 and OMB Control No. 2070-0184, represents the renewal of an existing ICR that is scheduled to expire on January 31, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before December 1, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2014-0736, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Chen Wen, Chemistry, Economics & Sustainable Strategies Division (7409-M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-8849; email address: wen.chen@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates 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.

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. 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.

II. What information collection activity or ICR does this action apply to?

Title: EPA's Safer Choice Partner of the Year Awards Program.

ICR number: EPA ICR No. 2450.02.

OMB control number: OMB Control No. 2070-0184.

ICR status: This ICR is currently scheduled to expire on January 31, 2016. 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 Code of Federal Regulations (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 for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA developed the Partner of the Year Awards to recognize Safer Choice stakeholders who have furthered the goals of Safer Choice through active and exemplary participation in and promotion of the Safer Choice program. Making the mission of the Safer Choice program known to the widest possible audience, through its safer product label and in other forms of communication, is critical to fully realizing the program's goals of protecting human health and the environment, promoting a sustainable economy, and creating green jobs, especially in the small business sector.

The Partner of the Year Awards will be an annual event, with recognition for Safer Choice stakeholder organizations from five broad categories: (1) Formulators/product manufacturers (of both consumer and institutional/industrial (I/I) products), (2) purchasers and distributors, (3) retailers, (4) supporters (e.g., non-governmental organizations, including environmental and health advocates, trade associations, academia, sports teams, and others), and (5) innovators (e.g., chemical manufacturers, technology developers, and others). Within these categories and based on the criteria, EPA may elect to give additional awards in the subcategories of "small business" and "sustained excellence." This information collection activity addresses the reporting burden associated with making application to EPA for recognition in the Partner of the Year Awards program.

Responses to this information collection are voluntary. Respondents may claim all or part of a response confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are establishments engaged in the production, use, and/or advancement of safer chemicals, that have furthered the goals of DfE through active and exemplary participation in and promotion of the program, and that wish to receive recognition for their achievements.

Estimated total number of potential respondents: 50.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 750 hours.

Estimated total annual costs: \$45,486. This includes an estimated burden cost of \$45,486 and an estimated cost of \$0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is no change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

IV. 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. EPA will issue another **Federal Register** document 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**.

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

Dated: September 25, 2015.

James J. Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015-25172 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9023-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www2.epa.gov/nepa>
Weekly receipt of Environmental Impact Statements (EISs)
Filed 09/14/2015 Through 09/18/2015
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20150275, Final, USA, VA, Fort Belvoir Short-Term Projects and Real Property Master Plan Update, Review Period Ends: 11/02/2015, Contact: Felix M. Mariani 703-806-3193

EIS No. 20150276, Final Supplement, NRCS, MS, Long Beach Watershed, Review Period Ends: 11/09/2015, Contact: Kurt Readus 601-965-5205

EIS No. 20150277, Draft, USFS, WA, LeClerc Creek Grazing Allotment Management Planning, Comment Period Ends: 11/16/2015, Contact: Gayne Sears 509-447-7300

EIS No. 20150278, Second Draft, USACE, GA, Update of the Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin in Alabama, Florida, and Georgia and Water Supply Storage Assessment, Comment Period Ends: 11/16/2015, Contact: Lewis C. Sumner 251-694-3857

EIS No. 20150279, Draft, FTA, CA, Geary Corridor Bus Rapid Transit Project, Comment Period Ends: 11/16/2015, Contact: Alex Smith 415-744-2599

EIS No. 20150280, Final, FTA, WA, Link Light Rail Operations and Maintenance Facility, Review Period Ends: 11/02/2015, Contact: James Saxton 206-220-7954

EIS No. 20150281, Final, USN, WA, Northwest Training and Testing, Review Period Ends: 11/02/2015, Contact: John Mosher 360-257-3234

EIS No. 20150282, Final, USACE, CA, Los Angeles River Ecosystem Restoration, Review Period Ends: 11/02/2015, Contact: Eileen Takata 213-300-5712

Dated: September 28, 2015.

Karin Leff,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015-24908 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0385; FRL-9934-21]

Registration Review; Conventional, Biopesticide and Antimicrobial Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, EPA is opening the public comment period for several registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for chloroneb, maple lactone, cacodylic acid, neodecamide N-methyl, milbemectin, and dimethopin. These pesticides do not currently have any actively registered pesticide products and are not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before December 1, 2015.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III. A., by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: For pesticide specific information contact: The person identified as a contact in the table in Unit III. Also include the docket ID number listed in the table in Unit III. A. for the pesticide of interest.

For general information contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-8015; email address: dumas.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental

effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that

is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Contact and contact information
1-MCP (1- Methylcyclopropene) 6075	EPA-HQ-OPP-2014-0670	Gina Burnett, burnett.gina@epa.gov , (703) 605-0513.
Acrolein, 2005	EPA-HQ-OPP-2015-0571	Kelly Ballard, ballard.kelly@epa.gov , (703) 305-8126.
Amical 48, 4009	EPA-HQ-OPP-2015-0264	SanYvette Williams williams.sanyvette@epa.gov , (703) 305-7702.
Amicarbazone, 7269	EPA-HQ-OPP-2015-0400	Maria Piansay, piansay.maria@epa.gov , (703) 308-8037.
Bromuconazole, 7035	EPA-HQ-OPP-2015-0535	James Parker, parker.james@epa.gov , (703) 306-0469.
Busan 77, 3034	EPA-HQ-OPP-2015-0256	Stephen Savage, savage.stephen@epa.gov , (703) 347-0345.
Chromated Copper Arsenicals, 0132	EPA-HQ-OPP-2015-0349	Sandra O'Neill, oneill.sandra@epa.gov , (703) 347-0141.
Ferbam, 8000	EPA-HQ-OPP-2015-0567	Khue Nguyen nguyen.khue@epa.gov , (703) 347-0248.
N-bromosulfamates and mixtures, 5069	EPA-HQ-OPP-2015-0265	SanYvette Williams williams.sanyvette@epa.gov , (703) 305-7702.
Penoxsulam, 7625	EPA-HQ-OPP-2015-0303	Bonnie Adler, adler.bonnie@epa.gov , (703) 308-8523.
Pinoxaden, 7266	EPA-HQ-OPP-2015-0603	Linsey Walsh, walsh.linsey@epa.gov , (703) 347-8030.
Rotenone, 0255	EPA-HQ-OPP-2015-0572	Kelly Ballard, ballard.kelly@epa.gov , (703) 305-8126.
Sabadilla alkaloids, 3128	EPA-HQ-OPP-2015-0063	Roy Johnson, johnson.roy@epa.gov , (703) 347-0492.
Tetraconazole, 7043	EPA-HQ-OPP-2015-0061	Veronica Dutch dutch.veronica@epa.gov , (703) 308-8585.
Thiram, 0122	EPA-HQ-OPP-2015-0433	Wilhelmena Livingston, livingston.wilhelmena@epa.gov , (703) 308-8025.
Topramezone (BAS 670H), 7268	EPA-HQ-OPP-2015-0127	Jose Gayoso gayoso.jose@epa.gov , (703) 347-8652.
Triticonazole, 7036	EPA-HQ-OPP-2015-0602	Miguel Zavala, zavala.miguel@epa.gov , (703) 347-0504.
Ziram, 8001	EPA-HQ-OPP-2015-0568	Khue Nguyen nguyen.khue@epa.gov , (703) 347-0248.

EPA is also announcing that it will not be opening a docket for chloroneb (case #0007), maple lactone (case #6000), cacodylic acid (case #2080), neodecamide N-mythyl (case #7428), milbemectin (case #7623), and dimethipin (case #3063) because these pesticides are not included in any products actively registered under FIFRA section 3. The Agency will take separate actions to propose revocation of any affected tolerances that are not supported for import purposes only.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course

of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including

the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at http://www.epa.gov/oppsrrd1/registration_review/schedule.htm. Information on the Agency's registration review program and its implementing regulation may be seen at http://www.epa.gov/oppsrrd1/registration_review.

3. Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 25, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division,
Office of Pesticide Programs.

[FR Doc. 2015-25167 Filed 10-1-15; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[3060-0824]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before November 2, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas_A._Fraser@omb.eop.gov; and to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Nicole Ongele at (202) 418-2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0824.

Title: Service Provider and Billed Entity Identification Number and Contact Information Form.

Form Number: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 26,000 respondents; 26,000 responses.

Estimated Time per Response: 0.75 hours.

Frequency of Response: On occasion reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151-154 and 254 the Communications Act of 1934, as amended.

Total Annual Burden: 19,500 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) who administers the universal service program must preserve the confidentiality of all data obtained from respondents and contributors to the universal service programs, must not use the data except for purposes of administering the universal service programs, and must not disclose data in company-specific form unless directed to do so by the Commission. With respect to the FCC Form 498, USAC shall publish each participant's name, SPIN, and contact information via USAC's Web site. All other information, including financial institution account numbers or routing information, shall remain confidential.

Needs and Uses: One of the functions of the Universal Service Administrative Company (USAC) is to provide a means for the billing, collection and disbursement of funds for the universal service support mechanisms. On October 1998, the OMB approved FCC Form 498, the "Service Provider Information Form" to enable USAC to collect service provider name and address, telephone number, Federal Employer Identification Number (EIN), contact names, contact telephone numbers, and remittance information. FCC Form 498 enables participants to request a Service Provider Identification Number (SPIN) and provides the official record for participation in the universal service support mechanisms. The remittance information provided by participants on FCC Form 498 enables USAC to make payments to participants in the universal service support mechanisms.

The following proposed revisions have been made to the FCC Form 498 for which we seek OMB approval:

- Form name changed to "Service Provider and Billed Entity Identification Number and Contact Information Form";
- Added an additional field in block 3 for a company's Federal Registration Number (FRN);
- Added a column for the Study Area Code Company Name in block 8;
- Added the ability for a carrier to designate an alternate bank account for the payment of BEAR funds in block 11;
- Added a box in block 1 and a supplemental information sheet to allow respondents to include information about affiliates;
- Updated the Principal Communications Types in block 14 to include additional business types as listed on the FCC Form 499-A; and
- Added a box after every program on the form that will allow service providers to cease participation in the associated program without having to deactivate their entire SPIN.

Corresponding adjustments were made to the instructions to reflect the proposed changes to the FCC Form 498. The information collected on the FCC Form 498 is used by USAC to disburse federal universal service support consistent with the specifications of eligible participants in the universal service programs. FCC Form 498 submissions also provide USAC with updated contact information so that USAC can contact universal service fund participants when necessary. Without such information, USAC would not be able to distribute support to the proper entities and this would prevent the Commission from fulfilling its

statutory responsibilities under the Act to preserve and advance universal service.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2015-25000 Filed 10-1-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2015.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Rhineland Bancshares, Inc.*, Rhineland, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Savings Bank of Rhineland, Rhineland, Missouri.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Pioneer Bancshares, Inc.*, Dripping Springs, Texas; to merge with FC

Holdings, Inc., and thereby indirectly acquire First Community Bank, National Association, both in Sugar Land, Texas.

Board of Governors of the Federal Reserve System, September 29, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-25098 Filed 10-1-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *James L. Williams III*, Casselton, North Dakota; to acquire voting shares of Goose River Holding Company, and thereby indirectly acquire voting shares of The Goose River Bank, both in Mayville, North Dakota.

Board of Governors of the Federal Reserve System, September 29, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-25097 Filed 10-1-15; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

RIN 3084-AA98

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is giving notice that there will be no fee increase for entities accessing

the National Do Not Call Registry (the "Registry") for fiscal year 2016.

ADDRESSES: Requests for copies of this document should be sent to this address: National Do Not Call Registry Program, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop CC-9232, Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's Web site: <https://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Nicholas Mastrocinque, (202) 326-3188, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop CC-9232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110-188, 122 Stat. 635) ("Act"), mandates a specific fee structure to use in determining the fees for accessing the Registry. According to the Act, for each year beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, whichever fee is applicable, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) ("CPI") for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amount if the CPI change is less than 1 percent. We measure this change in CPI from the time of the previous fee increase.

Last year, for fiscal year 2015, we calculated an increase in the CPI of 1.56 percent, and adjusted the fees accordingly (79 FR 51477 (August 29, 2014)). The average value of the CPI for the 12-month period ending June 2014 was 234.966; the average for the 12 months ending June 2015 was 236.677. This is an increase of 0.73 percent, less than the one percent threshold to trigger an increase.

As this falls below the statute's 1 percent required change in the CPI, there shall be no fee access increase. Therefore, the fees will remain at the current level of \$60 per area code, with a maximum fee of \$16,482. The access fee for each area code during the second six months of an entity's annual subscription period remains at \$30. Users will still be able to access the first five area codes free of charge, and organizations that are not required to comply with the Registry will still be

able to access it if they choose to while remaining exempt from fees.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2015-25081 Filed 10-1-15; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day 15-0134]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written

comments should be received within 30 days of this notice.

Proposed Project

Foreign Quarantine Regulations (42 CFR part 71), (OMB Control No. 0920-0134, Expiration Date 9/30/2017)—Revision — National Center for Emerging and Zoonotic Infections Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this information collection proposal is to request a revision of a currently approved data collection "Foreign Quarantine Regulations" that expires September 30, 2017. This revision is an effort to provide greater clarity surrounding paperwork requirements and focuses exclusively on certain information collections within OMB Control No. 0920-0134 pertaining to importation of dogs into the United States. Specifically, CDC seeks to make the following changes:

- CDC is asking to correct a transcription error in the burden tables in section 12. Currently, the relevant IC reads: 71.51(b)(2) Dogs/cats: Certification of Confinement, Vaccination (CDC form 75.37). It should have been: 71.51(c)(2) Dogs: Certification of Confinement, Vaccination (CDC form 75.37).
- CDC is also proposing to replace the CDC form 75.37 NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement with a new Application For Permission To Import A Dog Unimmunized Against Rabies, which, if the importer meets the criteria for importation, will be followed by a CDC-completed Permit to Conditionally Import a Dog Inadequately Immunized against Rabies—Single Entry.
- CDC is also requesting approval to change and split the current information collection (IC) "71.51(c)(2) Dogs/cats: Certification of Confinement, Vaccination (CDC form 75.37)" into two separate ICs.
- CDC will include one modified IC: "71.51(c)(2), (d) Application For Permission To Import A Dog Unimmunized Against Rabies". This will include a reduced estimate of the numbers of these permits, formerly CDC form 75.37 NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement, issued each year.
- CDC will include a separate IC pertaining to 71.51(c)(1), (d). The title for this IC is Valid Rabies Vaccination Certificate, which will include only the burden associated with rabies vaccination certificates.

• CDC is also including an information collection for 71.51(c)(i), (ii), and (iii) which provides exemption criteria for the importation of a dog without a rabies vaccination certificate.

CDC is not requesting changes to any of the other information collections included under OMB control number

0920–0134 Foreign Quarantine Regulations.

CDC is providing two estimates of the total annualized burden of this information collection request, because CDC needs the flexibility to use the PLF in a widespread manner during an outbreak of public health significance. The first total, 307,546 burden hours, is

the total estimated burden to respondents per year with the use of the Passenger Locator Form used in an outbreak of public health significance. The second total, 82,613 burden hours, includes the more limited use of the PLF. It is more likely that the average annual burden for reporting and recordkeeping will be the second total.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name/CFR reference	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Maritime conveyance operators	71.21(a) Radio Report of death/illness—illness reports from ships. (fillable PDF (individual case and cumulative report), phone, transcribed email).	2,000	1	2/60
Aircraft commander or operators	71.21 (b) Death/Illness reports from aircrafts (verbal, no form).	1,700	1	2/60
Maritime conveyance operators	71.21 (c) Gastrointestinal Illnesses reports 24 and 4 hours before arrival (MIDRS).	17,000	1	3/60
Maritime conveyance operators	71.21 (c) Recordkeeping -Medical logs (no form, captains provide logs).	17,000	1	3/60
Isolated or Quarantined individuals	71.33(c) Report by persons in isolation or surveillance (verbal, no form).	11	1	3/60
Maritime conveyance operators	71.35 Report of death/illness during stay in port (verbal, no form).	5	1	30/60
Traveler	Locator Form used in an outbreak of public health significance.	2,700,000	1	5/60
Traveler	Locator Form used for reporting of an ill passenger(s).	800	1	5/60
Importer	71.51(c)(1), (d)—Valid Rabies Vaccination Certificates.	245,310	1	15/60
Importer	71.51(c)(i), (ii), and (iii) exemption criteria for the importation of a dog without a rabies vaccination certificate.	43,290	1	15/60
Importer	71.51(c)(2), (d) Application For Permission To Import A Dog Unimmunized Against Rabies.	1,400	1	15/60
Importer	71.51(b) (3) Dogs/cats: Record of sickness or deaths (no form, record review).	20	1	15/60
Importer/	CDC PGA Message Set for Importing Cats and Dogs.	30,000	1	15/60
Filer	71.52(d) Turtle Importation Permits (no form, just written request).	5	1	30/60
Importer	71.56 (a)(2) African Rodents-Request for exemption (no form, written request only).	20	1	1
Importer/	CDC PGA Message Set for Importing African Rodents.	60	1	15/60
Filer	71.55 Dead bodies (death certificates submitted).	5	1	1
Importers	71.56(a)(iii) Appeal (no form, written request only).	2	1	1
Filer	Statement or documentation of Non-infectiousness (Documented, no form; authority under 71.32(b)).	2,000	1	5/60
Filer/Importer	CDC PGA Message Set for Importing African Rodent and All Family Viverridae Products.	2,000	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2015–25105 Filed 10–1–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifiers: CMS-906]

Agency Information Collection Activities: Proposed Collection; Comment Request**AGENCY:** Centers for Medicare & Medicaid Services.**ACTION:** Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 1, 2015.**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326.**SUPPLEMENTARY INFORMATION:****Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-906 The Fiscal Soundness Reporting Requirements

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The Fiscal Soundness Reporting Requirements; *Use:* The CMS is assigned responsibility for overseeing all Medicare Advantage Organizations (MAOs), Prescription Drug Plan (PDP) sponsors and PACE organizations on-going financial performance. Specifically, CMS needs the requested collection of information to establish that contracting entities within those programs maintain fiscally

sound organizations and thereby remain a going concern. All contracting organizations must submit annual independently audited financial statements one time per year. The MAOs with a negative net worth and/or a net loss and the amount of that loss is greater than one-half of the organization's total net worth must file three quarterly financial statements. Currently, there are approximately 71 MAOs filing quarterly financial statements. Part D organizations must also 3 quarterly financial statements. The PACE organizations are required to file 4 quarterly financial statements for the first three years in the program as well as PACE organizations with a negative net worth and/or a net loss and the amount of that loss is greater than one-half of the organization's total net worth. *Form Number:* CMS-906 (OMB control number: 0938-0469); *Frequency:* Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 815; *Total Annual Responses:* 1,518; *Total Annual Hours:* 506. (For policy questions regarding this collection contact GERALYN GLENN at 410-786-0973.)

Dated: September 29, 2015.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015-25108 Filed 10-1-15; 8:45 am]

BILLING CODE 4120-01-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services**

[Document Identifiers: CMS-10110 and CMS-10387]

Agency Information Collection Activities: Submission for OMB Review; Comment Request**ACTION:** Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any

other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by November 2, 2015.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 or Email: OIRA_submission@omb.eop.gov.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To

comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) Prospective Payment System and Consolidated Billing; *Use:* We are requesting approval of a reinstatement of a Change of Therapy OMRA for Skilled Nursing Facilities (SNFs). As described in CMS-1351-F, we finalized the assessment effective October 1, 2011. The SNFs are required to submit this assessment. The COT OMRA is comprised of a subset of resident assessment information developed for use by SNFs to satisfy a Medicare payment requirement. The burden associated with this is the SNF staff time required to complete the COT OMRA, SNF staff time to encode the data, and SNF staff time spent in transmitting the data. The SNFs are required to complete a COT OMRA when a SNF resident was receiving a sufficient level of rehabilitation therapy to qualify for an Ultra High, Very High, High, Medium, or Low Rehabilitation category and when the intensity of therapy (as indicated by the total reimbursable therapy minutes (RTM) delivered, and other therapy qualifiers such as number of therapy days and disciplines providing therapy) changes to such a degree that it would no longer reflect the RUG-IV classification and payment assigned for a given SNF resident based on the most recent assessment used for Medicare payment. The COT OMRA is a type of required PPS assessment which uses the same item set as the End of Therapy (EOT) OMRA. *Form Number:* CMS-10387 (OMB Control Number: 0938-1140); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other For-profits and Not-for-profit institutions); *Number of Respondents:* 15,421; *Total Annual Responses:* 678,524; *Total Annual Hours:* 701,119. (For policy questions regarding this collection contact Penny Gershman at 410-786-6643).

2. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Manufacturer Submission of Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals; *Use:* In accordance with Section 1847A of the Social Security Act (the Act), Medicare Part B covered drugs and biologicals not paid on a cost or prospective payment basis are paid based on the average sales price (ASP) of the drug or biological, beginning in

Calendar Year (CY) 2005. The ASP data reporting requirements are specified in Section 1927 of the Act. The reported ASP data are used to establish the Medicare payment amounts. The reporting template was revised in CY 2011 in order to facilitate accurate collection of ASP data. An accompanying user guide with instructions on the template's use was also created and included an explanation of the data elements in the template. *Form Number:* CMS-10110 (OMB Control Number: 0938-0921); *Frequency:* Quarterly; *Affected Public:* Private sector (Business or other For-profits); *Number of Respondents:* 180; *Total Annual Responses:* 720; *Total Annual Hours:* 34,560. (For policy questions regarding this collection contact Amy Gruber at 410-786-1542).

Dated: September 29, 2015.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015-25109 Filed 10-1-15; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1657-N]

Medicare, Medicaid, and Children's Health Insurance Programs; Announcement of the Advisory Panel on Clinical Diagnostic Laboratory Tests Meeting on October 19, 2015

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

ACTION: Notice.

SUMMARY: This notice announces the next meeting date of the Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) on Monday, October 19, 2015. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on issues related to clinical diagnostic laboratory tests.

DATES: *Meeting Date:* The meeting of the Panel is scheduled to take place at CMS's headquarters in Baltimore, MD on Monday, October 19, 2015, beginning at 9:00 a.m., Eastern Daylight Time (EDT). The Panel will address issues relating to the CY 2016 clinical laboratory fee schedule (CLFS) preliminary determinations of new and

reconsidered test codes, as well as provide input on other CY2016 CLFS issues that are designated in the Panel's charter.

Meeting Registration:

The public may attend the meeting in-person, view via webcast, or listen via teleconference. Beginning Friday, October 2, 2015, and ending Tuesday, October 13, 2015 at 5:00 p.m. EDT, registration to attend the meeting in-person may be completed on-line at <http://cms.gov/Regulations-and-Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>. On this Web page, under "Related Links," double-click the "Clinical Diagnostic Laboratory Tests FACA Panel Meeting Registration" link and enter the required information. All the following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Email addresses.

Note: Participants who do not plan to attend the meeting in-person on October 19, 2015 should not register. No registration is required for participants who plan to view the meeting via webcast or listen via teleconference.

Presenter Registration and Submission of Presentations and Comments

We are interested in submitted comments or in person presentations at the meeting concerning the issues described in the **SUPPLEMENTARY INFORMATION** section of this notice and clarified in the agenda to be published approximately 2 weeks before the meeting. The comments and presentations should not address issues not before the Panel. The deadline to register to be a presenter and to submit written presentations for the meeting is 5:00 p.m. EDT, Tuesday, October 13, 2015. Presenters may register by email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentations should be sent via email to the same person's email address.

Meeting Location, Webcast, and Teleconference

The meetings will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Woodlawn, Maryland 21244-1850. Alternately, the public may either view the meetings via a webcast or listen by teleconference. During the scheduled meeting, webcasting is accessible online at <http://cms.gov/live>. Teleconference dial-in information will appear on the final meeting agenda, which will be posted

on the CMS Web site when available at <http://cms.gov/Regulations-and-Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

Meeting Format

This meeting is open to the public. The on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m. on Monday, October 19, 2015. Following the opening remarks, the Panel will address any issues relating to the CY 2016 CLFS preliminary determinations of new and reconsidered test codes, as well as provide input on other CY 2016 CLFS issues that are designated in the Panel's charter. The Panel will hear oral presentations from the public for no more than 1 hour during each of two sessions. During session one, registered persons from the public may present recommendations on preliminary determinations of new and reconsidered codes for the CY 2016 CLFS. During session two, registered persons from the public may present recommendations on CLFS issues that are designated in the Panel's charter and outlined in the Agenda.

ADDRESSES: *Web site:* For additional information on the Panel, please refer to our Web site at <http://cms.gov/Regulations-and-Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

FOR FURTHER INFORMATION CONTACT: Glenn C. McGuirk, Designated Federal Official (DFO), Center for Medicare, Division of Ambulatory Services, CMS, 7500 Security Boulevard, Mail Stop C4-01-26, Baltimore, MD 21244, 410-786-5723, email CDLTPanel@cms.hhs.gov or Glenn.McGuirk@cms.hhs.gov. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel on Clinical Diagnostic Laboratory Tests is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m-1), as established by section 216 of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113-93, enacted April 1, 2014). The Panel is subject to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (Secretary) to consult with an expert outside advisory panel, established by the Secretary, composed of an appropriate

selection of individuals with expertise in issues related to clinical diagnostic laboratory tests. Such individuals may include molecular pathologists, clinical laboratory researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use crosswalking or gapfilling processes to determine payment for a specific new test;
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests; and
- Other aspects of the new payment system under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), CMS announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015.

The Panel charter provides that panel meetings will be held up to four times annually. The Panel consists of 15 individuals and a Chair. The Panel Chair facilitates the meeting and the DFO or DFO's designee must be present at all meetings.

II. Agenda

The Agenda for the October 19, 2015, meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- CY 2016 CLFS preliminary determinations of new and reconsidered test codes which were posted on September 25, 2015 on our Web site at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.
- Other CY 2016 CLFS issues designated in the Panel's charter and further described on our Agenda.

A detailed Agenda will be posted approximately 2 weeks before the meeting, on the CMS Web site at <http://cms.gov/Regulations-and-Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

III. Meeting Attendance

The Panel's meeting on October 19, 2015, is open to the public; however,

attendance is limited to space available. Priority will be given to those who pre-register and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting, which is located on federal property, must register by following the instructions in the "Meeting Registration" section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting, including presenters, must be pre-registered and on the attendance list by the prescribed date.
- Individuals who are not pre-registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present a government-issued photo identification to the Federal Protective Service or Guard Service personnel before entering the building. Without a current, valid photo ID, persons may not be permitted entry to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example, laptops and cell phones are subject to physical inspection.

- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

V. Special Accommodations

Individuals requiring special accommodations must include the request for these services during registration.

VI. Panel Recommendations and Discussions

The Panel's recommendations will be posted after the meeting on our Web site at <http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html>.

VIII. Copies of the Charter

The Secretary's Charter for the Advisory Panel on Clinical Diagnostic Laboratory Tests is available on the CMS Web site at <http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html> or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

IX. Collection of Information Requirements

This document does not impose information collection requirements,

that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 29, 2015.

Andrew M. Slavitt,
Acting Administrator, Centers for Medicare & Medicaid Services.
[FR Doc. 2015–25162 Filed 10–1–15; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: April 2016 Current Population Survey Supplement on Child Support.
OMB No.: 0970–0416.
Description: Collection of these data will assist legislators and policymakers in determining how effective their policymaking efforts have been over time in applying the various child support legislation to the overall child support enforcement picture. This information will help policymakers determine to what extent individuals on welfare would be removed from the welfare rolls as a result of more stringent child support enforcement efforts.
Respondents: Individuals and households.

ANNUAL BURDEN ESTIMATES				
Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Support Survey	41,300	1	0.03	1,239

Estimated Total Annual Burden Hours: 1,239.
Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.
OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for

the Administration for Children and Families.
Robert Sargis,
Reports Clearance Officer.
[FR Doc. 2015–24972 Filed 10–1–15; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****[Docket No. FDA-2015-D-3235]****M4E(R2): The Common Technical Document—Efficacy; International Conference on Harmonisation; Draft Guidance for Industry; Availability****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled “M4E(R2): The CTD—Efficacy” (M4E(R2)). The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). In August 2001, FDA made available guidance on preparing the efficacy components of an application file in the common technical document (CTD) format (“M4E: The CTD—Efficacy” (M4E guidance)). This draft guidance revises the M4E guidance. The revised draft guidance standardizes the presentation of benefit-risk information in regulatory submissions, providing greater specificity on the format and structure of benefit-risk information. This revision is intended to facilitate communication among regulators and industry.

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 either electronic or written comments on the draft guidance by December 1, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-7800. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Pujita Vaidya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1144, Silver Spring, MD 20993-0002, 301-796-0684; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

Regarding the ICH: Michelle Limoli, Center for Drug Evaluation and Research, International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7212, Silver Spring, MD 20993-0002, 301-796-8377.

SUPPLEMENTARY INFORMATION:**I. Background**

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based and harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from other interested stakeholders. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: Europe, Japan, and North America. The eight ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; the Pharmaceutical Research and Manufacturers of America; Health Canada; and Swissmedic. The

ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers such as the World Health Organization. In August 2015, the ICH Steering Committee agreed that a draft guidance entitled “M4E(R2): The CTD—Efficacy” should be made available for public comment. The draft guidance is the product of the M4E(R2) Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Expert Working Group.

ICH M4E(R2) revises the M4E guidance (made available in August 2001), which covers the Clinical Overview and Clinical Summary of Module 2 of the CTD and the Clinical Study Reports of Module 5. The revised draft guidance provides more specific guidance regarding the format and structure of the benefit-risk assessment in section 2.5.6; it also revises other sections of the guidance for clarification, given the proposed revisions in section 2.5.6. In addition, the revised draft guidance changes the numbering and the section headings for consistency.

Regulatory authorities approve drugs that are demonstrated to be safe and effective for human use. The meaning of “safe” has historically been interpreted to mean that the benefits of the drug outweigh its risks. This benefit-risk assessment of pharmaceuticals is the fundamental basis of regulatory decision-making. In the last several years, providing greater structure for the benefit-risk assessment has been an important topic in drug regulation. The M4E guidance directs applicants to include their conclusions on benefits and risks in the Clinical Overview of Module 2 of the CTD under section 2.5.6. Although general guidance is provided in the M4E guidance regarding the expected content of section 2.5.6, no further structure is suggested to aid industry in developing the benefit-risk assessment. As a result, regulators observe a high degree of variability in the approaches taken by applicants in presenting this information. This variability may not facilitate efficient communication of industry views to regulators. Although regulators and industry have developed approaches for structured benefit-risk assessment and these approaches may take different forms, there is a common thread evident that can inform harmonization of the format and structure of benefit-risk

assessments provided by applicants in their regulatory submissions.

Recognizing that there are many reasonable approaches for conducting a benefit-risk assessment, M4E(R2) does not specify a particular approach to be used by industry. However, the document does offer specific guidance on the major elements that should be included in the benefit-risk assessment. Furthermore, consistent with the concept paper that laid the groundwork for the Expert Working Group, the revised draft guidance does not dictate an approach used by a regulator in conducting a benefit-risk assessment.

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 current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.regulations.gov>, <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

Dated: September 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-25122 Filed 10-1-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0418]

An Evaluation of the Prescription Drug User Fee Act Workload Adjuster; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on an assessment of the Prescription Drug User Fee Act (PDUFA) Workload Adjuster conducted by an independent consulting firm. This assessment was conducted to fulfill FDA performance commitments made as part of the fifth authorization of PDUFA in section XV, "Improving FDA Performance Management," subsection B, which was reauthorized by the Food and Drug Administration Safety and Innovation Act of 2012 (FDASIA). Independent consulting firms conducted two assessments during PDUFA V. This is the second assessment to evaluate whether the adjustment reasonably represents actual changes in workload volume and complexity in the human drug review program and to present options to discontinue, retain, or modify any elements of the adjustment. After review of the report and receipt of public comment, FDA can adopt appropriate change to the workload adjustment methodology, if warranted.

DATES: Submit electronic or written comments by November 2, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2013-N-0418 for "An Evaluation of the Prescription Drug User Fee Act Workload Adjuster; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other

applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Alice Tsai, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1149, Silver Spring, MD 20993-0002, 240-402-6069, Alice.Tsai@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On July 9, 2012, the President signed into law FDASIA. This new law includes the reauthorization of PDUFA that provides FDA with the necessary resources to maintain a predictable and efficient review process for human drug and biologic products.

Title I of FDASIA is the fifth authorization of PDUFA and includes by reference the performance goals and procedures for PDUFA V transmitted by the Secretary of Health and Human Services to Congress in a commitment letter. FDA developed recommendations for PDUFA V in consultation with drug industry representatives, patient and consumer advocates, health care professionals, and other public stakeholders from July 2010 through May 2011. These recommendations included an FDA commitment to contract with an independent accounting or consulting firm to review the adequacy of the PDUFA adjustment for changes in workload (hereafter referred to as the workload adjuster).

The workload adjuster was introduced in PDUFA III to allow for FDA to augment the total user fee revenue amount each fiscal year (after adjusting for inflation) to account for changes in workload volume in the human drug application review process. Workload volume is measured by the changes in the number of new drug applications (NDAs) and biologics license applications (BLAs), active commercial investigational new drugs (INDs), efficacy supplements, and manufacturing supplements submitted to the human drug review program during the most recent 5-year period.

In PDUFA IV, the workload adjuster was expanded to account for the workload complexity (known as the adjustment for changes in review activities; hereafter referred to as the Complexity Factor) associated with the review of NDAs/BLAs and active commercial INDs. The NDA/BLA complexity is measured by changes in the number of labeling supplements, annual report reviews, and NDA/BLA meetings per NDA/BLA. IND complexity is measured by changes in the number of special protocol assessments and IND meetings per active commercial IND.

As part of the PDUFA IV recommendations, FDA committed to an evaluation of the adjustment for changes in review activities by an independent consulting firm. The study, conducted by Deloitte & Touche, LLP, in fiscal year (FY) 2009, found that the adjustment methodology used by FDA reasonably captures changes in the workload complexity for reviewing human drug applications under PDUFA IV. Although the FY 2009 evaluation concluded that the adjustment methodology was reasonable at that time, the complexity of new drug applications and FDA's regulatory responsibilities are constantly evolving. Moreover, the complexity component of the PDUFA IV workload adjuster was formulated before the enactment of the Food and Drug Administration Amendments Act of 2007 (FDAAA). Thus, the workload adjuster does not account for new and significant review activities required by FDAAA, such as risk evaluation and mitigation strategies, safety labeling changes, advisory committee meetings, and post-market safety requirements, among others.

Given the dynamic nature of drug products and FDA's regulatory responsibilities, FDA committed to periodic reassessments of the workload adjuster in PDUFA V to ensure that it is achieving its intended role of adjusting the user fee revenues to reflect actual changes in FDA's workload volume and complexity.

The PDUFA V commitment letter instructs FDA to contract with an independent accounting or consulting firm to conduct two assessments of the workload adjuster. The first assessment (to examine the performance of the workload adjuster since FY 2009) conducted by IBM in FY 2013, found that the workload adjuster does reasonably represent changes in workload volume associated with the human drug review process. However, the report concluded that methodology was flawed with respect to measuring workload complexity, because it does

not represent total amount of work per submission. The report recommended that FDA consider removing the Complexity Factor. In addition, the report found that the workload adjuster's use of 5-year rolling averages to measure changes in workload against the base years was not as sensitive to recent trends as 3-year rolling averages would be. The report is available at <http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM350567>. After reviewing the report and public comments, FDA discontinued the use of the Complexity Factor in the adjustment methodology and adopted 3-year averages to measure changes in workload volume.

The second assessment (to address the recommendations from the first evaluation and assess the continued performance of the workload adjuster) was just completed. The independent consulting firm is required to submit a report based on its assessment. The report will evaluate whether the workload adjuster reasonably represents actual changes in workload volume and will present options to discontinue, retain, or modify any elements of the adjustment. After review of the report and receipt of public comment, FDA, if warranted, may adopt appropriate changes to the methodology.

FDA is seeking public comment now on the second assessment of the PDUFA Workload Adjuster, available at <http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM464878.pdf>.

Dated: September 29, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-25117 Filed 10-1-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-0684]

Identification of Alternative In Vitro Bioequivalence Pathways Which Can Reliably Ensure In Vivo Bioequivalence of Product Performance and Quality of Non-Systemically Absorbed Drug Products for Animals; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the

comment period related to the use of in vitro methods as a mechanism for assessing the in vivo product bioequivalence (BE) of nonsystemically absorbed drug products intended for use in veterinary species, published in the **Federal Register** of March 18, 2015 (80 FR 14146). FDA is reopening the comment period to receive new information.

DATES: Submit either electronic or written comments by November 2, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2015-N-0684 for Identification of Alternative In Vitro Bioequivalence Pathways Which Can Reliably Ensure In

Vivo Bioequivalence of Product Performance and Quality of Non-Systemically Absorbed Drug Products for Animals; Reopening of the Comment Period. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section

for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: John Harshman, CVM, Food and Drug Administration, HFV-170, MPN2, 7500 Standish Place, Rockville, MD 20855, 240-402-0845.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 18, 2015 (80 FR 14146), FDA announced a public meeting to discuss the use of in vitro methods as a mechanism for assessing the in vivo product bioequivalence of nonsystemically absorbed drug products intended for use in veterinary species. In the same notice, FDA said that it is seeking additional public comment to the docket. Interested persons were originally given until May 18, 2015, to comment on this issue. Following publication of that notice, FDA received a request to allow interested persons additional time to comment. In response to that request, FDA published a **Federal Register** notice on June 10, 2015, reopening the comment period for 60 days, until August 10, 2015.

II. Request for Comments

Following publication of the June 10, 2015, notice reopening the comment period for 60 days, FDA received a request to allow interested persons an additional 30 days to comment. FDA has considered the request and is reopening the comment period for 30 days, until November 2, 2015.

Dated: September 28, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-25121 Filed 10-1-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information

Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than December 1, 2015.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: HRSA AIDS Education and Training Centers Evaluation Activities (OMB No. 0915–0281)—Revision.

Abstract: The AIDS Education and Training Centers (AETC) Program, under the title XXVI of the Public Health Service Act, as amended, Ryan White HIV/AIDS Program legislation supports a network of regional and

national centers that conduct targeted, multi-disciplinary education and training programs for health care providers treating persons with HIV/AIDS. The AETC Program's purpose is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat, and medically manage individuals with HIV infection, and to help prevent high risk behaviors that lead to HIV transmission.

Need and Proposed Use of the Information: As part of an ongoing effort to evaluate AETC activities, information is needed on AETC training sessions, consultations, and technical assistance activities. Each regional center collects information on AETC training events, and is required to report aggregate data on their activities to HRSA and the HIV/AIDS Bureau (HAB). These data provide information on the number of training events, including clinical trainings and consultations, as well as technical assistance activities conducted by each regional center, the number of health care providers receiving professional training or consultation, and the time and effort expended on different levels of training and consultation activities. In addition, information is obtained on the populations served by AETC trainees and the increase in capacity achieved through training events. Collection of this information allows HRSA and HAB to provide information on training activities and types of

education and training provided to Ryan White HIV/AIDS Program Grantees; resource allocation; and capacity expansion.

Likely Respondents: Trainees are asked to complete the Participant Information Form (PIF) once a year, and trainers are asked to complete an Event Record (ER) for each training event they conduct during the year. In addition to each regional AETC (8 total), the AETC National Coordinating Resource Center will compile these data into a data set and submit to HAB once a year.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The estimated annual response burden to trainers, as well as attendees of training programs as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Participant Information Form (PIF)	90,193	1	90,193	0.167	15,062
Event Record (ER)	18,070	1	18,070	0.2	3,614
Total	108,263	.....	108,263	.....	18,676

The estimated annual burden to AETCs is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Aggregate Data Set	9	2	18	32	576

The total burden hours are 19,252. HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the

estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

Jackie Painter,
Director, Division of the Executive Secretariat.
[FR Doc. 2015–24956 Filed 10–1–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Centers for Disease Control and Prevention (CDC)/ Health Resources and Services Administration (HRSA) Advisory Committee on HIV, Viral Hepatitis and Sexually Transmitted Diseases (STD) Prevention and Treatment; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given of the following meeting:

Name: CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT).

Date and Time: November 4, 2015, 10:00 a.m.–4:30 p.m.; and November 5, 2015, 10:00 a.m.–12:30 p.m.

Place: This meeting is accessible via audio conference call and Adobe Connect Pro.

Status: This meeting is open to the public. The virtual meeting is available via teleconference line and Adobe Connect Pro Meeting and will accommodate approximately 100 people. Join the meeting by:

1. (Audio Portion) Calling the Toll Free Phone Number 1-800-369-3340 and providing the Public Participant Pass Code 4318075, and

2. (Visual Portion) Connecting to the Advisory Committee Adobe Connect Pro Meeting using the following URL: https://hrsa.connectsolutions.com/cdc-hrsa_ac/.

(Copy and paste the above link into your browser if it does not work directly). Participants should call and connect 15 minutes prior to the meeting in order for logistics to be set up. Call (301) 443-9684 or send an email to sgordon@hrsa.gov if you have any questions, or send an email to CWilliams2@hrsa.gov if you are having trouble connecting to the meeting site.

Purpose: This Committee is charged with advising the Director, CDC, and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS, Viral Hepatitis and other STDs; the support of health care services to persons living with HIV/AIDS; and education of health professionals and the public about HIV/AIDS, Viral Hepatitis and other STDs.

Agenda: Agenda items include: (1) CDC and HRSA Program Updates; (2) HRSA HIV Clinical Workforce Study; (3) Emerging Issues Related to ACA Implementation and Ryan White HIV/AIDS Program Client Level Data; (4)

Impact of Ryan White HIV/AIDS Program on HIV Treatment Outcomes; and (3) CHAC Workgroup Updates (Pre-Exposure Prophylaxis, Hepatitis C Virus, and Data). Agenda items are subject to change.

Public Comment: Persons who desire to make an oral statement may request it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

FOR FURTHER INFORMATION CONTACT:

Shelley B. Gordon, Senior Public Health Analyst, Health Resources and Services Administration, HIV/AIDS Bureau, Division of Policy and Data, 5600 Fishers Lane, Room 7C-26, Rockville, Maryland 20857, telephone (301) 443-9684, fax (301) 443-3343, or email sgordon@hrsa.gov.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2015-24957 Filed 10-1-15; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Non-viral Adoptive Cell Transfer-based Immunotherapies (ACT) for the Treatment and Prophylaxis of Patients With Metastatic Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Intima Biosciences, Inc., which is located in New York City, New York to practice the inventions embodied in the following patent applications and applications claiming priority to these applications:

1. U.S. Provisional Patent Application No. 61/771,251 filed March 1, 2013 entitled "Methods of Producing Enriched Populations of Tumor Reactive T Cells from Peripheral Blood" (HHS Ref No. E-085-2013/0-US-01);

2. PCT Application No. PCT/US2013/038813 filed April 30, 2013 entitled "Methods of Producing Enriched Populations of Tumor Reactive T Cells from Peripheral Blood" (HHS Ref No. E-085-2013/0-PCT-02) and all resulting national stage filings; and

3. PCT Application No. PCT/US2014/058796 filed October 2, 2014 entitled "Methods of Isolating T Cell Receptors

Having Antigenic Specificity for a Cancer-Specific Mutation" (HHS Ref No. E-233-2014/0-PCT-01);

The patent rights in these inventions have been assigned to the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of the Licensed Patent Rights with the Licensee's non-viral clustered regularly interspaced short palindromic repeats (CRISPR)/cellular apoptosis susceptibility (Cas) systems and proprietary non-viral constructs for the insertion of genes encoding T-Cell Receptors (TCR) against mutated antigens into peripheral blood lymphocytes for the treatment and prophylaxis of patients with metastatic cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 2, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A., Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240) 276-5530; Facsimile: (240) 276-5504; Email: chatterjeesa@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The first technology describes a process to select highly tumor-reactive T cells from a patient's peripheral blood sample based on the expression of two specific T cell surface markers: Programmed cell death protein 1 (PD-1; CD279) and/or T cell Ig- and mucin-domain-containing molecule-3 (TIM-3). After this enriched population of tumor-reactive T cells is selected and expanded to large quantities, it gets re-infused into the patient via an ACT regimen. The enrichment of tumor-reactive cells from a patient's peripheral blood based on these markers provides a simple alternative to the current strategies based on isolation tumor-reactive cells from the tumor, as it reduces the cost and complications of tumor of resection, as well as provides a T cell product for patients without resectable lesions. The second technology describes a method to identify and generate TCR engineered T cells for personalized cancer therapy. Using tandem mini-gene constructs encoding all of the patient's tumor mutations, T cells that were reactive with the unique mutated antigens expressed only in the patient's tumors

are identified, and then the mutation-reactive TCRs and engineered peripheral blood T cells from the same patient are isolated to express these mutation-reactive TCRs. These personalized TCR engineered T cells are expanded and infused back into the same patient with the potential to induce tumor regression.

The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24990 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Bridging the Gap Between Cancer Mechanism and Population Science.

Date: October 29, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room

7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Rockville, MD 20850, 240-276-6385, lovingeg@mail.nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, KRAS-Dependent Cancers.

Date: November 4, 2015.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892-9750 240-276-6371 decluej@mail.nih.gov.

Name of Committee: National Cancer Institute, Special Emphasis Panel, Core Infrastructure and Methodological Research for Cancer Epidemiology Cohorts.

Date: November 10, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 5W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892-9750, 240-276-6385 lovingeg@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 29, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-25068 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Regulatory Networks.

Date: October 23, 2015.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435-1741, pannierr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular Biology.

Date: October 26-27, 2015.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301-435-0952, espinozala@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Virulence.

Date: October 26, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 3200, MSC 7808, Bethesda, MD 20892, 301-435-1167, pandya@mai.nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: October 29, 2015.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, Bethesda, MD 20892, 301-435-1116, kozelp@mail.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: October 29–30, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301-435-1149, marci.scidmore@nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: October 29–30, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435-2398, pughjohn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Surgical Sciences and Bioengineering.

Date: October 29, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chiayeng Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 5213, MSC 7852, Bethesda, MD 20892, 301-435-2397, chiayeng.wang@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: November 2–3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Kristin Kramer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437-0911, kramerkm@csr.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: November 2–3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435-2477, zargerma@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Confocal Microscopy and Imaging.

Date: November 2–3, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 5201, MSC 7840, Bethesda, MD 20892, 301-435-1175, berestm@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urology.

Date: November 2, 2015.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mushtaq A. Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301-435-1778, khanm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Care Delivery and Methodologies Research Project Grants.

Date: November 2, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806-0009, brontetinkewjm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vaccines Against Microbial Disease.

Date: November 3, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301-495-1506, jakesse@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pulmonary Diseases.

Date: November 3–4, 2015.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301-435-0696, barnasg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interventions and Mechanisms for Addictions.

Date: November 3, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300-6541, boulaymg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Bioanalytical Chemistry, Biophysics, and Assay Development.

Date: November 4–5, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Vonda K. Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301-435-1789, smithvo@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: November 4, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Martha Garcia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301-435-1243, garciamc@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol, Drugs, and Heavy Metals.

Date: November 4–5, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301-435-1119, selmanom@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Biology and Tissue Engineering.

Date: November 4, 2015.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301-451-0996, ybi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Differentiation and Integration of Stem Cells (Embryonic and Induced-Pluripotent) Into Developing or Damaged Tissues.

Date: November 4, 2015.

Time: 2:00 p.m. to 5:30 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: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435-2359, shayiqr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes and Genetics Applications AREA Review.

Date: November 4, 2015.

Time: 3:00 p.m. to 5:30 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: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, Lorangd@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13-137: Bioengineering Research.

Date: November 4, 2015.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408-9756, carsteae@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small

Business: Aging and Development, Auditory, Vision and Low Vision Technologies.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle Hotel, 1400 6th Avenue, Seattle, WA 98101.

Contact Person: Paek-Gyu Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613-2064, leepg@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle, 1400 6th Avenue, Seattle, WA 98101.

Contact Person: Yuan Luo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301-915-6303, luoy2@mail.nih.gov.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-806-6596, rubertm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Synthetic and Biological Chemistry.

Date: November 5, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-1722, eissenstatma@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of Neuroscience AREA Grant Applications.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301-435-1220, crosland@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biochemistry and Biophysical Chemistry.

Date: November 5-6, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 437-7927, jollieda@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Adaptive and Innate Immune Response.

Date: November 5, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Patrick K. Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301-435-1052, laip@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Computational Biosciences.

Date: November 5-6, 2015.

Time: 11:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435-2344, moscajos@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.

Date: November 6, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301-237-9870, xuguofen@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-24983 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Peer review of Support of Competitive Research (SCORE) Applications.

Date: October 27, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, 3An.18, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12M, Bethesda, MD 20892, 301-594-2704, Shinako.takada@nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of INBRE Research Grant Applications.

Date: October 27, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, 3An.12A, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12E, Bethesda, MD 20892, 301-435-0807, slicelw@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology,

Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 28, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-24984 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive License: Differential Expression of Molecules Associated With Acute Stroke

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive license to VuEssence, which is located in Florida, to practice the inventions embodied in the following patents:

1. AU Patent 2005248410, issued August 5, 2010 (E-306-2003/0-AU-03)
2. US Patent 7,749,700, issued July 6, 2010 (E-306-2003/1-US-01)

The patent rights in these inventions have been assigned to the United States of America. The prospective start-up exclusive license territory may be worldwide and the field of use may be limited to in vitro class III diagnostic device for the detection and assessment of ischemic stroke in humans.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 19, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated start-up exclusive evaluation option license should be directed to: Susan Ano, Ph.D., NINDS Technology Transfer and Development Branch, 31 Center Drive, Suite 8A52, MS2540, Bethesda, MD 20892; Telephone: (301) 435-5515; Email: anos@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The present technology claims methods of determining whether a subject had an

ischemic stroke by detecting expression of twenty biomarkers in the blood, comparing expression levels to an individual who has not had a stroke, and determining whether there was at least a four-fold increase in the biomarker expression levels. Each of the biomarkers is detectable by a specified set of sequences.

The patent also claims a method of administering an appropriate treatment regimen for a subject who had an ischemic stroke.

The prospective start-up exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24988 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the

indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301-496-7057; fax: 301-402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION:

Technology descriptions follow.

Novel Radio-Labeled Agents for Imaging Alzheimer's Disease-Associated Amyloid

Description of Technology: This technology introduces novel radio-labeled agents for imaging amyloid deposits in the brains of Alzheimer's disease patients. These are small molecule, radio-ligand compounds that are analogs of benzo[d]thiazole. They are highly specific to amyloid, have low background noise, do not undergo rapid defluoridation and do not produce residual radioactivity in the brain. In addition, the compounds are stable and may be readily synthesized from commercially available starting materials. These compounds may be used in many noninvasive imaging techniques including: Magnetic resonance spectroscopy (MRS) or imaging (MRI) or positron emission tomography (PET) or single-photon emission computed tomography (SPECT) to measure amyloid. Non-invasive detection of Alzheimer's disease-associated amyloid plaques in the brain would be valuable for early diagnosis, monitoring, and for clinical development of therapeutic drugs.

Potential Commercial Applications: Imaging agents for use in magnetic resonance spectroscopy (MRS), or imaging (MRI), positron emission tomography (PET) or single-photon emission computed tomography (SPECT).

Competitive Advantages: Highly specificity to amyloid, low background, do not undergo rapid defluoridation and do not produce residual radioactivity in the brain.

Development Stage: Early-stage.

Inventors: Lisheng Cai and Victor W. Pike (NIMH).

Publications:

1. Cai L, et al. Synthesis and structure-affinity relationships of new 4-(6-iodo-H-imidazo[1,2-a]pyridin-2-yl)-N-dimethylbenzeneamine derivatives as ligands for human beta-amyloid plaques. *J Med Chem.* 2007 Sep 20;50(19):4746-58. [PMID 17722900]
2. Cai L, et al. Synthesis and evaluation of N-methyl and S-methyl 11C-labeled 6-methylthio-2-(4'-N,N-dimethylamino)phenylimidazo[1,2-

a]pyridines as radioligands for imaging beta-amyloid plaques in Alzheimer's disease. *J Med Chem.* 2008 Jan 10;51(1):148-58. [PMID 18078311]

Intellectual Property:

- HHS Reference No. E-225-2011/0—US Provisional Application No. 61/535,569 filed 16 Sep 2011
- HHS Reference No. E-225-2011/1—PCT Application No. PCT/US2012/055124 filed 13 Sep 2012, which published as WO 2013/0401830 on 21 Mar 2013; US Patent Application No. 14/345,004 filed 23 Apr 2014

Related Technology: HHS Reference No. E-156-2006/0—US Patent No. 8,703,096 issued 22 Apr 2014; US Patent Application No. 14/223,782 filed 24 Mar 2014; Various international patents/applications issued/pending.

Licensing Contact: Jennifer Wong; 301-435-4633; wongje@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Mental Health (NIMH) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Beta-amyloid Imaging Agents. For collaboration opportunities, please contact Suzanne L. Winfield, Ph.D. at winfiels@intr.nimh.nih.gov or 301-402-4324.

Human Research Information System (HuRIS)

Summary: Researchers at the National Institute on Drug Abuse (NIDA) seek licensing or co-development of a Human Research Information System (HuRIS) software that automates all major functions of a clinical-research entity. The system is designed for commercial healthcare providers, community treatment centers, and clinical research facilities.

Description of Technology: The available system is the Human Research Information System (HuRIS), an integrated advanced clinical/research informatics series of systems—that is, an intelligent electronic environment for the collection, organization and retrieval of information in clinical/scientific decision support—which enables data and resource sharing in real time among authorized users at our clinics. (Individual systems or subsystems may be licensable.) Users on both the clinical side (e.g. doctors writing medication orders or nurses recording participants' vital signs) and on the research side (e.g. researchers conducting data analysis or completing reporting requirements) have access to the information on demand. At the core of this informatics infrastructure reside the clinical charts and research records of participants

compiled over the entire history of their study participation, and sometimes across multiple studies. The computerized recording of participants' information starts from the time of their initial consent for screening. Data collected by our intake personnel under a screening protocol become part of the participants' clinical research records. This recording continues as participants are admitted to a clinical trial and persists throughout their progress within the prescribed activities until they are discharged. The electronic recording of participants' activities enables the use of this information as a research resource to different groups at different locations, in current and future protocols, as permitted by human subjects' protection regulations. The HuRIS has a number of intelligent decision systems built-in for real-time or on-demand query as well as HL-7 communications with external laboratories for data exchange, and it seamlessly communicates with our Human Biospecimen Tracking System. User permissions to access various components of the system are centrally controlled and all access is logged.

Potential Commercial Applications:

- Hospital Information Management
- Clinical Research Information Management
- Pharmacy Management System
- Biospecimens Tracking System
- Laboratory Information Management
- Behavioral Modification/Addiction Treatment

Competitive Advantages:

- Mature solution developed with contributions by numerous physicians, scientists, and treatment professionals at all levels
- Low-cost mechanism
- Proven advantage in prior clinical studies

Development Stage:

- Ready for commercialization
- Prototype
- Clinical

Inventors: Massoud R. Vahabzadeh, Mustapha Mezghanni, Jia-Ling Lin, Michelle K. Leff (all of NIDA)

Publications:

1. Massoud Vahabzadeh, Jia-Ling Lin, Mustapha Mezghanni, Carlo Contoreggi, and Michelle Leff, "An EHR-Based Multi-Site Recruiting System for Clinical Trials," *Proc. 20th IEEE International Symposium on Computer-Based Medical Systems*, June 2007, pages 331-6.

2. Massoud Vahabzadeh, Jia-Ling Lin, Mustapha Mezghanni, David Epstein, and Kenzie Preston, "Automation in an Addiction Treatment Research Clinic:

Computerized Contingency Management, Ecological Momentary Assessment, and a Protocol Workflow System," Drug and Alcohol Review, 28(1):3–11, January 2009.

Intellectual Property: HHS Reference No. E–266–2014/0—Software. No patent protection is being sought.

Contact Information: Vio Conley, M.S.; NCI Technology Transfer Center; Phone: 240–276–5531; Email: conleyv@mail.nih.gov.

Keywords: Software, Clinical Information System, Research Information System, Medical Decision Support System (DSS), Electronic Hospital Records (EHR), Physicians Order Entry (POE), Pharmacy Information System, Laboratory Information Management (LIM), Biospecimen Tracking System, Substance abuse, Drug addiction, Mental health, mPAL, HuRIS.

Optimized Gene Therapy Vector for the Treatment of Glycogen Storage Disease Type Ia

Description of Technology: NIH researchers have developed an adeno-associated viral (AAV) vector for the treatment of glycogen storage disease type Ia (GSD-Ia). GSD-Ia is an inherited disorder of metabolism associated with life-threatening hypoglycemia, hepatic malignancy, and renal failure caused by the deficiency of glucose-6-phosphatase-alpha (G6Pase-alpha or G6PC). This new AAV vector that expresses human G6Pase-alpha directed by the tissue-specific human G6PC promoter/enhancer incorporates two improvements: (1) It expresses a variant of G6Pase-alpha with enhanced enzymatic activity; (2) it is codon optimized to achieve higher enzyme expression levels and enhanced enzymatic activity.

Current therapy, which primarily consists of dietary modification, fails to prevent long-term complications in many patients, including growth failure, gout, pulmonary hypertension, renal dysfunction, osteoporosis, and hepatocellular adenomas (HCA). Gene therapy-based techniques, which directly address the underlying genetic deficiency driving the disorder, offer the prospect of long-term remission in patients with GSD-Ia.

Potential Commercial Applications: Gene therapy vector for the treatment of GSD-Ia.

Competitive Advantages:

- Protein coding sequence modified for enhanced enzymatic activity.
- Codon optimized for increased enzyme expression in target organs.

Inventor: Janice J. Chou (NICHD)

Development Stage: In vivo data available (animal).

Publications:

1. Lee YM et al. Prevention of hepatocellular adenoma and correction of metabolic abnormalities in murine glycogen storage disease type Ia by gene therapy. *Hepatology* 2012 Nov;56(5):1719–29. [PMID 22422504].

2. Lee YM, et al. The upstream enhancer elements of the G6PC promoter are critical for optimal G6PC expression in murine glycogen storage disease type Ia. *Mol Genet Metab*. 2013 Nov;110(3):275–80. [PMID 23856420].

Intellectual Property: HHS Reference No. E–039–2015/0–US–01—US Provisional Patent Application 62/096,400 filed December 23, 2014.

Related Technologies: HHS Reference No. E–552–2013/0—US Provisional Patent Application No. 61/908,861 filed November 26, 2013; PCT Application No. PCT/US2014/067415 filed November 25, 2014.

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; vathyams@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Child Health and Human Development is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize gene therapy vectors for the treatment of glycogen storage disease type Ia. For collaboration opportunities, please contact Joseph M. Conrad, III, Ph.D., J.D. at jmconrad@mail.nih.gov.

Dated: September 25, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–24987 Filed 10–1–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Miniature Serial Sectioning Microtome for Block-Face Imaging

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to Carl Zeiss Microscopy GmbH, which is located in Germany, to practice the inventions

embodied in the following patent applications:

1. US Provisional Application 61/991,929, filed May 12, 2014 (E–121–2014/0–US–01)
2. PCT Application PCT/US2015/030359, filed May 12, 2015 (E–121–2014/0–PCT–02)

The patent rights in these inventions have been assigned to the United States of America.

The prospective start-up exclusive license territory may be worldwide and the field of use may be limited to microtomes for scanning electron microscopes (SEMs) or light microscopes for life science applications.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 2, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Susan Ano, Ph.D., NINDS Technology Transfer and Development Branch, 31 Center Drive, Suite 8A52, MS2540, Bethesda, MD 20892; Telephone: (301) 435–5515; Email: anos@mail.nih.gov.

SUPPLEMENTARY INFORMATION: A microtome device is used in a variety of microscopy techniques to remove very thin (e.g., in the tens of nanometers range) portions from the top of a sample between successive images. This technology discloses a design for a microtome device that offers several unique features and advantages over commercially available microtomes. A prototype of the microtome has been built and demonstrated to work with a serial block-face scanning electron microscopy in order to serially collect ultrathin sections from plastic embedded biological tissues. This microtome design allows for a sample to be cut at a location removed from the electron beam axis, reducing interference from debris and allowing imaging at a greater range of working distances. This microtome device is lightweight and easy to install utilizing the built-in stage of existing microscopes such that a sample's position and orientation can be controlled along three-axes of rectilinear translation and two axes of rotation. This microtome design utilizes a diamond blade coupled to both the base plate and an actuator to control the movement of the blade in a direction perpendicular to the exposed surface of the pedestal, while producing an output

signal that indicates the blade location with respect to the base plate. Advantageously, this allows for a stage coupled pedestal to be moved accurately from an imaging location on the beam axis to a cutting location off the beam axis.

The prospective start-up exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24994 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of a Start-up Exclusive Commercial License Agreement: Development of MHC Class II Restricted T Cell Epitopes From the Cancer Antigen, NY ESO-1, for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an start-up exclusive commercial license to Immunova Therapeutics, Inc., which is located in Houston, Texas, to practice the inventions embodied in the following patent applications and applications claiming priority to these applications:

E-090-2000

1. U.S. Provisional Patent Application No. 61/179,004 filed January 28, 2000 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/0-

US-01);

2. U.S. Provisional Patent Application No. 60/237,107 filed September 29, 2000 entitled "HLA-DP Restricted CD4+ T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-227-2000/0-US-01 was combined with E-090-2000/0-US-01 at the PCT stage, creating the E-090-2000/1 technology family and associated applications);
3. PCT Application No. PCT/US01/02765 filed January 26, 2001 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-PCT-01);
4. Canadian Patent No. 2398743 issued June 23, 2015 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-CA-02);
5. Australian Patent No. 785151 issued January 18, 2007 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-AU-03);
6. Japanese Patent No. 5588363 issued August 1, 2014 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-JP-12);
7. U.S. Patent No. 7,619,057 issued November 17, 2009 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-US-06);
8. U.S. Patent No. 8,754,046 issued June 17, 2014 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-US-07);
9. U.S. Patent Application No. 12/568,134 filed September 28, 2009 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-US-013);
10. European Patent Application No. 10010354.8 filed January 26, 2001 entitled "MHC Class II Restricted T Cell Epitopes from the Cancer Antigen, NY ESO-1" (HHS Ref No. E-090-2000/1-EP-10);

The patent rights in these inventions have been assigned to the Government of the United States of America. The prospective start-up exclusive commercial license territory may be worldwide and the field of use may be limited to the use of the Licensed Patent Rights to develop, manufacture, distribute, sell and use NY-ESO-1 based vaccines and cell therapy products for the treatment of NY-ESO-1-positive cancers.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 19, 2015 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be

directed to: Sabarni K. Chatterjee, Ph.D., M.B.A., Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240) 276-5530; Facsimile: (240) 276-5504; Email: chatterjeesa@mail.nih.gov.

SUPPLEMENTARY INFORMATION: NY-ESO-1 is a known tumor antigen which is expressed on a broad range of tumor types, including melanoma, breast, bladder, ovarian, prostate, head and neck cancers, neuroblastoma, and small cell lung cancer. The above-referenced inventions embody the identification of a number of novel immunogenic peptide epitopes, and analogs thereof, which are derived from the NY-ESO-1 tumor antigen. Specifically, this technology describes novel MHC Class II restricted epitopes of NY-ESO-1 which are recognized by CD4+ T cells. It also embodies the identification of two additional immunogenic peptide epitopes of NY-ESO-1. The latter two epitopes are presented by HLA-DP4, a prevalent MHC Class II allele present in 43-70% of Caucasians. The inventors also determined that the DP allele is highly associated with the NY-ESO-1 antibody production. In addition, one of these epitopes has dual HLA A2 and DP4 specificity, thereby it has the potential to generate both CD4+ and CD8+ tumor specific T cells. These epitopes may be of great value as prophylactic and/or therapeutic cancer vaccines or cell therapy products for use against a number of common cancers.

The prospective start-up exclusive commercial license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective start-up exclusive commercial license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Any additional, properly filed, and complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive commercial license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24982 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Analytical Instruments Utilizing Condensation Particle Counters for the Detection and Analysis of Small Aerosol Particles

AGENCY: Public Health Service, National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the Public Health Service, Department of Health and Human Services, is contemplating the grant of an exclusive license to Kanomax Japan, Inc. having a principal place of business in Osaka, Japan, to practice the inventions embodied in U.S. Provisional Patent Application No. 62/026,559, filed on 18 July 2014, entitled "Aerosol Particle Growth Systems for Personal Sampling Applications Using Polymer Electrolyte Membranes" [HHS Reference No. E-026-2014/0-US-01]. The patent rights in these inventions have been assigned to the United States of America. The territory of the prospective exclusive patent license may be worldwide, and the field of use may be limited to "Analytical instruments comprising condensation particle counters (CPCs) for the sampling, detection, counting and analysis of ultrafine and nano-sized aerosol particles."

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before November 2, 2015 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Tara L. Kirby, Ph.D., Chief, CDC Unit, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852-3804; Telephone: (301) 435-4426; Facsimile: (301) 402-0220; Email: tarak@mail.nih.gov. A signed confidential disclosure agreement may be required to receive copies of the patent application assuming it has not already been

published under the publication rules of either the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: Hazardous airborne particles pose a risk for health and safety in a variety of environments and thus detection of these small particles is essential. Current particle magnification systems are bulky and require a lot of power for operation, making them unsuitable to easily detect and analyze small particles in mobile and personal settings.

The CDC has developed space-saving miniature instrumentation and methods for the direct sampling and analysis of small particles (diameter <300-400 nm). The systems can effectively sample air at a rate of a few liters per minute and concentrate the particulate matter into microliter or milliliter liquid samples. The novel system uses proton exchange membranes to grow small particles for optical detection using standard methods. Further, these methods allow the system to separate condensation and aerosol flow to enhance user mobility. Moreover, the described methods use inexpensive materials and require low power for operation.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published notice, the NIH Office of Technology Transfer receives written evidence and argument that establishes that the grant of the contemplated license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Properly filed competing applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24985 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of a ME-TARP Based Immunotherapy

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to PDS Biotechnology Corporation ("PDS") located in New Brunswick, New Jersey, USA:

Intellectual Property

1. United States Provisional Patent Application No. 60/476,467, filed June 5, 2003, entitled "Immunogenic Peptides and Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment" [HHS Reference No. E-116-2003/0-US-01];
2. International Patent Application No. PCT/US2004/17574 filed June 2, 2004 entitled "Immunogenic Peptides And Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment" [HHS Reference No. E-116-2003/0-PCT-02];
3. United States Patent No. 7,541,035, issued June 2, 2009, entitled "Immunogenic Peptides And Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment" [HHS Reference No. E-116-2003/0-US-03];
4. United States Patent No. 8,043,623, issued 25 Oct 2011, entitled "Immunogenic Peptides and Peptide Derivatives For The Treatment of Prostate And Breast Cancer Treatment" [HHS Reference No. E-116-2003/0-US-04];
5. United States Provisional Patent Application No. 61/915,948, filed December 13, 2013, entitled "Multi-Epitope TARP Peptide Vaccine and Uses Thereof" [HHS Reference No. E-047-2014/0-US-01];
6. International Patent Application No. PCT/US2014/070144 filed December 12, 2014 entitled "Multi-Epitope TARP Peptide Vaccine and Uses Thereof" [HHS Reference No. E-047-2014/0-PCT-02]; and all continuation applications, divisional applications and foreign counterpart applications claiming priority to the US provisional application no. 61/915, 948.

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the

field of use will be limited to the use of Licensed Patent Rights for the following Fields of Use:

1. Development and Commercialization of an ME-TARP-based therapy containing at least one cationic lipid within the scope of the Licensed Patent Rights.
2. Development and Commercialization of a cell based therapeutic product with ME-TARP for Prostate Cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 2, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A. Senior Licensing and Patenting Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530 MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240) 276-5530; Facsimile: (240) 276-5504; Email: chatterjeesa@mail.nih.gov.

SUPPLEMENTARY INFORMATION: This invention concerns the identification of immunogenic peptides within TARP, and their use to create an anti-cancer immune response in patients. By introducing these peptides into a patient, an immune response against these cancer cells can be initiated by the peptides, resulting in treatment of the cancer. A phase I clinical trial in stage D0 prostate cancer patients is nearing completion. Initial results indicate a statistically significant decrease in the slope of PSA for 48 weeks after vaccination.

The technology has the potential of being developed into a vaccine for various cancer indications or for the treatment of any cancer associated with increased or preferential expression of TARP.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection

and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 28, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-24989 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: October 22-23, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Mary Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301-451-0996, marygs@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 29-30, 2015.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance New Orleans Arts Hotel, 700 Tchoupitoulas Street, New Orleans, LA 70130.

Contact Person: Mark D. Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301-435-0913, lindnermd@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member

Conflict: Surgical Science and Bioengineering.

Date: October 29, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301-435-2598, firrellj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: October 29, 2015.

Time: 11:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301-435-0484, mohsenim@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

Date: October 30, 2015.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435-1164, custerm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Brain Injury and Neuro-cognitive Impairment.

Date: October 30, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892-7846, 301-435-1254, yakovleva@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13-309-311: Translational Research in Pediatric and Obstetric, Pharmacology and Therapeutics.

Date: October 30, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Clara M. Cheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170 MSC 7892, Bethesda, MD 20817, 301-435-1041, chengc@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-24986 Filed 10-1-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2014-1053]

Towing Safety Advisory Committee; October 2015 Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Towing Safety Advisory Committee will meet in Washington, DC, to review and discuss recommendations from its subcommittees and to receive briefs listed in the agenda under

SUPPLEMENTARY INFORMATION. All meetings will be open to the public.

DATES: The Towing Safety Advisory Committee Subcommittees will meet on Thursday, October 22, 2015, from 8:30 a.m. to 5 p.m. The full Towing Safety Advisory Committee will meet on Friday, October 23, 2015, from 8 a.m. to 5:30 p.m. These meetings may close early if the Committee has completed its business.

ADDRESSES: All meetings will be held at the Department of Transportation Headquarters Media Center, 1200 New Jersey Avenue SE., Washington, DC 20590. The Telephone Number for the DOT HQ Media Center is (502) 992-5326 and the Fax is (502) 589-4905.

You must present a form of government issued identification to gain entrance to the Department of Transportation Headquarters. We recommend you arrive at least 30 minutes before the scheduled start time.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individuals listed

in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the "Agenda" section below. If you want the Committee members to be able to review your comments before the meeting, submit them no later than October 15, 2015 and they must be identified by Docket No. USCG-2014-1053. Written comments may be submitted using the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact Mr. Abernathy listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number, "USCG-2014-1053." All comments received will be posted without alteration at <http://www.regulations.gov> including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005 issue of the **Federal Register** (70 FR 15086).

Docket: For access to the docket to read documents or comments related to this notice, go to <http://www.regulations.gov> insert USCG-2014-1053 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Abernathy, Alternate Designated Federal Officer for the Towing Safety Advisory Committee; Commandant (CG-OES-2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593-7509; telephone 202-372-1363, fax 202-372-8382; or email William.J.Abernathy@uscg.mil; or Commander Jose A. Perez, Designated Federal Officer; telephone 202-372-1410, fax 202-372-8382; or email Jose.A.Perez3@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. Appendix. This Committee is established in accordance with, and operates under the provisions of, the *Federal Advisory Committee Act*. As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

Agenda of Meetings

The subcommittees will meet on October 22, 2015, from 8:30 a.m. to 5 p.m., to work on their specific task assignments:

(1) Recommendations for the Maintenance, Repair, and Utilization of Towing Equipment, Lines, and Couplings.

(2) Recommendations to Establish Criteria for Identification of Air Draft for Towing Vessels and Tows.

(3) Recommendations concerning the MODU KULLUK Report of Investigation.

(4) Recommendations regarding the automation equipment, testing, and trial periods to be considered by Officers-in-Charge, Marine Inspection for a reduction in engine room personnel on towing vessels.

On October 23, 2015, from 8 a.m. to 5:30 p.m., the Towing Safety Advisory Committee will meet to discuss the progress of its subcommittees and expects to receive and consider the draft final reports from the subcommittees on the MODU KULLUK and Towing Gear. The Committee will also receive new tasking requesting recommendations regarding Articulated Tug and Barge operations and manning, and use of Electronic Charting on Towing Vessels. The Committee will also receive an update on a tasking request to review and provide recommendations regarding engine room operations on towing vessels equipped with systems automation in order to determine manning levels.

There will be a comment period for Towing Safety Advisory Committee members and a comment period for the public after each report presentation, but before each is voted on by the Committee. The Committee will review the information presented on each issue, deliberate on any recommendations presented in the Subcommittees' reports, and formulate recommendations for the Department's consideration.

A copy of each available draft report and presentation as well as the meeting agenda will be available by October 15, 2015, at: <https://homeport.uscg.mil/tsac>. Any revisions or updates to the presentations and the reports that are received subsequent to the meeting will be posted no later than 90 days following the meeting.

An opportunity for oral comments by the public will be provided during the meeting on October 23, 2015. Speakers are requested to limit their comments to 3 minutes. Please note the public oral comment period may end before 5:30 p.m., if the Committee has finished its

business earlier than scheduled. Please contact Mr. William J. Abernathy, listed above in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Minutes

Minutes from the meeting will be available for public review and copying within 90 days following the close of the meeting and can be accessed from the Coast Guard Homeport Web site <http://homeport.uscg.mil/tsac>.

Dated: September 29, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2015-25114 Filed 10-1-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2015-0635; OMB Control Number 1625-0071]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of an extension of a currently approved collection: 1625-0071, Boat Owners Report—Possible Safety Defect. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 1, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2015-0635] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) Online: <http://www.regulations.gov>.

(2) Mail: DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(3) 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.

(4) Fax: 202-493-2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

Copies of the ICR(s) are available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE STOP 7710, WASHINGTON DC 20593-7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection;

and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2015-0635], and must be received by December 1, 2015. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting comments

If you submit a comment, please include the docket number [USCG-2015-0635], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via <http://www.regulations.gov>), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to <http://www.regulations.gov>, and type "USCG-2015-0635" in the "Search" box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice 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 "Search" box insert "USCG-2015-0635" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. **Title:** Boat Owners Report—Possible Safety Defect.

OMB Control Number: 1625-0071.

Summary: This collection of information provides a means for consumers who believe that their recreational boats or designated associated equipment, contains substantial risk, defects or fail to comply with federal safety standards to report the deficiencies to the U.S. Coast Guard for investigation and possible remedy.

Need: Title 46 U.S.C. 4310 gives the Coast Guard the authority to require manufacturers of recreational boats and certain items of designated associated equipment to notify owners and remedy: (1) defects that create a substantial risk of personal injury to the public; and (2) failures to comply with applicable Federal safety standards.

Forms: CG-5578.

Respondents: Owners and users of recreational boats and items of designated associated equipment.

Frequency: One time.

Burden Estimate: The estimated annual burden remains unchanged at 16.5 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: September 18, 2015.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2015-25131 Filed 10-1-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2015-0748; OMB Control Number 1625-0047]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision of a currently approved collection: 1625-0047, Plan Approval and Records for Vital System Automation. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 1, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2015-0748] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) **Online:** <http://www.regulations.gov>.

(2) **Mail:** DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(3) **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.

(4) **Fax:** 202-493-2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at

room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

Copies of the ICR(s) are available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593-7710.

FOR FURTHER INFORMATION CONTACT:

Contact Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the

ICR and the docket number of this request, [USCG–2015–0748], and must be received by December 1, 2015. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the “Privacy Act” paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2015–0748], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via <http://www.regulations.gov>), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to <http://www.regulations.gov>, and type “USCG–2015–0748” in the “Search” box. 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 will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice 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 “Search” box insert “USCG–2015–0748” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New

Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. **Title:** Plan Approval and Records for Vital System Automation.

OMB Control Number: 1625–0047.

Summary: This information collection pertains to the vital system automation on commercial vessels that is necessary to protect personnel and property on board U.S.-Flag vessels.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to promulgate regulations for the safety of personnel and property on board vessels. Various sections within parts 61 and 62 of Title 46 of the Code of Federal Regulations contain these rules.

Forms: None.

Respondents: Owners, operators, shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 39,900 hours to 46,500 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: September 18, 2015.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2015–25133 Filed 10–1–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0057]

Committee Name: Homeland Security Academic Advisory Council

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Academic Advisory Council will meet

on October 21, 2015 in Washington, DC. The meeting will be open to the public.

DATES: The Homeland Security Academic Advisory Council will meet Wednesday, October 21, 2015, from 10:00 a.m. to 3:30 p.m. Please note that the meeting may close early if the Council has completed its business.

ADDRESSES: The meeting will be held at the U.S. Citizenship and Immigration Services (USCIS) Tomich Conference Center, 111 Massachusetts Ave NW., Washington, DC 20529. All visitors to the USCIS Tomich Conference Center must bring a Government-issued photo ID.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, send an email to AcademicEngagement@hq.dhs.gov or contact Lindsay Burton at 202–447–4686 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Council prior to the adoption of the recommendations as listed in the **SUPPLEMENTARY INFORMATION** section below. Comments must be submitted in writing no later than Tuesday, October 13, 2015, must include DHS–2015–0057 as the identification number, and may be submitted using one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** AcademicEngagement@hq.dhs.gov. Include the docket number in the subject line of the message.
- **Fax:** 202–447–3713.
- **Mail:** Academic Engagement; Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528–0440.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket, to read background documents or comments received by the Homeland Security Academic Advisory Council, go to <http://www.regulations.gov> and search for “Homeland Security Academic Advisory Council” then select the notice dated October 2, 2015.

One thirty-minute public comment period will be held during the meeting on October 21, 2015 after the conclusion of the presentation of draft recommendations, but before the

Council deliberates. Speakers will be requested to limit their comments to three minutes. Contact the Office of Academic Engagement as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT:

Lindsay Burton, Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528-0440, email: AcademicEngagement@hq.dhs.gov, tel: 202-447-4686 and fax: 202-447-3713.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. Appendix. The Homeland Security Academic Advisory Council provides advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; faculty exchanges; and cybersecurity.

Agenda: The six Council subcommittees (Student and Recent Graduate Recruitment, Homeland Security Academic Programs, Academic Research and Faculty Exchange, International Students, Campus Resilience, and Cybersecurity) will give progress reports and may present draft recommendations for action in response to the taskings issued by the Department. DHS senior leadership will provide an update on the Department's efforts in implementing the Council's approved recommendations as well as its recent initiatives with the academic community.

The meeting materials will be posted to the Council Web site at: <http://www.dhs.gov/homeland-security-academic-advisory-council-hsaac> on or before October 16, 2015.

Responsible DHS Official: Lauren Kielsmeier, AcademicEngagement@hq.dhs.gov, 202-447-4686.

Dated: September 21, 2015.

Lauren Kielsmeier,

Executive Director for Academic Engagement.

[FR Doc. 2015-24585 Filed 10-1-15; 8:45 am]

BILLING CODE 9110-9B-P

DEPARTMENT OF HOMELAND SECURITY

Senior Executive Service Performance Review Board

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of **Federal Register**.

SUMMARY: This notice announces the appointment of the members of the

Senior Executive Service Performance Review Boards for the Department of Homeland Security. The purpose of the Performance Review Board is to view and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service, Senior Level and Senior Professional positions of the Department.

DATES: This Notice is effective October 2, 2015.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357-8164.

SUPPLEMENTARY INFORMATION: Each federal agency is required to establish one or more performance review boards (PRB) to make recommendations, as necessary, in regard to the performance of senior executives within the agency. 5 U.S.C. 4314(c). This notice announces the appointment of the members of the PRB for the Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions within DHS.

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

Albence, Matthew
Alles, Randolph D.
Allison, Roderick J.
Armstrong, Charles R.
Baran, Kathy
Bardorf, Tracey
Barrera, Staci
Bartlett, Jonathan M.
Beattie, John Henry
Benner, Derek
Bester, Margot
Book, Heather S.
Borkowski, Mark S.
Brasure, Wayne
Bray, Shawn
Brinsfield, Kathryn
Brothers, Reginald
Brown, A Scott
Brown, Dallas C.
Bryson, Tony
Buck, Ken
Cahill, Donna L.
Callahan, Colleen B.
Callahan, William J.
Campagnolo, Donna
Canevari, Holly
Carpenter, Dea
Carraway, Melvin
Carver, Jonathan
Castro, Raul

Chavez, Richard
Choi, Juliet
Cioppa, Thomas
Clancy, Joseph P.
Cogswell, Patricia
Colucci, Nicholas
Conklin, Jeffery
Coven, Phyllis
Cowan, Robert
Curda, Susan
DeStefano, Ernest
DiFalco, Frank J.
DiPietro, Joseph R.
Dolan, Mark E.
Dougherty, Thomas E.
Driggers, Richard
Drummer, Donald G.
Dunbar, Susan
Edge, Peter
Edwards, Eric
Emerson, Catherine
Emrich, Matthew
Falk, Scott K.
Finkelstein, Martin
Fisher, Michael J.
Fitzmaurice, Stacey D.
Foucart, Bruce
Frazier, Denise
Fujimura, Paul N.
Fulghum, Chip
Gallihugh II, Ronald B.
Garner, David
Gibbs, Michael
Glawe, David J.
Grant, David
Greba, Kevin
Greene, Jonathan
Griffin, Robert P.
Griggs, Christine
Grimes, Ronald
Gunter, Brett A.
Guttentag, Lucas
Hall, Christopher J.
Hatfield Jr., Mark O.
Hazuda, Mark
Healy, Craig
Hess, David
Heinz, Todd W.
Henderson, Latetia M.
Hewitt, Ronald T.
Higgins, Jennifer
Highsmith, AnnMarie
Hinojosa, Ana B.
Hochman, Kathleen
Hoggan, Kelly C.
Homan, Thomas
Hutchinson, Kimberly S.
Jacksta, Linda L.
Jaddou, Ur
Jenkins, Jr., Kenneth T.
Johnson Perryman, Janet
Johnson, Tae
Jones, Franklin C.
Jones, Keith
Jones, Sophia D.
Kerner, Francine
Kerns, Kevin
Klein, Matthew
Kramar, John
Krohmer, Jon
Kruger, Mary
Kubiak, Lev
Lafferty, John
Lajoie, Darby R.
Landy, Kevin
Lane, Susan

Langlois, Joseph
 Lanum, Scott
 Looney, Robert
 Lowery, III, Edward W.
 Ludtke, Meghan G.
 Magaw, Craig D.
 Maher, Joseph B.
 Manaher, Colleen M.
 Manaher, Colleen M.
 Mayenschein, Eddie D.
 McAleenan, Kevin K.
 McMillan, Howard
 McShaffrey, Richard S.
 Meckley, Tammy
 Meckley, Tammy M.
 Melero, Mariela
 Meyer, Jonathan E.
 Micone, Vince
 Miles, John
 Miller, Philip
 Monica, Donald
 Moore, Joseph
 Moynihan, Timothy
 Mulligan, George D.
 Murata, Christina E.
 Muzyka, Carolyn
 Neufeld, Donald
 Newhouse, Victoria E.
 O'Connor, Kimberly
 Owen, Todd C.
 Palmer, David J.
 Paramore, Farom K.
 Pearl, Thomas
 Peterson, Mary E.
 Phillips, Sally
 Pietropaoli, Lori
 Pineiro, Marlen
 Pino, Lisa
 Provost, Carla L.
 Quinn, Ian
 Ragsdale, Daniel
 Ramlogan, Riah
 Randolph, William
 Rapp, Marc
 Redman, Kathy
 Reid, Paula A.
 Renaud, Daniel
 Renaud, Tracy
 Rice, Stephen
 Richardson, Gregory
 Riordan, Denis
 Rittenberg, Scot
 Roberts, Russell A.
 Rodriguez, Leon
 Rogers, Debra
 Rose Jr. Pat A.
 Rosenberg, Ron
 Ruppel, Joanna
 Scanlon, Julie A.
 Schied, Eugene H.
 Schmelzinger, Gilbert
 Schwartz, Mark
 Scialabba, Lori
 Selby, Cara
 Settles, Clark
 Shahoulian, David
 Shelton Waters, Karen R.
 Silvers, Rob
 Skyes, Gwendolyn
 Sloan, Terry
 Smislova, Melissa J.
 Smith, Brenda B.
 Smith, Steven
 Stallworth, Charles E.
 Stanley, Kathleen
 Strack, Barbara

Street, Stacey
 Sutherland, Daniel W.
 Swacina, Linda
 Swain, Donald
 Taylor, Frank
 Tennyson, Stephanie
 Terrell, Joseph P.
 Thomas, Cari B. RADM
 Thompson, John
 Thompson, Kirt
 Triplett, Cynthia R.
 Trotta, Nicholas
 Ulrich II, Dennis
 Vanison, Denise
 Vaughan, Jill A.
 Velarde, Barbara
 Velasquez, Andrew
 Venture, Veronica
 Villanueva, Raymond
 Walton, Kimberly H.
 Weinberg, Joseph
 Wenchel, Rosemary
 Windham, Nicole
 Witzal, Mark
 Zuchowski, Laura

This notice does not constitute a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget. Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Dated: September 25, 2015

Thomas Vieira,

Manager, Executive Resources Policy, Office of the Chief Human Capital Officer.

[FR Doc. 2015-25157 Filed 10-1-15; 8:45 am]

BILLING CODE 9110-9B-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-NEW]

Agency Information Collection Activities: Application for Travel Document (Carrier Documentation), Form I-131A; New Collection

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the

categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until December 1, 2015.

ADDRESSES: All submissions received must include the OMB Control Number 1615-NEW in the subject box, the agency name and Docket ID USCIS-2015-0004. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at www.regulations.gov under e-Docket ID number USCIS-2015-0004;

(2) *Email.* Submit comments to USCISFRCComment@uscis.dhs.gov;

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140.

SUPPLEMENTARY INFORMATION:

Comments

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 consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: <https://egov.uscis.gov/cris/Dashboard.do>, or call the USCIS National Customer Service Center at 1-800-375-5283.

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 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:* New Collection.

(2) *Title of the Form/Collection:* Application for Travel Document (Carrier Documentation).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-131A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. Certain lawful permanent residents may file Form I-131A to obtain documentation that will allow a commercial carrier to board the lawful permanent resident on a vessel or aircraft destined for the United States without transportation carrier liability.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 respondents submitting Form I-131A at .92 hours; 13,950 respondents providing biometrics at 1.17 hours; and 1,050 providing passport-style photographs at .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 30,646.5 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: <http://www.regulations.gov>. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529-2140, Telephone number 202-272-8377.

Dated: September 28, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2015-25055 Filed 10-1-15; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5835-N-19]

60-Day Notice of Proposed Information Collection: Supplement to Application for Federally Assisted Housing

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 1, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Danielle Garcia, Branch Chief, Subsidy Oversight Branch, Office of Asset Management and Portfolio Oversight, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; Danielle.D.Garcia@hud.gov or telephone 202-402-6732. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection:

Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502-0581.

Type of Request: Extension of currently approved collection.

Form Number: HUD Form 92006.

Description of the need for the information and proposed use:

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any the delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Respondents (i.e. affected public): The respondents are individuals or families who are new admissions in the covered programs.

Estimated Number of Respondents: 302,770.

Estimated Number of Responses: 302,770.

Frequency of Response: Each individual or family only responds once unless they wish to update their information.

Average Hours per Response: 0.25 hours.

Total Estimated Burdens: 75,692.50.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 28, 2015.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

[FR Doc. 2015-25072 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5832-N-10]

60-Day Notice of Proposed Information Collection: Application for Rural Capacity Building for Community Development and Affordable Housing NOFA

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection

described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 1, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Steven K. Washington, Director, Office of Policy Development and Coordination, CPD, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Steven K. Washington at Steven.K.Washington@hud.gov or telephone 202-402-4142. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Application for Rural Capacity Building for Community Development and Affordable Housing NOFA.

OMB Approval Number: 2506-0195.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Rural Capacity Building for Community Development and Affordable Housing (RCB) program and the funding made available have been authorized by the Annual Appropriations Acts each year since Fiscal Year 2012. The competitive funds are awarded to national not-for-profit organizations through a Notice of Funding Availability (NOFA) to carry out eligible activities related to community development and affordable housing projects and programs. Applicants are required to submit certain information as part of their application for assistance. Without this information, it would be impossible to determine which applicants were eligible for award.

Respondents (i.e. affected public): National organizations with expertise in rural housing and community development, including experience working with rural housing development organizations, community development corporations (CDCs), community housing development organizations (CHDOs), local governments, and Indian tribes.

Estimated Number of Respondents: 30.

Estimated Number of Responses: 1.

Frequency of Response: Annual.

Average Hours per Response: 40.

Total Estimated Burdens: 1200 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	30	1	1	40	1200	\$45	\$54,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: September 23, 2015.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2015-25148 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5835-N-16]

60-Day Notice of Proposed Information Collection: Contractor's Requisition-Project Mortgages

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 1, 2015

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Production, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Theodore.K.Toon@hud.gov or telephone (202) 402-8386. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Contractor's Requisition-Project Mortgages.

OMB Approval Number: 2502-0028.

Type of Request: Extension of currently approved collection.

Form Number: HUD-92448.

Description of the need for the information and proposed use: Contractor's submit a monthly application for distribution of insured mortgage proceeds for construction costs. Multifamily Hub Centers ensure that the work is actually completed satisfactory.

Estimated Number of Respondents: 1,325.

Estimated Number of Responses: 15,900.

Frequency of Response: 12.

Average Hours per Response: 6.

Total Estimated Burdens: 95,400.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: September 28, 2015.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2015-25173 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5828-N-40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B-17, Parklawn Building, 5600 Fishers Lane, Rockville,

MD 20857, (301) 443-2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720-8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236-9853; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, OECM MA-50, 4B122, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287-1503; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL 33021; (443) 223-4639;

NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National (These are not toll-free numbers).

Dated: September 24, 2015.

Tonya Proctor,

Deputy Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/02/2015

Suitable/Available Properties

Building

California

Kelso Mobile Home #101

Kelbake & Kelso-Cima Roads

Kelso CA 92309

Landholding Agency: Interior

Property Number: 61201530025

Status: Excess

Comments: off-site removal only; 45+ yrs. old; 1,440 sq. ft.; residential; poor conditions; attempted moving may result in damage; contact Interior for more information.

Unsuitable Properties

Building

California

Almanor Ranger District Engine

900 E. Highway 36

Chester CA 96020

Landholding Agency: Agriculture

Property Number: 15201530025

Status: Unutilized

Comments: documented at hazardous levels; irremediable; H. capsulatum a ground fungus whose spores cause histoplasmosis when inhaled; spores are air airborne.

Reasons: Contamination

Almanor Ranger District

Warehouse

900 E. Highway 36

Chester CA 96020

Landholding Agency: Agriculture

Property Number: 15201530026

Status: Unutilized

Comments: documented at hazardous levels; irremediable; H. capsulatum a ground fungus whose spores cause histoplasmosis when inhaled; spores are air airborne.

Reasons: Contamination

Almanor Ranger District Timber

900 E. Highway 36

Chester CA 96020

Landholding Agency: Agriculture

Property Number: 15201530027

Status: Unutilized

Comments: documented deficiencies: holes & gaps in exterior; documented at hazardous levels; irremediable; H. capsulatum a ground fungus whose spores cause histoplasmosis when inhaled; spores are air airborne.

Reasons: Contamination; Extensive deterioration

Building 64

Fort MacArthur

San Pedro CA

Landholding Agency: Air Force

Property Number: 18201530037

Status: Underutilized

Comments: flammable/explosion material are located on adjacent facility. Public access denied and no alternative method to gain access without compromising national security.

Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Florida

196—Compressed Air Shop

M6-0896 4th Street SE

Kennedy Space Center FL 32899

Landholding Agency: NASA

Property Number: 71201530007

Status: Unutilized

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Oregon

Building 2

1450 Queen Avenue SW

Albany OR 97321

Landholding Agency: Energy

Property Number: 41201530006

Status: Excess

Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

[FR Doc. 2015-24847 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5896-N-01]

Multifamily, Health Care Facilities, and Hospital Mortgage Insurance Premiums for Fiscal Year (FY) 2016

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with HUD regulations, this Notice announces the mortgage insurance premiums (MIPs) for Federal Housing Administration (FHA) Multifamily, Health Care Facilities, and Hospital mortgage insurance programs that have commitments to be issued or reissued in FY 2016. FY 2016 MIPs are the same as in FY 2015. This Notice does not apply to loans insured under the Risk Sharing programs of section 542(b) or 542(c) of the Housing and Community Development Act of 1992.

DATES: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT:

Multifamily Programs: Theodore K. Toon, Director, Office of Multifamily Production, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-8000, telephone number 202-402-8386 (this is not a toll free number).

Health Care and Hospital Programs:
 Roger M. Lukoff, MA, FACHE, Associate Deputy Assistant Secretary, FHA-Office of Healthcare Programs, United States Department of Housing and Urban Development, 451 Seventh Street SW., Room 6264, Washington, DC 20410. Telephone: 202-402-4762, FAX: 202-708-0560. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's mortgage insurance regulations at 24 CFR 207.254 provide as follows:

Notice of future premium changes will be published in the **Federal Register**. The Department will propose MIP changes for multifamily mortgage insurance programs and provide a 30-day public comment period for the purpose of accepting comments on whether the proposed changes are appropriate.

This notice announces that the FY 2016 MIPs are the same the FY 2015 MIPs, published in the **Federal Register** on March 31, 2014 (79 FR 18049). Since HUD is not seeking to implement any premium changes for FY 2016 for the mortgage insurance programs listed in this notice, HUD is not seeking public comment at this time.

II. Positive Credit Subsidy Programs

The Department will continue to suspend issuance and reissuance of commitments under two programs that have previously required positive credit subsidy: Section 221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative Mortgages without LIHTC and Section 223(d) Operating Loss Loans for Apartments.

The MIPs to be in effect for FHA Firm Commitments issued or reissued in FY 2016 are shown in the chart below:

FISCAL YEAR 2016 MIP RATES

Multifamily, healthcare facilities and hospital insurance programs

	Basis points
FHA Multifamily	
207 Multifamily Housing New Construction/Sub Rehab without LIHTC.	70
207 Multifamily Housing New Construction/Sub Rehab with LIHTC.	45
207 Manufactured Home Parks without LIHTC.	70
207 Manufactured Home Parks with LIHTC.	45

FISCAL YEAR 2016 MIP RATES—Continued

Multifamily, healthcare facilities and hospital insurance programs

	Basis points
221(d)(3) New Construction/Substantial Rehabilitation (NC/SR) for Nonprofit/Cooperative mortgagor without LIHTC.	N/A
221(d)(3) Limited dividend with LIHTC.	45
221(d)(4) NC/SR without LIHTC	65
221(d)(4) NC/SR with LIHTC	45
220 Urban Renewal Housing without LIHTC.	70
220 Urban Renewal Housing with LIHTC.	45
213 Cooperative	70
207/223(f) Refinance or Purchase for Apartments without LIHTC.	60*
207/223(f) Refinance or Purchase for Apartments with LIHTC.	45*
223(a)(7) Refinance of Apartments without LIHTC.	50**
223(a)(7) Refinance of Apartments with LIHTC.	45**
223d Operating Loss Loan for Apartments.	N/A
231 Elderly Housing without LIHTC ...	70
231 Elderly Housing with LIHTC	45
241(a) Supplemental Loans for Apartments/coop without LIHTC.	95
241(a) Supplemental Loans for Apartments/coop with LIHTC.	45

FHA Healthcare Facilities (Nursing Homes, ALF & B&C)

232 NC/SR Healthcare Facilities without LIHTC.	77
232 NC/SR—Assisted Living Facilities with LIHTC.	45
232/223(f) Refinance for Healthcare Facilities without LIHTC.	65*
232/223(f) Refinance for Healthcare Facilities with LIHTC.	45*
223(a)(7) Refinance of Healthcare Facilities without LIHTC.	55**
223(a)(7) Refinance of Healthcare Facilities with LIHTC.	45**
223d Operating Loss Loan for Healthcare Facilities.	95
241(a) Supplemental Loans for Healthcare Facilities without LIHTC.	72
241(a) Supplemental Loans for Healthcare Facilities with LIHTC.	45

FHA Hospitals

242 Hospitals	70
223(a)(7) Refinance of Existing FHA-insured Hospital.	55**
223(f) Refinance or Purchase of Existing Non-FHA-insured Hospital.	65*
241(a) Supplemental Loans for Hospitals.	65

*The first-year or upfront MIP fee for loans insured under Section 223(f) for Multifamily, Health Care Facilities, and Hospital programs is 100 basis (one percent) points. The annual MIP amounts are otherwise shown above for the respective Section 223(f) programs.

**The first-year or upfront MIP fee for loans under Section 223(a)(7) for Multifamily, Health Care Facilities, and Hospital programs is 50 basis points. The annual MIP amounts are otherwise shown above for the respective Section 223(a)(7) programs.

Dated: September 28, 2015.

Edward L. Golding,

Assistant Secretary for Housing.

[FR Doc. 2015-25149 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5837-N-04]

60-Day Notice of Proposed Information Collection: Manufactured Housing Survey

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 1, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of

available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A. The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Manufactured Housing Survey collects data on new manufactured homes that are sold or leased for residential use. The survey tracks a sample of manufactured homes (units) shipped to dealers and the sales price and characteristics of the sampled units. Beginning in fiscal year 2015, dealers are contacted once to obtain sales price

and characteristics of the unit. If the unit has been placed by the time Census contacts the dealer, additional placement data are collected. Other selected housing characteristics collected include size, location, and titling. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also uses these data to monitor total housing production and its affordability.

Furthermore, the Manufactured Housing Survey serves as the basis for HUD's mandated indexing of loan limits. Section 2145 (b) of the Housing and Economic Recovery Act (HERA) of 2008 requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by this survey. Section 2145 of the HERA of 2008 also amends the maximum loan limits for manufactured home loans insured under Title I. HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

Loan type	Purpose	Old loan limit	New loan limit
MANUFACTURED HOME IMPROVEMENT LOAN.	For financing alterations, repairs and improvements upon or in connection with existing manufactured homes.	\$17,500	\$25,090
MANUFACTURED HOME UNIT(S)	To purchase or refinance a Manufactured Home unit(s)	48,600	69,678
LOT LOAN	To purchase and develop a lot on which to place a manufactured home unit.	16,200	23,226
COMBINATION LOAN FOR LOT AND HOME.	To purchase or refinance a manufactured home and lot on which to place the home.	64,800	92,904

Method of Collection: The methodology for collecting information on new manufactured homes involves contacting a monthly sample of new manufactured homes shipped by manufacturers. The units are sampled from lists obtained from the Institute for Building Technology and Safety. Dealers that take shipment of the selected homes are mailed a survey form four months after shipment for recording the status of the manufactured home.

A. Overview of Information Collection

Title of Information Collection: Manufactured Housing Survey.

OMB Approval Number: 2528-0029.

Type of Request: Extension of currently approved collection.

Form Number: C-MH-9A

Description of the need for the information and proposed use:

Respondents (i.e. affected public): Business firms or other for-profit institutions.

Estimated Number of Respondents: 4,860.

Estimated Number of Responses: 4,860.

Frequency of Response: Once.

Average Hours per Response: .5 hours.

Total Estimated Burdens: 2,430.

Hourly Cost per Response: \$0.

Estimated Total Annual Cost: The only cost to respondents is their time.

The annual cost of the survey is \$404,000.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C. 5424 note, title 13 U.S.C. 8(b), and title 12, U.S.C., section 1701z-1.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Authority: Title 42 U.S.C. 5424 note, title 13 U.S.C. 8(b), and title 12, U.S.C., section 1701z-1.

Dated: September 22, 2015.

Katherine M. O'Regan,

Assistant Secretary for Policy, Development and Research.

[FR Doc. 2015-25171 Filed 10-1-15; 8:45 am]

BILLING CODE 4210-62-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

**[FWS-HQ-FAC-2015-N188;
FXFR13360900000-156-FF09F14000]**

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Aquatic Nuisance Species (ANS) Task Force, which consists of 13 Federal and 14 ex-officio members. The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic invasive species (AIS); to monitor,

control, and study such species; and to disseminate related information.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Wednesday, November 4, and Thursday, November 5, 2015. For security purposes, sign-up for the meeting is required. For more information, contact the ANS Task Force Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The ANS Task Force meeting will take place at the National Oceanic and Atmospheric Administration, Building 3 (SSMC3), Room 4527, 1315 East-West Highway, Silver Spring, MD 20910 (301-713-0174).

FOR FURTHER INFORMATION CONTACT: Donald R. MacLean, Acting Executive Secretary, ANS Task Force, by telephone at (703) 358-2108, or by email at don_maclean@fws.gov. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the ANS Task Force will hold a meeting.

Background

The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Act) (Pub. L. 106-580, as amended), and is composed of 13 Federal and 13 ex-officio members, and co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The ANS Task Force provides advice on AIS infesting waters of the United States and other nations, among other duties, as specified in the Act.

Meeting Agenda

- Fish passage needs and AIS threats.
- ANSTF accomplishment tracking.
- Special session on boating industry partnerships, including discussions on the “Building Consensus” effort and on boat design and construction in consideration of aquatic invasive species.
- Approval of both the North Carolina Aquatic Nuisance Species Management Plan and the revised New York State Aquatic Invasive Species Management Plan.
- Special session on economics, including discussions on the USFWS “National Survey for Hunting and Fishing, and Lionfish Modeling and Economics”.
- Special session on communications, including discussion on the new

Communication/Education/Outreach Committee, and updates on the Stop Aquatic Hitchhikers! campaign and the revitalization of the Habitattitude campaign.

- Updates on numerous other ANSTF efforts, including:

- Addressing AIS transport at federally managed water bodies.
- ANSTF Involvement with National Invasive Species Awareness Week.
- A national early detection and rapid response framework and emergency response funding plan.
- The Arctic Strategy and AIS.

- Task Force Member updates and updates from all the Regional Panels.

The final agenda and other related meeting information will be posted on the ANS Task Force Web site at <http://anstaskforce.gov>.

PUBLIC INPUT

If you wish to	You must contact the ANS Task Force Executive Secretary (see FOR FURTHER INFORMATION CONTACT) no later than
Register for the meeting.	October 31, 2015.

Meeting Minutes

Summary minutes of the meeting will be maintained by the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 60 days after the meeting and will be posted on the ANS Task Force Web site at <http://anstaskforce.gov>.

Dated: September 25, 2015.

David Hoskins,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director for Fish and Aquatic Conservation.

[FR Doc. 2015-25115 Filed 10-1-15; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian

Affairs proclaimed approximately 104.40 acres, more or less, as an addition to the Reservation of the Shakopee Mdewakanton Sioux Community of Minnesota on September 22, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS-4642-MIB, 1849 C Street NW., Washington, DC 20240, Telephone: (202) 208-3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the land described below. The land was proclaimed to be an addition to the Shakopee Mdewakanton Sioux Community Reservation for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

Reservation of the Shakopee Mdewakanton Sioux Community, Township of Prior Lake, County of Scott, State of Minnesota, MWCC Parcel 3 (Tessmer), Legal Description, Containing 104.40 acres more or less.

The East Half of the Southeast Quarter of Section 33, Township 115 North, Range 22 West of the 5th Principal Meridian, according to the United States Government Survey thereof and situated in Scott County, Minnesota.

AND

That part of the West 24.00 acres of the Northwest Quarter of the Southwest Quarter of Section 34, Township 115 North, Range 22 West of the 5th Principal Meridian, Scott County, Minnesota lying West of the East 16.00 acres of said Northwest Quarter of the Southwest Quarter, according to the United States Government survey thereof and situated in Scott County, Minnesota.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads or pipelines and any other rights-of-way or reservations of record.

Dated: September 22, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015-24797 Filed 10-1-15; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[15X L1109AF LLUT980300
L11100000.PH0000 24-1A]

Third Call for Nominations to the Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations for one vacant position on the Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC), with the term expiring January 7, 2016. The RAC provides advice and recommendations to the BLM on land-use planning and management of the National System of Public Lands within Utah. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than November 2, 2015.

ADDRESSES: Nominations and completed applications for the Utah RAC should be sent to Sherry Foot, Special Programs Coordinator, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT:

Sherry Foot at the address listed in the **ADDRESSES** section of this notice; by telephone (801) 539-4195; or by email: sfoot@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to leave a message or question with the above individual. The FIRS is available 24 hours a day, seven days a week. Replies will be received during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member, citizen-based councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands.

The one position to be filled is in the following category:

Category Two—Representatives of nationally or regionally recognized environmental organizations,

archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations.

Nominees must be residents of Utah. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision making. The Obama Administration prohibits individuals who are currently federally-registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

- Letters of reference from represented interests or organizations;
- A completed RAC application; and,
- Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM-Utah will issue a press release providing additional information for submitting nominations.

Authority: 43 CFR 1784.4-1

Jenna Whitlock,

Acting State Director.

[FR Doc. 2015-25145 Filed 10-1-15; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLWY910000 L16100000 XX0000]

Notice of Public Meeting; Wyoming Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Wyoming Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting is scheduled for Thursday, October 29, 2015, from 10 a.m. to 6 p.m., and October 30, from 8 a.m. to noon.

ADDRESSES: The meeting will be conducted at the BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT:

Christian Venhuizen, Wyoming Resource Advisory Council Coordinator, Wyoming State Office, 5353

Yellowstone Road, Cheyenne, WY 82009; telephone 307-775-6103; email cvenhuizen@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 10-member RAC advises the Secretary of the Interior on a variety of management issues associated with public land management in Wyoming. Planned agenda topics include presentations on the BLM Wyoming coal program; Greater Sage-Grouse; BLM Fire, Fuels and Aviation Management; and follow-up to previous RAC meetings. On Thursday, October 29, the meeting will begin at 10 a.m., in the Casper Field Office's Platte River Conference Room and will conclude by 6 p.m. The meeting will resume Friday, October 30, with a public comment period at 8 a.m. in the conference room and the meeting will conclude by noon. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. If there are no members of the public interested in speaking, the meeting will move promptly to the next agenda item. The public may also submit written comments to the RAC by emailing cvenhuizen@blm.gov, with the subject line "RAC Public Comment" or by submitting comments during the meeting to the RAC coordinator. Typed or written comments will be provided to RAC members as part of the meeting's minutes.

Dated: September 24, 2015.

Mary Jo Rugwell,

State Director (acting).

[FR Doc. 2015-24974 Filed 10-1-15; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[L19900000.PO0000.LLCOF00000]

Notice of Intent To Solicit Nominations for the Front Range Resource Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for the Bureau of Land

Management (BLM) Front Range Resource Advisory Council (RAC), which has five member terms expiring this year. The Front Range RAC provides advice and recommendations to the BLM on land use planning and management of the public lands in eastern Colorado. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than November 2, 2015.

ADDRESSES: Send nomination packages to Courtney Whiteman, Public Affairs Specialist, BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: Courtney Whiteman, Public Affairs Specialist, BLM Colorado State Office. Phone: (303) 239-3668. Email: cwhiteman@blm.gov.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs, found at 43 CFR subpart 1784, require that each RAC include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of State, county, or local elected office, employees of a State agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Those who have already submitted a nomination in response to the first and second calls for nominations to the Front Range RAC (published in the **Federal Register** on February 3, 2015, (80 FR 5785) and May 21, 2015 (80 FR 29332)) do not need to resubmit. All nominations from the first, second and third calls will be considered together during the review process. Individuals may nominate themselves or others. Nominees must be residents of Colorado. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations for the Front Range RAC:

- Letters of reference from represented interests or organizations;
- A completed Resource Advisory Council application; and
- Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Royal Gorge Field Office will issue a press release providing additional information for submitting nominations, with specifics about the number and categories of member positions available.

Authority: 43 CFR 1784.4-1.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2015-25142 Filed 10-1-15; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS-WASO-D-COS-POL-19400;
PPWODIREP0; PPMPSPD1Y.YM0000]**

Notice of November 4-5, 2015, Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 1-16, that the National Park System Advisory Board will meet November 4-5, 2015, in Boston, Massachusetts.

DATES: The Board will meet on November 4-5, 2015.

ADDRESSES: The meeting will be held at the Commandant's House, 21 2nd Avenue, Charlestown Navy Yard, Boston, Massachusetts 02139, telephone (617) 242-5611.

Agenda: On the morning of November 4, the Board will convene its business meeting at 8:15 a.m., Eastern Standard Time, and adjourn for the day at 12:00 p.m. The Board will tour the National Parks of Boston in the afternoon. On November 5, the Board will reconvene at 8:15 a.m., and adjourn at 3:30 p.m. During the course of the two days, the Board may be addressed by National Park Service Director Jonathan Jarvis and briefed by other National Park Service officials regarding education, philanthropy, NPS urban initiatives, science, and the National Park Service Centennial; and receive status briefings on matters pending before committees of the Board.

FOR FURTHER INFORMATION CONTACT: For information concerning the National Park System Advisory Board or to request to address the Board, contact Shirley Sears, National Park Service, MC 0004-Policy, 1849 C Street NW., Washington, DC 20240, telephone (202) 354-3955, email Shirley_Sears@nps.gov.

SUPPLEMENTARY INFORMATION: The board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the 7th floor conference room at 1201 Eye Street NW., Washington, DC.

Dated: September 29, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–25065 Filed 10–1–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04084000, XXXR4081X1,
RN.20350010.REG0000]

Colorado River Basin Salinity Control Advisory Council Notice of Public Meeting

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will convene the meeting on Wednesday, October 28, 2015, at 1:00 p.m. and adjourn at approximately 5:00 p.m. The Council will reconvene the meeting on Thursday, October 29, 2015, at 8:30 a.m. and adjourn the meeting at approximately 11:00 a.m.

ADDRESSES: The meeting will be held at the Embassy Suites—Paloma Village Hotel, 3110 East Skyline Drive, Tucson, Arizona. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3847; email at: kjacobson@usbr.gov.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3847; email at: kjacobson@usbr.gov.

SUPPLEMENTARY INFORMATION: Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments

received prior to the meeting will be provided to Council members at the meeting.

The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 1, 2015.

Brent Rhees,

Regional Director, Upper Colorado Region.

[FR Doc. 2015–24645 Filed 10–1–15; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Second Review)]

Ironing Tables and Certain Parts Thereof From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930, that revocation of the antidumping duty order on ironing tables and certain parts thereof from

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), instituted this review on May 1, 2015 (80 FR 24968) and determined on August 4, 2015 that it would conduct an expedited review (80 FR 50027, August 18, 2015).

The Commission made this determination pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)). It completed and filed its determination in this review on September 28, 2015. The views of the Commission are contained in USITC Publication 4568 (September 2015), entitled *Ironing Tables and Certain Parts Thereof from China: Investigation No. 731–TA–1047 (Second Review)*.

By order of the Commission.

Issued: September 28, 2015.

William R. Bishop,

*Supervisory Hearings and Information
Officer.*

[FR Doc. 2015–25061 Filed 10–1–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on September 15, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), R Consortium, Inc. (“R Consortium”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: TIBCO Software Inc., Palo Alto, CA; Oracle Corporation, Burlington, MA; R Foundation for Statistical Computing, Vienna, AUSTRIA; Google, Mountain View, CA; Mango Solutions, Chippenham, Wiltshire, UNITED KINGDOM; Alteryx Inc., Irvine, CA; RStudio Inc., Boston,

MA; Hewlett-Packard Company, Palo Alto, CA; Ketchum Trading LLC, Chicago, IL; and Microsoft Corporation, Redmond, WA.

The general areas of R Consortium's planned activity are to: (a) Advance the worldwide promotion of and support for the R open source language and environment as the preferred language for statistical computing and graphics (the "Environment"); (b) establish, maintain, seek support for, and develop infrastructure projects and technical and infrastructure collaboration initiatives related to the Environment, and such other initiatives as may be appropriate to support, enable and promote the Environment; (c) encourage and increase user adoption, involvement with, and contribution to, the Environment; (d) facilitate communication and collaboration among users and developers of the Environment, the R Consortium and the R Foundation; (e) support and maintain policies set by the Board of Directors; and (f) undertake such other activities as may from time to time be appropriate to further the purpose and achieve the goals set forth above.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015-25063 Filed 10-1-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on September 9, 2015, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Group, L.L.C. ("TOG") 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, Actica Consulting Ltd., Surrey, UNITED KINGDOM; Adept Technology Pvt. Ltd., Chennai, INDIA; Agency for Public Management and eGovernment, Oslo, NORWAY; Alliant Techsystems Operations LLC, Clearwater, FL; Archi Tacts, Inc., Coppell, TX; ARISE Consulting (SuZhou) Pte. Ltd., Shanghai, PEOPLE'S

REPUBLIC OF CHINA; ATE Enterprises, Ltd., High Wycombe, UNITED KINGDOM; Cephas Consulting Corp., Tustin, CA; DAR Solutions L.L.C., Rockford, IL; EA-Xperts, Mannheim, GERMANY; GooBiz, Cergy, FRANCE; HCL Technologies, Ltd., Noida, INDIA; Incepture S.a.r.l., Rabat, MOROCCO; Information Systems Audit and Control Association, Inc., Rolling Meadows, IL; New Zealand Department of Internal Affairs, Wellington, NEW ZEALAND; Optimal Business Growth Ltd., Poole, UNITED KINGDOM; Palm View Consulting, Whitlock, BELGIUM; Shware Systems, Port Richey, FL; Software Engineering Competence Center, Giza, EGYPT; and University of Luxembourg, Luxembourg, LUXEMBOURG, have been added as parties to this venture.

Also, Aoyama Gakuin University, Tokyo, JAPAN; Architecting the Enterprise, High Wycombe, UNITED KINGDOM; Atos International SAS, Bezons, FRANCE; CPP Investment Board, Toronto, CANADA; Eflow, Inc., Shibuya-ku, JAPAN; Ericsson AB, Stockholm, SWEDEN; Estrat TI S.A. de C.V., Mexico City, MEXICO; Keio University, Kanagawa, JAPAN; Kutta Technologies, Inc., Phoenix, AZ; Nanfang Media Group, Guangzhou, PEOPLE'S REPUBLIC OF CHINA; QinetiQ NA, Stafford, VA; Silosmashers, Inc., Fairfax, VA; Sony Computer Science Laboratories, Tokyo, JAPAN; Strategic Communications, Louisville, KY; Symphony Ltd., Setagaya-ku, JAPAN; The Marlo Group, Southgate, AUSTRALIA; and Universite Laval CeRTAE, Quebec, CANADA, have withdrawn as parties to this venture.

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 TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG 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 June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on May 7, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 4, 2015 (80 FR 31921).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2015-25056 Filed 10-1-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1140-0020]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Firearms Transaction Record, Part I, Over-the-Counter

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** 80 FR 44999, on July 28, 2015, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until November 2, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Carolyn King, Firearms Industry Programs Branch at FederalRegisterNoticeATFF4473@atf.gov. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503 or send email to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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;
- Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; 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.

Overview of This Information Collection 1140-0020

1. *Type of Information Collection:* Extension of an existing approved collection without change.

2. *The Title of the Form/Collection:* Firearms Transactions Record, Part I, Over-the-Counter.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 4473 (5300.9).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: The form is used to determine the eligibility, under the Gun Control Act (GCA), of a person to receive a firearm from a Federal firearms licensee and to establish the identity of the buyer/transferee. It is also used in law enforcement investigations/inspections to trace firearms and confirm that licensees are complying with their recordkeeping obligations under the GCA.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 17,080,926 respondents will take 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 8,540,463 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E-405B, Washington, DC 20530.

Dated: September 29, 2015.

Jerri Murray,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015-25075 Filed 10-1-15; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 12:00 p.m., Tuesday, October 6, 2015.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determination on six original jurisdiction cases.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346-7010.

Dated: September 29, 2015.

J. Patricia W. Smoot,
Chairman, U.S. Parole Commission.

[FR Doc. 2015-25205 Filed 9-30-15; 11:15 am]

BILLING CODE 4410-31-P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., October 6, 2015.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of June 2, 2015 minutes; Introduction of new Chief of Staff; Approval of Final Rule on Applying the 1972 DC Board Guidelines to DC Code Offenses Committed on or before March 3, 1985.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346-7010.

Dated: September 29, 2015.

J. Patricia W. Smoot,
Chairman, U.S. Parole Commission.

[FR Doc. 2015-25208 Filed 9-30-15; 11:15 am]

BILLING CODE 4410-31-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2015-14; Application No. D-11837]

Notice of Exemption Involving Credit Suisse AG (Hereinafter, either Credit Suisse AG or the Applicant) Located in Zurich, Switzerland

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the Internal Revenue Code of 1986, as amended (the Code). The exemption affects the ability of certain entities with specified relationships to Credit Suisse AG to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84-14 (PTE 84-14).¹

DATES: *Effective Date:* This exemption is effective from November 18, 2015 (the first date following the last day of relief provided by PTE 2014-11) through: November 20, 2019 (the date that is five years from the date of the Conviction, described below) with respect to Credit Suisse Affiliated QPAMs; and November 20, 2024 (the date that is ten years from the date of the Conviction) with respect to Credit Suisse Related QPAMs.

FOR FURTHER INFORMATION CONTACT: Scott Ness, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8561. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

General Information Regarding the QPAM Class Exemption

A QPAM is a "Qualified Professional Asset Manager." By definition, QPAMs are large regulated banks, savings and loan associations, insurance companies or federally registered investment advisors that meet certain standards of size and independence. PTE 84-14 permits these independent asset managers to engage in a variety of arm's length transactions with parties in interest with respect to the plans they

¹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

manage that would otherwise be prohibited. The scope of Part I of the class exemption is limited, such that QPAMs cannot: Engage in self-dealing transactions; act in their own interest or the interest of their affiliates; and/or engage in transactions with parties that are in a position to affect their independent judgment, such as persons with ownership interests in the QPAM.

PTE 84–14 primarily permits QPAMs to engage in various arm's length transactions with parties in interest, and obviates the need to undertake time-consuming compliance checks for parties-in-interest, forego investment opportunities, or seek an individual exemption from the Department for each transaction. The conditions in the exemption were designed to ensure that the transactions covered therein are protective of, and in the interest of, affected plans.

The scope of the anti-criminal provision set forth in section I(g) of PTE 84–14 is very broad and covers entities with various relationships to a convicted entity. When one of these entities is convicted of specified crimes, the related QPAMs lose the ability to rely on the class exemption for 10 years following the date of the conviction, absent an individual exemption.

THE FIRST PROPOSED EXEMPTION: On September 3, 2014, the Department of Labor (the Department) published a proposed exemption in connection with Application No. D–11819, at 79 FR 52365 (the First Proposed Exemption), for certain entities with specified relationships to Credit Suisse AG, to continue to rely upon the relief provided by PTE 84–14, notwithstanding that a judgment of conviction (the Conviction) against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, section 371, was pending in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS. The Department received ten comments and four requests for a hearing regarding that notice.

In anticipation that the judgment of conviction would be entered on November 21, 2014 (the Conviction Date), and recognizing that additional relevant information could be provided at the hearing, the Department issued three notices in the **Federal Register**, on November 18, 2014: A temporary final exemption notice (the Temporary Final Exemption (79 FR 68716)), a second proposed exemption notice (the Second Proposed Exemption (79 FR 68712)), and a hearing notice (the Hearing Notice (79 FR 68711)).

THE TEMPORARY FINAL EXEMPTION: The Temporary Final Exemption became effective on the Conviction Date and will last approximately one year. Among other things, the exemption allowed Credit Suisse QPAMs to continue to engage in transactions covered by the QPAM Class Exemption, subject to enhanced conditions, while the Department considered the testimony and additional information provided at, and subsequent to, the hearing.

THE SECOND PROPOSED EXEMPTION: The Second Proposed Exemption, which correlates to this notice, described relief that was similar to the Temporary Final Exemption, but with a longer duration. The Department issued the Second Proposed Exemption after concluding that it would be beneficial to the Department's review to obtain further information regarding the concerns raised by commenters to the First Proposed Exemption.

THE HEARING: The Hearing Notice informed interested persons that the Department would hold a hearing on January 15, 2015, to discuss issues raised by commenters following publication of the First Proposed Exemption. The hearing was intended to solicit additional information regarding whether the Second Proposed Exemption was in the interest of, and protective of, plans and IRAs, and administratively feasible.

THIS NOTICE (THE SECOND FINAL EXEMPTION AND THE REVOCATION): This document sets forth the Second Final Exemption, which relates to the Second Proposed Exemption. The record for this exemption includes the hearing transcript and hearing-related submissions, as well as comments received in connection with the Second Proposed Exemption. As commenters at the hearing raised issues related to the First Proposed Exemption, the record for this Notice also incorporates comments with respect to such exemption.

This Second Final Exemption covers the same transactions as those described in the Temporary Exemption, but contains enhanced conditions for the protection of plans and their participants and beneficiaries.

Written Comments, Hearing Testimony, and Supplements

The record for this notice includes testimony and supplemental materials from the hearing, comments received in connection with the First Proposed Exemption, as well as comments received in connection with the publication of the Second Proposed Exemption. The testimony at the

hearing and supplemental materials were mixed, with some speakers expressing support for granting an exemption and others expressing opposition. The hearing produced approximately 218 pages of testimony by 18 speakers, as well as supplemental materials.

The Department received six written comments with respect to the Second Proposed Exemption.² Four of the comments supported the Second Proposed Exemption. Included in the six comments is the Applicant's written comment, which requested certain changes and clarifications with respect to the operative language of the exemption, and which provided additional information in support of the requested changes and in response to issues raised during the public hearing. The Applicant previously submitted a comment with respect to the First Proposed Exemption that the Department considered in the preamble to the Temporary Final Exemption, published in the **Federal Register** at 79 FR 68716 on November 18, 2014. That comment was reflected, where appropriate, in the Temporary Final Exemption and the Second Proposed Exemption. The discussion of the Applicant's comment to the First Proposed Exemption, and the Department's response thereto, will not be repeated herein.

The sixth and final comment is a statement from the independent auditor that sought certain clarifications with respect to the operative language of the exemption. The comments received in connection with the hearing, the First Proposed Exemption, and the Second Proposed Exemption are described below. The Department has not reproduced the comments in their entirety, but has summarized the information. Complete copies of the transcript from the hearing and supplemental submissions can be found at www.regulations.gov or by visiting EBSA's Public Disclosure Room.

Comments Relating to the First Proposed Exemption and the Hearing

1. Exemption Standards for Relief.

A. Several commenters sought a denial of the requested exemption on the grounds that a denial would punish Credit Suisse AG and/or deter future criminal behavior by Credit Suisse AG.

DEPARTMENT'S RESPONSE: The Department notes that relief under this exemption is contingent upon Credit

² The commenters include the American Benefits Council, the Securities Industry and Financial Markets Association (SIFMA), two members of the general public (one of whom was anonymous), the Applicant, and the independent auditor.

Suisse AG having not provided any fiduciary services to ERISA-covered plans or IRAs, except in connection with securities lending services of the New York Branch of Credit Suisse AG, or acting as a QPAM for ERISA-covered plans or IRAs. Further, the exemption is structured to insulate the Credit Suisse QPAMs from Credit Suisse AG. In this regard, the exemption requires that each Credit Suisse Affiliated QPAM immediately develop, implement, maintain, and follow written policies (the Policies) requiring and reasonably designed to ensure that, among other things: The asset management decisions of the Credit Suisse Affiliated QPAM are conducted independently of Credit Suisse AG's management and business activities; and the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs.

Furthermore, the Department notes that the record upon which exemptive relief was proposed and is herein granted suggests that neither the Credit Suisse Affiliated QPAMs nor the Credit Suisse Related QPAMs were involved in the conduct underlying the Conviction. The record also supports a finding that the Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (the Credit Suisse QPAMs) operate separately and independently of Credit Suisse AG with respect to their asset management decisions. Based on the facts of this case, the beneficial nature of the covered transactions, and the conditions imposed by the exemption, the Department believes that a full denial of exemptive relief is not warranted. The exemption requires plans with assets managed by Credit Suisse Affiliated QPAMs to be alerted to the Conviction. In this regard, the Credit Suisse Affiliated QPAMs must provide a notice of the proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG

provides fiduciary securities lending services.

The exemption also facilitates the ability of such plans to transfer assets managed by a Credit Suisse Affiliated QPAM to non-Credit Suisse asset managers, without the imposition of an additional fee, penalty or charge, with only very narrow exceptions designed to prevent abusive investment practices and protect all investors in pooled funds in which such plans invest. In addition, each Credit Suisse Affiliated QPAM must agree not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM, or otherwise require indemnification of the QPAM, for violating ERISA or the Code or engaging in prohibited transactions.

The Department stresses that the act of selecting and retaining an investment manager service provider is a fiduciary act; and that a plan fiduciary is under a continuing duty to monitor the service provider's performance at reasonable intervals. Fiduciaries (including investment managers) should be reviewed by the appointing fiduciaries in such a manner as may be reasonably expected to ensure that their performance has been in compliance with the terms of the plan and statutory standards (e.g., prudence, exclusive benefit, and prohibited transactions rules).³ In this regard, the Department has endeavored to craft a set of conditions that should reduce concern about the criminal activities that gave rise to the Conviction. However, a recurrence of such activities would certainly be cause for a prudent fiduciary to reconsider the prudence of employing the Credit Suisse Affiliated QPAMs as service providers to ERISA-covered plans.

B. Another commenter suggested that the Department should require that the Credit Suisse QPAMs demonstrate a track record of legal compliance before an exemption is issued.

DEPARTMENT'S RESPONSE: Credit Suisse AG, and not the Credit Suisse QPAMs, was subject to the Conviction. Importantly, as discussed above, the record contains no evidence that the Credit Suisse QPAMs were involved in the criminal activities that gave rise to the Conviction. In addition, the Department is not aware of any evidence that the investment management activities of the Credit Suisse QPAMs were affected by Credit Suisse AG's criminal activities. The Department has also shortened the duration of this exemption to five years with respect to the Credit Suisse Affiliated QPAMs, as discussed below,

such that the Credit Suisse Affiliated QPAMs must be prepared to demonstrate, among other things, compliance with the terms of this exemption, prior to receiving a further extension of exemptive relief for transactions described in PTE 84–14.

The exemption is focused on ensuring each QPAM's continued legal compliance. In this regard, the exemption requires that an annual exemption audit be performed by an independent fiduciary who is experienced in ERISA and the transactions covered by the exemption. The auditor must annually determine whether each Credit Suisse Affiliated QPAM has developed, implemented, maintained, and followed Policies requiring and reasonably designed to ensure that, among other things: The Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (ii) the Credit Suisse Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iii) any filings or statements made by the Credit Suisse Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (iv) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (v) the Credit Suisse Affiliated QPAM complies with the terms of this exemption; and (vi) violations of, or failure to comply with the terms above, are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant Credit Suisse Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA

³ See 29 CFR 2509.75–8.

where such fiduciary is independent of Credit Suisse AG.

Further, each year, the auditor must determine whether each Credit Suisse Affiliated QPAM has developed and implemented a program of training (the Training), conducted at least annually for relevant Credit Suisse Affiliated QPAM asset management, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing.

C. One other commenter suggested that the Department take a stronger role in its position as a regulator by declining Credit Suisse's exemption request.

DEPARTMENT'S RESPONSE: The failure of the Credit Suisse Affiliated QPAMs to meet the conditions of PTE 84-14 and subsequent need to request an individual administrative exemption from the Department provides the Department with the opportunity to enhance the safeguards for plans and their participants and beneficiaries by imposing stringent conditions on the operations of the QPAMs for the next ten years, which would not otherwise exist. As a regulator, the Department will proactively investigate the operations of the Credit Suisse QPAMs, will review each exemption audit submitted by the independent auditor, and take whatever action it deems necessary to ensure that affected plans and IRAs are adequately protected. Finally, this exemption is unavailable to the extent Credit Suisse AG or the Credit Suisse QPAMs have made a material misrepresentation, or to the extent the Credit Suisse QPAMs fail to satisfy the terms herein. Moreover, the Department may take steps to revoke this (or any) exemption if, once the exemption takes effect, changes in circumstances, including changes in law or policy, occur which call into question the continuing validity of the Department's original findings concerning the exemption.⁴

2. Adequacy of Safeguards.

A. Some commenters to the First Proposed Exemption and at the hearing stated that the First Proposed Exemption did not contain adequate safeguards to protect the rights of participants and beneficiaries of plans.

For instance, one commenter suggested that the audit should be extended to other controversial aspects of the financial industry, such as CEO awards and incentives. Other commenters suggested that no set of conditions would be adequate to protect plans and their participants and beneficiaries due to past deficiencies within the Credit Suisse organization, the severity of problems within the Credit Suisse organization, and the lack of isolation of the Credit Suisse QPAMs from the rest of the Credit Suisse organization.

DEPARTMENT'S RESPONSE: As noted above, Credit Suisse AG, and not the Credit Suisse QPAMs, was subject to the Conviction. The Department is not aware of any evidence that the investment management activities of the Credit Suisse QPAMs were affected by Credit Suisse's criminal activities. As described above, the relief set forth in the exemption is contingent upon an auditor's determination that the investment and compliance operations of each Credit Suisse Affiliated QPAM is isolated from Credit Suisse AG. The audit is designed to preserve the integrity of each Credit Suisse Affiliated QPAM, by ensuring that the appropriate Credit Suisse Affiliated QPAM personnel annually receive rigorous training on fiduciary duties and ethical conduct. In addition, each Credit Suisse Affiliated QPAM is generally required to permit plans to transfer their assets to another asset manager without the imposition on the plan of an additional fee, penalty or charge. Also, the QPAMs may not require the plan to insulate the QPAM from liability for violating ERISA or the Code or engaging in prohibited transactions.

3. Compliance Culture.

A. Commenters additionally described a longstanding and pervasive culture of wrongdoing within the Credit Suisse organization, including knowledge of corporate wrongdoing by senior executives. Commenters further suggested that the criminal behavior of Credit Suisse AG indicates that any assurances of legal compliance by the Credit Suisse Affiliated QPAMs given to the Department lacked credibility. Commenters brought to the Department's attention the participation of Credit Suisse Asset Management Limited, United Kingdom (CSAM UK) in knowingly violating federal sanctions laws by facilitating money laundering. Finally, commenters also identified several civil controversies involving the Credit Suisse QPAMs, including specifically Credit Suisse's involvement in certain real estate financing transactions related to residential and

resort planned communities in various locations around the country.⁵

DEPARTMENT'S RESPONSE: The Department believes that the record associated with this exemption supports a finding that the Credit Suisse QPAMs may continue to engage in transactions that are in the interests of plans and IRAs under enhanced scrutiny from the Department and pursuant to additional conditions imposed under the exemption, as discussed above and below. Additionally, the Department intends to monitor the Credit Suisse QPAMs' compliance with the conditions for this exemption, and has limited the duration of the exemption to five years, with respect to the Credit Suisse Affiliated QPAMs.⁶ This five-year limitation is intended to reinforce the central importance of compliance with both the letter and spirit of the exemption's conditions, particularly including the mandated policies and procedures. Although the Department is currently satisfied that the Credit Suisse Affiliated QPAMs are insulated from Credit Suisse, the Department believes plans and IRAs will be further protected to the extent the Department re-evaluates Credit Suisse's compliance with the exemption as part of any consideration as to whether to grant more permanent relief for the Credit Suisse Affiliated QPAMs.

The Department does not currently view the private controversies described above, as grounds to deny the requested exemption. However, the fiduciary of a plan or IRA should consider the involvement of the Credit Suisse QPAMs in a private controversy (as well as a criminal investigation) in its determination as to whether to hire and/or retain a Credit Suisse QPAM as a service provider.

4. Importance of Enforcing Penalties.

A. Some commenters argued that Section I(g) of PTE 84-14 clearly states that a conviction will bar an entity from serving as a QPAM. Accordingly, they contend that it is important to enforce

⁵ See, e.g., *Claymore Holdings LLC v. Credit Suisse AG, Cayman Islands Branch and Credit Suisse Securities (USA) LLC*, case No. DC-13-07858, in the 134th Judicial District Court of Dallas County, Texas; *Credit Suisse Loan Funding LLC and Credit Suisse AG, Cayman Islands Branch v. Highland Crusader Offshore Partners LP, et al.*, case No. 652492/2013 in the Supreme Court of the State of New York, County of New York; and *Timothy L. Blixseth v. Credit Suisse AG, Credit Suisse Group AG, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, et al.*, case No. 12-CV-00393-PAB-KLM in the U.S. District Court, District of Colorado.

⁶ The Department has determined not to limit relief in this manner to the Credit Suisse Related QPAMs because these QPAMs are not, in general terms, controlled by Credit Suisse.

⁴ See DOL Reg. Sec. 2570.50.

mandatory penalties in order to deter future misconduct.

DEPARTMENT'S RESPONSE: Section I(g) of PTE 84–14 does not bar an applicant from seeking an individual exemption for an asset manager to continue to act as a QPAM following the criminal conviction of its affiliate. The stated purpose of Section I(g) of the QPAM Class Exemption is set forth in the original proposal for PTE 84–14 which states, “A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.”⁷ The Department is of the view that, based on the record, the Credit Suisse QPAMs are capable of maintaining a high standard of integrity; and the conditions of this exemption are sufficient for the Department and other independent parties to verify that this high standard of integrity is met.

B. Commenters also considered the approximately \$2.6 billion in penalties paid in connection with the Conviction to be insufficient and found it problematic that the party ultimately responsible for paying such penalties is the shareholders, rather than the individuals involved in the criminal conduct.

DEPARTMENT'S RESPONSE: The Department had no role in determining the appropriateness or amount of the penalties assessed in connection with the conviction of Credit Suisse. The Plea Agreement between Credit Suisse AG and the Office of the U.S. Attorney for the Eastern District of Virginia and the Tax Division of the Department of Justice states that the sentence imposed, which comprised a \$2,000,000,000 resolution with the Department of Justice, was the “appropriate disposition of the Information”⁸ and was comprised of: A criminal fine in the amount of \$1,333,500,000;⁹ restitution to the Internal Revenue Service of \$666,500,000, representing estimated pecuniary losses from the criminal offense; and a mandatory special assessment of \$400, which was to be paid to the Clerk of Court. In addition, Credit Suisse also paid \$715,000,000 and \$100,000,000 in civil penalties,

respectively, to the New York Department of Financial Services and the U.S. Federal Reserve Board.

C. Additionally, some commenters suggested that a permanent exemption would indicate the Department's tolerance of cutting corners and criminal wrongdoing by powerful financial institutions at the expense of consumers and the law.

DEPARTMENT'S RESPONSE: The entities that may engage in the transactions permitted by this exemption did not participate in the criminal activity that is the subject of the Conviction. Moreover, the entity that did engage in the criminal conduct, Credit Suisse AG, has been subject to substantial penalties, including \$2.6 billion paid in connection with the Conviction.

However, after reviewing the entire record, the Department believes that plans would be further protected to the extent the relief set forth herein extends no longer than November 17, 2019, with respect to any Credit Suisse Affiliated QPAM. If a Credit Suisse Affiliated seeks to engage in a transaction described in PTE 84–14 beyond that date, the Applicant must re-apply for exemptive relief in a timely fashion. The Department notes that, in re-applying for exemptive relief, the Applicant should be prepared to demonstrate that the conditions of this exemption have been met. The Department's review of any such application may also extend to Credit Suisse AG's compliance with relevant laws and regulations throughout the duration of this exemption.

D. Finally, some commenters suggested the Department has a role to play in enforcing criminal penalties for wrongdoing.

DEPARTMENT'S RESPONSE: To the Department's knowledge, the criminal penalties imposed on Credit Suisse were appropriate and have been enforced. The Department's responsibility is to ensure that the conditions required for granting an exemption have been satisfied. In particular, prior to granting this exemption, the Department had to find that the exemption is in the interest of and protective of, affected plans and the participants of such plans, and administratively feasible. The Department has made these findings.

5. Impact on Plans & Beneficiaries.

A. Some of the commenters suggested that the Department should deny the exemption and force Credit Suisse to pay for any related costs to plans of moving to a new asset manager. Other commenters stated that the cost to plans would not be significant if the

Department denied Credit Suisse's exemption application.

DEPARTMENT'S RESPONSE: The Department does not view the costs identified by the Credit Suisse QPAMs, for affected plans and IRAs to locate and hire a new asset manager, as a sole compelling reason to grant this exemption. The Department does not believe, however, that the evidence supports a finding that plan fiduciaries should be compelled to move their business away from the Credit Suisse QPAMs if they choose not to do so. Instead, the Department has concluded that the best approach is to facilitate the plans' ability to withdraw their business should they choose to do so, while enhancing their protections should they choose to continue their business relationship with the Credit Suisse QPAMs. Accordingly, the exemption enables plan fiduciaries to terminate their investment management agreements with a Credit Suisse Affiliated QPAM without penalty.

B. Two commenters suggested that the exemption would permit plans to enter into exotic or complex transactions that would otherwise not be customary for such plans or which would serve to harm the broader economy as well as Credit Suisse QPAMs' retiree clients.

DEPARTMENT'S RESPONSE: The exemption permits a wide range of transactions between a plan and a party in interest, and does not identify the specific types of transactions that may be covered by the exemption. The exemption expressly does not relieve a fiduciary or other party in interest from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

6. Factual Issues.

During the hearing, commenters also identified topics that they felt were not fully developed in the First Proposed Exemption. For instance, commenters questioned whether the Applicant identified all of the QPAMs that would be covered by this exemption. Commenters also questioned why Credit Suisse plan clients did not submit comments for the public record.

DEPARTMENT'S RESPONSE: The Applicant was required to provide a list of all entities that were currently acting as Credit Suisse Affiliated QPAMs, as

⁷ See 47 FR 56945, 56947 (December 21, 1982).

⁸ According to the Plea Agreement between the Department of Justice and Credit Suisse AG, applicable sentencing guidelines called for a range of \$1,333,000,000 to \$2,666,000,000, based on, among other things, the size of the financial loss to the U.S. Treasury, the size of Credit Suisse, and the participation of high level personnel in the conduct.

⁹ This amount included \$196,511,014 in fines already paid by Credit Suisse pursuant to the Order Instituting Administrative and Cease and Desist Proceedings with the SEC, dated February 21, 2014 (the SEC Order). The SEC Order required payments by Credit Suisse of \$82,170,990 in disgorgement of fees, \$64,340,024 in prejudgment interest, and a \$50,000,000 penalty.

well as a list of the entities that might fall into the category of Credit Suisse Related QPAMs. Such information was available and known by the Department before it published the First Proposed Exemption in the **Federal Register** at 79 FR 52365 on September 3, 2014.

The Applicant was also required to, and did, notify all affected plans and Credit Suisse Related QPAMs of the First Proposed Exemption (Application No. D-11819), published in the **Federal Register** at 79 FR 52365 on September 3, 2014, and of the Second Proposed Exemption (Application No. D-11837), published in the **Federal Register** at 79 FR 68712 on November 18, 2014. The Applicant was further required to, and did, notify such plans and Related QPAMs of the public hearing held on January 15, 2015. No plan clients submitted information in connection with any such notices, or filed objections to either the First Proposed Exemption or the Second Proposed Exemption.

7. Auditor Independence.

Some commenters were concerned that the auditor required as a condition of this exemption would not be truly independent. One commenter additionally proposed that the auditor be chosen by the Department.

DEPARTMENT'S RESPONSE: The Department imposes strict standards and requirements to ensure that an auditor is qualified and independent. Furthermore, if an applicant chooses an auditor that does not meet such requirements, the Department will require an applicant to select an appropriately independent and qualified auditor. With respect to this exemption, in order to strengthen the auditor's independence, the Department added new subsection I(i)(12), which is described below.

8. Credit Suisse QPAMs' Capacity to Act as Fiduciary.

A. Some commenters argued that Swiss bank secrecy laws undermine the integrity of the financial markets and would allow Credit Suisse QPAMs to continue to hide behind walls of secrecy if such QPAMs were accused of misusing plan assets.

DEPARTMENT'S RESPONSE: The Department believes the scope of the audit ensures that the Credit Suisse QPAMs will not be able to hide behind Swiss bank secrecy laws. In particular, the granted exemption now requires that the Credit Suisse Affiliated QPAM grant the auditor unconditional access to its business, including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel.

B. Some commenters presented testimony and written submissions arguing that Credit Suisse failed to exercise its fiduciary responsibilities with respect to Swiss bank accounts opened during the period around World War II in that many accounts were unilaterally closed by Credit Suisse. Another commenter argued that Credit Suisse's transgressions with respect to non-plan and IRA investors is analogous to plans and IRAs, so Credit Suisse should not be trusted with plan and IRA assets.

DEPARTMENT'S RESPONSE: As noted above, under the terms of this exemption, Credit Suisse AG may not act as a QPAM on behalf of plans and IRAs. The commenters did not otherwise provide the Department any factual information with respect to transgressions by Credit Suisse QPAMs involving ERISA or IRA assets.

Comments Relating to the Second Proposed Exemption

Credit Suisse AG's Comment

In its comment to the Second Proposed Exemption, the Applicant requests certain confirmations and/or clarifications regarding: (1) The scope of the condition found in Section I(f) of the Second Proposed Exemption prohibiting the Credit Suisse Affiliated QPAMs from entering into transactions with Credit Suisse AG or engaging Credit Suisse AG to provide certain services with respect to investment funds managed by such QPAMs; (2) the interaction between the Policies and Training requirements found in Section I(h) of the Second Proposed Exemption; (3) the scope of the audit requirement found in Section I(i) of the Second Proposed Exemption; (4) the scope of the requirements of Section I(k); and (5) the identity of the ERISA-covered plans and IRAs required to receive the notice described in Section I(m) of the Second Proposed Exemption. The Applicant's requests and the Department's responses are described below, in addition to a description of certain modifications to the Second Proposed Exemption made by the Department which are related to the Applicant's comment regarding the audit requirement.

9. Section I(f).

Section I(f) of the Second Proposed Exemption provides "[a] Credit Suisse Affiliated QPAM will not use its authority or influence to direct an 'investment fund' . . . that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment

fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption." The Applicant requests confirmation that Section I(f) would not disallow a Credit Suisse Affiliated QPAM from trading in markets where Credit Suisse AG provides local subcustody services to an unaffiliated global custodian, where the Credit Suisse Affiliated QPAM has no control over the global custodian's selection of the local subcustodian. According to the Applicant, the unaffiliated global custodian engaged by a plan's named fiduciary, not the Credit Suisse Affiliated QPAM, selects and hires local subcustodians. However, the Applicant states that in some markets, Credit Suisse AG may be the only subcustodian available. According to the Applicant, to the extent that a Credit Suisse Affiliated QPAM enters into a transaction in a market where Credit Suisse AG has been selected as the local subcustodian, Credit Suisse AG might receive additional compensation from the global custodian.

The Department declines to provide the confirmation requested above. In this regard, the Department is concerned about the potential for self-dealing inasmuch as, depending on the facts and circumstances, a Credit Suisse Affiliated QPAM might effectively use its "authority or influence to direct" an investment fund to "enter into" a "transaction with" Credit Suisse AG or "provide additional services, for a fee borne by" the investment fund.

10. Section I(h)(2).

Section I(h)(2) of the Second Proposed Exemption requires each Credit Suisse Affiliated QPAM to develop and implement Training described therein, that is "set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing." The Applicant requests that the Department confirm that this condition requires the Policies to expressly provide for the Training, but that the actual Training materials may be separate from the Policies and need not be duplicated verbatim within the Policies.

The Department stresses that although the actual Training materials need not be duplicated within the Policies, the Policies must provide for, and

incorporate, the Training requirement and provide specific details regarding the Training materials, including the identification of the particular training program and the primary training materials, the effective date(s) of any training manuals, and a brief outline of any information on the topics covered within the materials.

11. *Section I(i)(1).*

Section I(i)(1) of the Second Proposed Exemption requires that the Credit Suisse Affiliated QPAMs submit to an annual audit conducted by an independent auditor. The condition requires that “the first of the audits must be completed no later than twelve (12) months after the date of Conviction and must cover the first six-month period that begins on the date of Conviction; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which [the audit] applies.” The Applicant requests confirmation that the final audit need only cover the last six months of the disqualifying period under Section I(g) of PTE 84–14.

The Department acknowledges that the timing of the audits required by the Second Proposed Exemption differs from the timing of the first two audits required by PTE 2014–11, which may cause confusion regarding compliance with the audit condition for this exemption. In this regard, the two audits required by PTE 2014–11, together, cover the twelve month period ending on November 20, 2015. The Department has modified the language in Section I(i)(1) of the Second Proposed Exemption, such that the initial audit required by this exemption will cover the twelve month period beginning on November 21, 2015, and ending on November 20, 2016. Each subsequent audit will also start on November 21, and end on the following November 20. For consistency with PTE 2014–11, the Department has changed the effective date of this exemption, to November 18, 2015, which is the first day following the expiration of relief set forth in that exemption. Furthermore, the Department has modified Section I(i)(1) to provide that “the audit requirement must be incorporated in the Policies”

12. *Additional Modifications to Section I(i)*

The Department notes that a robust, transparent audit conducted by a sophisticated independent auditor, for the entire period covered by this exemption, is an important condition for relief under this exemption. Therefore, the Department has modified the Second Proposed Exemption in

order to ensure the independence and rigor of the audit, bolster the public record and ensure transparency,¹⁰ and enhance its ability to exercise oversight, if necessary. Therefore, the Department has added new Sections I(i)(2), (10), (11), and (12), and made certain clarifying changes to Section I(i)(4) (renumbered as Section I(i)(5)), as described below.

The Department added new Section I(i)(2), in part, in order to ensure that the auditor would have access to all the information necessary to satisfy the requirements under this exemption, and to assist in achieving full transparency with regard to the Credit Suisse Affiliated QPAMs’ Policies and Training and to their attempts to comply with this exemption. The Department’s changes to Section I(i) described herein also reflect the assertions made by Credit Suisse at the public hearing on January 15, 2015, that the auditor(s) would have full, unfettered access. In this regard, the Department notes that the Applicant’s assertions that the auditor would have unfettered access as of the date of the hearing constitute an essential part of the record, without which the Department would not have been able to make its required findings under section 408(a) of the Act. Newly added Section I(i)(2) provides that, “[t]o the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Credit Suisse Affiliated QPAM and, if applicable, Credit Suisse AG, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel.”

The Department has added new Section I(i)(10) to the exemption, in order to provide additional transparency and to allow the Department the opportunity to verify the independence of any auditor or other entity engaged by a Credit Suisse Affiliated QPAM in its efforts to comply with the requirements of this exemption. Specifically, new Section I(i)(10) provides that “[e]ach Credit Suisse Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in

connection with such QPAM’s compliance with the Training or Policies conditions of this exemption, no later than twelve (12) months after the date of the Conviction (and one month after the execution of any agreement thereafter).”

The Department has added new Section I(i)(11), in order to provide the Department with additional oversight of, and to ensure the transparency of, the audit process. Section I(i)(11), as added, provides that “[t]he auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant Credit Suisse Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable Credit Suisse Affiliated QPAM.” In connection with this addition, the Department has struck the last two sentences from Section I(i)(5) of the Second Proposed Exemption as such sentences are now subsumed in new Section I(i)(11).

The Department has added new Section I(i)(12) in order to provide the Department with additional oversight in the selection of any replacement auditor and the ability to verify such replacement auditor’s independence and qualifications. Newly added Section I(i)(12) provides that, in the event that the Applicant contemplates replacing the current auditor, “Credit Suisse AG must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Credit Suisse AG demonstrates to the Department’s satisfaction that such new auditor is independent of Credit Suisse AG, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.”

The Department also made certain clarifying modifications to Section I(i)(4) of the Second Proposed Exemption to more accurately describe the information required in the Audit Report and to reinforce the requirement that the auditor must test for the Credit Suisse Affiliated QPAM’s operational compliance with the Policies and Training requirements. Accordingly, the Department has modified the first sentence of Section I(i)(4) of the Second Proposed Exemption by substituting the word “procedures” for “steps,” and the second sentence by adding the phrase “and compliance with” to describe the auditor’s determinations with regard to the Policies and Training.

¹⁰ The Department notes that, once it receives the information specified in Section I(i), including the additional information described below, such information will become a part of the administrative record and will be available to the public through the Department’s Public Disclosure Room.

Finally, the Department has updated OED's mailing address for each Credit Suisse Affiliated QPAM's Audit Report found in Section I(i)(8) of the proposed exemption, and renumbered Sections I(i)(2) through I(i)(8) of the Second Proposed Exemption to reflect the addition of new Section I(i)(2) described above.

13. Section I(k).

Section I(k) of the Second Proposed Exemption provides that, with respect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, each Credit Suisse Affiliated QPAM agrees, to certain undertakings, including among other things, "(4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors."

The Department has become aware that there is some confusion about whether the exception to the restrictions in subparagraph (5) (*i.e.*, for reasonable fees designed to prevent abusive investment practices or ensure equitable treatment to pooled fund investors) applies to subparagraph (4) as well, given that the rationale for the exception may apply to both. The Department takes the view that the rationale for applying the exception to the restriction in Section I(k)(5) applies to Section I(k)(4) inasmuch as the protection of investors in a pooled fund is concerned. Therefore, to resolve the confusion, the Department has modified Section I(k)(4) of the Second Proposed Exemption to provide that each Credit Suisse Affiliated QPAM agrees . . . "(4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such

restrictions are applied consistently and in like manner to all such investors."

Furthermore, Section I(k) of the Second Proposed Exemption provides that each Credit Suisse Affiliated QPAM will provide a notice to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, within six (6) months of the date of publication of this notice of exemption in the **Federal Register**, of its required undertakings under Section I(k). The Department notes that the notification required by Section I(k), if already provided to an ERISA-covered plan or IRA in connection with the Temporary Final Exemption, need not be re-delivered, but any ERISA-covered plan or IRA that has not received a notice pursuant to Section I(k) must receive such notification within six (6) months of the date of publication of this exemption in the **Federal Register** and/or receive a new, fully executed, investment management agreement containing the covenants required by Section I(k).

14. Section I(m).

Pursuant to Section I(m) of the Second Proposed Exemption, the Credit Suisse Affiliated QPAMs were required to provide certain disclosures to "(1) each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services." In its comment, the Applicant notes that notices were sent to interested persons, as agreed upon with the Department, and in accordance with Section I(m) of the Second Proposed Exemption. However, the Applicant requests confirmation that the ERISA-covered plans and IRAs referred to in Sections I(m)(1) and (2) are those (A) with respect to which PTE 84-14 may be used; and (B) that were clients of Credit Suisse Affiliated QPAMs or Credit Suisse AG as of the date that the Second Proposed Exemption was published in the **Federal Register**.

The Department concurs with the Applicant's requested confirmation.

The Auditor's Statement

The auditor requests confirmations and/or clarifications concerning: (1) The method which the auditor contemplates testing each Credit Suisse Affiliated

QPAM's compliance with such QPAM's Policies in accordance with Section I(i)(3) of the Second Proposed Exemption; (2) the required determinations to be made by the auditor in the Audit Report in Section I(i)(4) of the Second Proposed Exemption; (3) the timing of the first and second audit reports and of the second audit specified by Section I(i)(1) of the Second Proposed Exemption; and (4) the scope of the audit as it relates to the requirement in Section (h)(1) of the Second Proposed Exemption for the Credit Suisse Affiliated QPAMs to develop, implement, maintain, and follow the Policies described therein.

15. Section I(j)(3).

The auditor sought the Department's views regarding the auditor's audit plan, as it relates to Section I(i)(3) of the Second Proposed Exemption, which requires that the auditor "test each Credit Suisse Affiliated QPAM's operational compliance with the Policies" Further, Section I(h)(1) of the Second Proposed Exemption requires that each Credit Suisse Affiliated QPAM "immediately develops, implements, maintains, and follows the Policies requiring and reasonably designed to ensure that . . . (ii) the Credit Suisse Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs."

The auditor states that, assuming that the Policies are deemed to be adequate, it plans to test each Credit Suisse Affiliated QPAM's operational compliance with the Policies, including its compliance with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions, by interviewing relevant personnel, gathering related documentation and evaluating a representative sample of transactions conducted by each Credit Suisse Affiliated QPAM for ERISA-covered plans and IRAs over the covered period. Furthermore, the auditor states that each review would test each Credit Suisse Affiliated QPAM's compliance with the Policies' requirements related to: (a) Compliance with ERISA, including the Act's fiduciary, prohibited transaction, and reporting provisions; (b) ERISA corrections; (c) on-boarding ERISA client portfolios (*e.g.* required documentation, coding); and (d) ongoing ERISA compliance requirements for client portfolios, including: (i) Indicia of ownership, (ii) gifts and entertainment, (iii) fidelity

bonding, (iv) plan client reporting (e.g. Credit Suisse disclosures), (v) pooled investment funds, (vi) filings and statements to regulators, (vii) information barriers, and (viii) ERISA training.

The Department notes that the contemplated testing and review described above is consistent with the Department's expectations concerning the auditor's responsibilities under Section I(i) of the exemption. However, the Department is not, at this time, taking a view herein whether the auditor's contemplated testing and review described above will be sufficient to satisfy its responsibilities under the exemption. The Department anticipates that the auditor's final audit plan and its actual audit testing and review may be different than that described above, depending on the facts and circumstances and actual conditions as they develop, in order to ensure the relevant requirements of this exemption have been met.

16. Section I(i)(4).

Section I(i)(4) of the Second Proposed Exemption provides, in relevant part, that "[a]ny determinations by the auditor that the respective Credit Suisse Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance." The auditor requests confirmation that this sentence requires the auditor's determinations to be based on the independent compliance review that the auditor conducts itself and not simply upon representations made by Credit Suisse Affiliated QPAMs with respect to compliance with the Policies and Training requirements over the covered period.

The Department confirms, in part, the auditor's request, as the determinations to be made under the exemption require the auditor to do its own independent compliance review and not simply rely upon the representations made by the Credit Suisse Affiliated QPAM. The Department also notes that Section I(i)(4) of the Second Proposed Exemption requires that any finding that the Credit Suisse Affiliated QPAM has complied with the requirements under Section I(h) be based on evidence that demonstrates the Credit Suisse Affiliated QPAM has actually implemented, maintained, and followed sufficient Policies and Training, as opposed to, for example, a finding that the Credit Suisse Affiliated QPAM has not violated ERISA, and therefore the Policies and Training in place to prevent such violations are deemed sufficient.

17. Section I(i)(1).

The auditor requests a clarification regarding the timing of the first audit report, since the audit requirement under PTE 2014–11 and the Second Proposed Exemption both cover the same time period but provide different due dates for the audit report. Furthermore, the auditor requests that the Department clarify whether the first full year annual audit specified in the Second Proposed Exemption obviates the need for the second six month audit period under PTE 2014–11. The Department believes that the clarifications described above address the auditor's requests.

18. Section I(h)(1).

Section I(h)(1) of the Second Proposed Exemption requires that "[e]ach Credit Suisse Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that . . . (v) the Credit Suisse Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients." The auditor requests a confirmation that, in connection with testing each Credit Suisse Affiliated QPAM's operational compliance with its Policies, the audit will only relate to "communications" in the form of written documents.

The Department did not intend that the audit be restricted only to written documents. The Department expects that if the auditor is privy to relevant oral or other non-written communications, the auditor will also consider those communications in connection with performing the audit. Accordingly, in the Department's view, the auditor's responsibilities extend to any communications, written or otherwise, that exist in reviewable form, including notes of meetings, audio and video recordings, powerpoints, computer files, and any other media, provided that such information can reasonably be assumed to have been used in any communications referred to in Section I(h)(1) of the exemption.

Provision of Notice of Final Exemption

Given that substantial changes have been made to the proposed exemption, as reflected in this final exemption, the Department is requiring that ERISA-covered plans and IRAs with assets managed by Credit Suisse Affiliated QPAMs in reliance of PTE 84–14 receive

a copy of this final exemption no later than 90 days following the date of publication in the **Federal Register**. Notice to a plan or IRA may be provided electronically (including by an email that has a link to the exemption).

After giving full consideration to the entire record, including the written comments, subject to the Department's responses thereto, the Department has decided to grant the exemption. The complete application file, with copies of the comments, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the First Proposed Exemption, published in the **Federal Register** on September 3, 2014, at 79 FR 52365; the Temporary Final Exemption, published in the **Federal Register** on November 18, 2014, at 79 FR 68716; and the Second Proposed Exemption published in the **Federal Register** on November 18, 2014, at 79 FR 68712.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other

provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

Exemption¹¹

Section I: Covered Transactions

The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84–14¹² notwithstanding the Conviction (as defined in Section II(c)),¹³ provided the following conditions are satisfied:

(a) Any failure of the Credit Suisse Affiliated QPAMs or the Credit Suisse Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(b) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs (including officers, directors, agents other than Credit Suisse AG, and employees of such QPAMs) did not participate in the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(c) The Credit Suisse Affiliated QPAMs and the Credit Suisse Related QPAMs did not directly receive compensation in connection with the criminal conduct of Credit Suisse AG that is the subject of the Conviction;

(d) The criminal conduct of Credit Suisse AG that is the subject of the

Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(e) Credit Suisse AG did not provide any fiduciary services to ERISA-covered plans or IRAs, except in connection with securities lending services of the New York Branch of Credit Suisse AG, or act as a QPAM for ERISA-covered plans or IRAs;

(f) A Credit Suisse Affiliated QPAM will not use its authority or influence to direct an “investment fund” (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such Credit Suisse Affiliated QPAM to enter into any transaction with Credit Suisse AG or engage Credit Suisse AG to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(g) Each Credit Suisse Affiliated QPAM will ensure that it does not engage or employ any person involved in the criminal conduct that underlies the Conviction in connections with transactions involving any “investment fund” (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such Credit Suisse Affiliated QPAMs;

(h) (1) Each Credit Suisse Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the Credit Suisse Affiliated QPAM are conducted independently of Credit Suisse AG’s management and business activities; (ii) the Credit Suisse Affiliated QPAM fully complies with ERISA’s fiduciary duties and ERISA and the Code’s prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the Credit Suisse Affiliated QPAM does not knowingly participate in any other person’s violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the Credit Suisse Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM’s knowledge at that time; (v) the Credit Suisse Affiliated

QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the Credit Suisse Affiliated QPAM complies with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant Credit Suisse Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Credit Suisse AG; however, with respect to any ERISA-covered plan or IRA sponsored by an “affiliate” (as defined in Section VI(d) of PTE 84–14) of Credit Suisse AG or beneficially owned by an employee of Credit Suisse AG or its affiliates, such fiduciary does not need to be independent of Credit Suisse AG; Credit Suisse Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Credit Suisse Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant Credit Suisse Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(i) (1) Each Credit Suisse Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate

¹¹ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

¹³ Section I(g) generally provides that “[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of” certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. Each audit must cover a twelve month period that begins on November 21 and ends on the following November 20, and be completed no later than six (6) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each Credit Suisse Affiliated QPAM and, if applicable, Credit Suisse AG, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each Credit Suisse Affiliated QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each Credit Suisse Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Credit Suisse AG and the Credit Suisse Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective Credit Suisse Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (h) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Credit Suisse Affiliated QPAM shall be promptly addressed by such Credit Suisse Affiliated QPAM, and any actions taken by such Credit Suisse Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective Credit

Suisse Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Credit Suisse Affiliated QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the Credit Suisse Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, and not solely on evidence that demonstrates that the Credit Suisse Affiliated QPAM has not violated ERISA;

(6) The auditor shall notify the respective Credit Suisse Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the Credit Suisse Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Credit Suisse AG reviews the Audit Report for each Credit Suisse Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Credit Suisse Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington DC 20210, no later than 30 days following its completion, and each Credit Suisse Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such Credit Suisse Affiliated QPAM;

(10) Each Credit Suisse Affiliated QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and

(B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than twelve (12) months after the date of the Conviction (and one month after the execution of any agreement thereafter);

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan, audit testing, identification of any instances of noncompliance by the relevant Credit Suisse Affiliated QPAM, and an explanation of any corrective or remedial actions taken by the applicable Credit Suisse Affiliated QPAM; and

(12) Credit Suisse AG must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Credit Suisse AG demonstrates to the Department's satisfaction that such new auditor is independent of Credit Suisse AG, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(j) The Credit Suisse Affiliated QPAMs comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction;

(k) Effective from the date of publication of this exemption notice in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services, each Credit Suisse Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the Credit Suisse Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the Credit Suisse Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Credit Suisse AG; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with

the Credit Suisse Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of this notice of exemption in the **Federal Register**, each Credit Suisse Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a Credit Suisse Affiliated QPAM provides asset management or other discretionary fiduciary services;

(l) Each Credit Suisse Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such Credit Suisse Affiliated QPAM relies upon the relief in the exemption;

(m) The Credit Suisse Affiliated QPAMs provided a notice of the proposed exemption along with a separate summary describing the facts that led to the Conviction, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a Credit Suisse Affiliated QPAM, or the sponsor of an investment fund in any case where a Credit Suisse Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a Credit Suisse Related QPAM; and (3) each ERISA-covered plan for which the New York Branch of Credit Suisse AG provides fiduciary securities lending services; and

(n) A Credit Suisse Affiliated QPAM will not fail to meet the terms of this exemption solely because a Credit Suisse Related QPAM or a different

Credit Suisse Affiliated QPAM fails to satisfy a condition for relief under this exemption. A Credit Suisse Related QPAM will not fail to meet the terms of this exemption solely because Credit Suisse AG, a Credit Suisse Affiliated QPAM, or a different Credit Suisse Related QPAM fails to satisfy a condition for relief under this exemption;

(o) ERISA-covered plans and IRAs with assets managed by Credit Suisse Affiliated QPAMs in reliance of PTE 84–14 must receive a copy of this final exemption no later than 90 days following the date of publication in the **Federal Register**. Notice to a plan or IRA may be provided electronically (including by an email that has a link to the exemption).

Section II: Definitions

(a) The term “Credit Suisse Affiliated QPAM” means a “qualified professional asset manager” (as defined in section VI(a) ¹⁴ of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Credit Suisse AG is a current or future “affiliate” (as defined in section VI(d) of PTE 84–14). The term “Credit Suisse Affiliated QPAM” excludes the parent entity, Credit Suisse AG.

(b) The term “Credit Suisse Related QPAM” means any current or future “qualified professional asset manager” (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which Credit Suisse AG owns a direct or indirect five percent or more interest, but with respect to which Credit Suisse AG is not an “affiliate” (as defined in Section VI(d) of PTE 84–14).

(c) The term “Conviction” means the judgment of conviction against Credit Suisse AG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14-cr-188-RBS, on November 21, 2014.

¹⁴ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Signed at Washington, DC, this 25th day of September, 2015.

Lyssa Hall,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. 2015–24919 Filed 10–1–15; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–086)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially-exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 7,623,972 for an invention entitled “Detection of Presence of Chemical Precursors”; U.S. Patent No. 7,801,687 for an invention entitled “Chemical Sensors Using Coated or Doped Carbon Nanotube Networks”; U.S. Patent No. 7,968,054 for an invention entitled “Nanostructure Sensing and Transmission Of Gas Data”; and U.S. Patent No. 8,000,903 for an invention entitled “Coated or Doped Carbon Nanotube Network Sensors as Affected by Environmental Parameters”; and ARC–16902–1 for an invention entitled “Nanosensors for medical diagnosis”; and ARC–16292–1 for an invention entitled “Nanosensor/Cell Phone Hybrid for Detecting Chemicals and Concentrations,” to The Medical Innovation Group, LLC, having its principal place of business at 416 Mount Airy Road, Basking Ridge, NJ 07920. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially-exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A-4, Moffett Field, CA 94035-1000. (650) 604-5104; Fax (650) 604-2767.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Chief Patent Counsel, Office of Chief Counsel, NASA Ames Research Center, Mail Stop 202A-4, Moffett Field, CA 94035-1000. (650) 604-5104; Fax (650) 604-2767. Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov/>.

Mark P. Dvorscak,
Agency Counsel for Intellectual Property.
[FR Doc. 2015-24955 Filed 10-1-15; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Senior Executive Service Performance Review Board

ACTION: Notice.

SUMMARY: This notice announces the membership of the National Endowment for the Arts (NEA) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: *Effective Date:* September 28, 2015.

ADDRESSES: Send comments concerning this notice to: National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Craig McCord Sr. by telephone at (202) 682-5473 or by email at mccordc@arts.gov.

SUPPLEMENTARY INFORMATION: 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's

performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts (NEA):
Winona Varnon—Deputy Chairman for Management and Budget
Michael Griffin—Chief of Staff
Sunil Iyengar—Director, Research & Analysis

Dated: September 28, 2015.

Kathy N. Daum,
Director, Administrative Services.
[FR Doc. 2015-24963 Filed 10-1-15; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 7-10, 2015, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, October 7, 2015,
Conference Room T2-B1, 11545
Rockville Pike, Rockville, Maryland

2:00 p.m.-2:05 p.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

2:05 p.m.-3:30 p.m.: Reactor Oversight Process (ROP) Enhancements (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed enhancements to the ROP Process.

3:30 p.m.-4:00 p.m.: Assessment of the Quality of Selected Research Projects (Open)—The Committee will discuss the quality of selected NRC research projects.

4:00 p.m.-6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Thursday, October 8, 2015, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.-8:35 a.m.: Opening remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.-11:00 a.m.: SHINE Construction Permit Application (Open/Closed) - The Committee will hear presentations by and hold discussions with representatives of the NRC staff and SHINE regarding the safety evaluation associated with the SHINE construction permit application for a Mo99 medical radioisotope production facility under 10 CFR part 50.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).

1:00 p.m.-3:30 p.m.: Interim Staff Guidance (ISG): Acute Chemical Exposures and Quantitative Standards (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, NEI, and other members of the public regarding the Interim Staff Guidance (ISG): Acute Chemical Exposures and Quantitative Standards.

3:30 p.m.-6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).

Friday, October 9, 2015, Conference Room T2-B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.-10:00 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, and matters related to the conduct of ACRS business, including anticipated workload and member assignments.

Note: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

10:00 a.m.-10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

1:00 p.m.-2:00 p.m.: Meeting with Commissioner Baran (Open)—The Committee will meet with

Commissioner Baran to discuss items of mutual interest.

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).

Saturday, October 10, 2015, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports.

Note: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary pursuant to 5 U.S.C. 552b(c)(4).]

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion 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 1, 2014 (79 FR 59307). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS Staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of the October

7th–10th meeting date 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 agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 28th day of September, 2015.

For the Nuclear Regulatory Commission.
Annette L. Vietti-Cook,
Acting, Advisory Committee Management Officer.

[FR Doc. 2015–25116 Filed 10–1–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATES: October 5, 12, 19, 26, November 2, 9, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 5, 2015

There are no meetings scheduled for the week of October 5, 2015.

Week of October 12, 2015—Tentative

There are no meetings scheduled for the week of October 12, 2015.

Week of October 19, 2015—Tentative

Monday, October 19, 2015

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1)

Wednesday, October 21, 2015

9 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) (Part 1) (Public Meeting)
To be held at FERC Headquarters, 888 First Street NE., Washington, DC.
(Contact: Tania Martinez-Navedo: 301–415–6561)

This meeting will be webcast live at the Web address—www.ferc.gov.

11:20 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) (Part 2) (Closed—Ex. 1 & 3)

To be held at FERC Headquarters, 888 First Street NE., Washington, DC.

Week of October 26, 2015—Tentative

There are no meetings scheduled for the week of October 26, 2015.

Week of November 2, 2015—Tentative

There are no meetings scheduled for the week of November 2, 2015

Week of November 9, 2015—Tentative

There are no meetings scheduled for the week of November 9, 2015

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at Glenn.Ellmers@nrc.gov.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/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 Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at Kimberly.Meyer-Chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically.

If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301-415-1969), or email Brenda.Akstulewicz@nrc.gov or Patricia.Jimenez@nrc.gov.

Dated: September 30, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015-25312 Filed 9-30-15; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on October 7, 2015, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 2015-8:30 a.m. Until 1:00 p.m.

The Subcommittee will discuss sections of the NuScale Design-Specific Review Standard. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301-415-6973 or Email: Maitri.Banerjee@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were

published in the **Federal Register** on October 1, 2014, (79 FR 59307).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, 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 these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: September 24, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015-25118 Filed 10-1-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-327 and 50-328; NRC-2013-0037]

License Renewal for Sequoyah Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued renewed facility operating licenses Nos. DPR-77 and DPR-79 to Tennessee Valley Authority, the operator of the Sequoyah Nuclear Plant, Units 1 and 2 (SQN). Renewed facility operating licenses Nos. DPR-77 and DPR-79 authorize operation of SQN by the licensee at reactor core power levels not in excess of 3455 megawatts thermal, in accordance with the provisions of the SQN renewed licenses and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to renew facility operating licenses Nos. DPR-77 and DPR-79.

DATES: The license renewal of facility operating licenses Nos. DPR-77 and

DPR-79 were effective on September 28, 2015.

ADDRESSES: Please refer to Docket ID NRC-2013-0037 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0037. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Emmanuel Sayoc, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301-415-4084; email: Emmanuel.Sayoc@nrc.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the NRC has issued renewed facility operating licenses Nos. DPR-77 and DPR-79 to Tennessee Valley Authority, the operator of SQN. Renewed facility operating licenses Nos. DPR-77 and DPR-79 authorize operation of SQN by the licensee at reactor core power levels not in excess of 3455 megawatts thermal, in accordance with the provisions of the SQN renewed licenses and technical specifications. The NRC's ROD that supports the NRC's decision to renew facility operating licenses Nos. DPR-77 and DPR-79 is available in ADAMS under Accession No. ML15104A689. As discussed in the ROD and the final supplemental environmental impact statement (FSEIS) for SQN, Supplement

53 to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Sequoyah Nuclear Plant, Units 1 and 2," dated March 2015 (ADAMS Accession No. ML15075A438), the NRC has considered a range of reasonable alternatives that included natural gas combined-cycle, supercritical pulverized coal, new nuclear, wind and solar power, and the no action alternative. The ROD and FSEIS document the NRC's determination in its environmental review that the adverse environmental impacts of license renewal for SQN are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

SQN is a dual pressurized water reactor nuclear steam supply system, with four coolant loops for each unit, and located approximately 9.5 miles northeast of Chattanooga, Tennessee. The application for the renewed license, "Sequoyah Nuclear Plant, Units 1 and 2, License Renewal Application," dated January 7, 2013 (ADAMS Accession No. ML130240007), as supplemented by letters dated through August 17, 2015, complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. As required by the Act and the NRC's regulations in Chapter 1 of Title 10 of the *Code of Federal Regulations*, the NRC has made appropriate findings, which are set forth in the license. A public notice of acceptance for docketing of the application and an opportunity for a hearing was published in the **Federal Register** on March 5, 2013 (78 FR 14362).

For further details with respect to this action, see: (1) Tennessee Valley Authority license renewal application for Sequoyah Nuclear Plant, Units 1 and 2, dated January 7, 2013, as supplemented by letters dated through August 17, 2017; (2) the NRC's safety evaluation report published in January 2015 (ADAMS Accession No. ML15021A356); (3) the NRC's final environmental impact statement (NUREG-1437, Supplement 53) for Sequoyah Nuclear Plant, Units 1 and 2, published in March 2015; and (4) the NRC's ROD.

Dated at Rockville, Maryland, this 28th day of September, 2015.

For the Nuclear Regulatory Commission.

Christopher G. Miller,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2015-25128 Filed 10-1-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250, and 50-251; NRC-2015-0011]

Florida Power & Light Company Turkey Point Nuclear Generating, Units 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision with regard to a petition dated July 18, 2014, as supplemented on September 3, 2014, filed by Mr. Thomas Saporito (the petitioner), requesting that the NRC take action with regard to Turkey Point Nuclear Generating, Units 3 and 4. The petitioner's requests and the director's decision are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC-2015-0011 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0011. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, NRC has issued Director's Decision DD-15-10 (ADAMS Accession No. ML15237A181) for a petition filed by Mr. Thomas

Saporito (the petitioner) on July 18, 2014, as supplemented on September 3, 2014 (ADAMS Package Accession No. ML14202A521).

The petitioner requested that the NRC take enforcement action against Florida Power & Light Company (the licensee) regarding the Turkey Point Nuclear Generating, Units 3 and 4. Specifically, the petitioner requested that the NRC suspend or revoke the licenses for Turkey Point, issue a violation with a civil penalty of \$1 million, and issue a confirmatory order that the plant stays in a cold shutdown mode until the licensee completes (1) an independent assessment (through a contractor) to assess, fully understand, and correct the root cause of the rise in ultimate heat sink (UHS) temperature; (2) a comprehensive evaluation of all nuclear safety-related equipment and components that may have been affected; and (3) an independent evaluation of all nuclear safety-related equipment and components that may have been affected.

On September 3, 2015, the petitioner addressed the NRC's Petition Review Board by teleconference. The meeting provided the petitioner an opportunity to provide additional information and to clarify issues cited in the petition. The transcript for that meeting is available in ADAMS under Accession No. ML14266A123.

The NRC reviewed the petition, its supplements, and the transcripts from the meeting on September 3, 2014, and referred the request to the Director of the Office of Nuclear Reactor Regulation. By letter dated January 30, 2015 (ADAMS Accession No. ML14349A597), the Deputy Director determined that the petitioner's request that the NRC take enforcement action until the licensee completes an independent root cause assessment for the rise in UHS temperature met the criteria for review under the petition process. The Deputy Director determined that the other requests in the petition did not meet the criteria for review under the petition process.

By letters to the petitioner and licensee dated July 27, 2015 (ADAMS Accession Nos. ML15162B048 and ML15162B050, respectively), the NRC issued the proposed director's decision (ADAMS Accession No. ML15162B053) for comment. The petitioner and the licensee were asked to provide comments within 15 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. Comments were received from the petitioner by electronic mail dated August 5, 2015, and August 12,

2015 (ADAMS Accession Nos. ML15237A170 and ML15229B009, respectively) and are addressed in an attachment to the final director's decision.

The Director of the Office of Nuclear Reactor Regulation has denied the petitioner's request that the NRC take enforcement action until the licensee completes an independent root

cause assessment for the rise in UHS temperature. The reasons for this decision are explained in Director's Decision DD-15-10 pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR) of the Commission's regulations.

The NRC will file a copy of the director's decision with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Rockville, Maryland, this 23rd day of September 2015.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2015-25126 Filed 10-1-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 7, 2015, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 7, 2015—1:00 p.m. Until 2:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather

information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301-415-5844 or Email: Quynh.Nguyen@nrc.gov) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 2014 (79 FR 59307).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, 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 DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240-888-9835) to be escorted to the meeting room.

Dated: September 24, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015-25146 Filed 10-1-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on October 6, 2015, Room T-2B1, 11545

Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 6, 2015—8:30 a.m. Until 4:30 p.m.

The Subcommittee will review and discuss the NRC staff's plans to resolve and close the remaining open Tier 2 and 3 recommendations developed in response to the March 11, 2011 accident at the Fukushima Dai-ichi nuclear power plant. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone: 301-415-6236 or Email: Kathy.Weaver@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 2014 (79 FR 59307).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, 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 these references if such

rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240-888-9835) to be escorted to the meeting room.

Dated: September 25, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015-25120 Filed 10-1-15; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75994; File No. SR-NYSEARCA-2015-84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program Until March 31, 2016

September 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on September 30, 2015, until March 31, 2016. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on September 30, 2015, until March 31, 2016.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.³ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Equities Rule 7.44(m), the pilot period for the Program was originally scheduled to end twelve months after the date of implementation. Because the Program was implemented on April 14, 2014, the first pilot period for the Program ended on April 14, 2015 and the Exchange

extended the pilot period to September 30, 2015.⁴

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.⁵ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.⁶ Through this filing, the Exchange seeks to amend NYSE Arca Equities Rule 7.44(m) and extend the current pilot period of the Program until March 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the

⁴ The Exchange announced the implementation date by Trader Update, which is available here: https://www.nyse.com/publicdocs/nyse/notifications/trader-update/2014_04_07_Arca_RLP%20GO%20LIVE.pdf. See Securities Exchange Act Release No. [sic]

⁵ See RLP Approval Order, *supra*, n. 4 at 79529.

⁶ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated September 17, 2015.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

³ See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEARCA-2013-107) ("RLP Approval Order").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the current expiration of the pilot period. The Exchange stated that an immediate operative date would be consistent with the protection of investors and the public interest because the pilot period is set to expire on September 30, 2015, and a waiver would permit the beneficial aspects of the Program to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to continue uninterrupted after its current expiration date of September 30, 2015, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2015-84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2015-84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2015-84, and should be submitted on or before October 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-24969 Filed 10-1-15; 8:45 am]

BILLING CODE 8011-01-P

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75995; File No. SR-NYSEMKT-2015-69]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program Until March 31, 2016

September 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on September 30, 2015, until March 31, 2016. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program,³ currently scheduled to expire on September 30, 2015, until March 31, 2016.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.⁴ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE MKT Rule 107C(m)—Equities, the pilot period for the Program is scheduled to end on September 30, 2015.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate

because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.⁵ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.⁶ Through this filing, the Exchange seeks to amend NYSE MKT Rule 107C(m)—Equities and extend the current pilot period of the Program until March 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and

⁵ See *id.* at 40681.

⁶ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated September 17, 2015.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

³ See Securities Exchange Act Release No. 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR-NYSEMKT-2014-60).

⁴ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR-NYSEAmex-2011-84).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the current expiration of the pilot period. The Exchange stated that an immediate operative date would be consistent with the protection of investors and the public interest because the pilot period is set to expire on September 30, 2015, and a waiver would permit the beneficial aspects of the Program to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

public interest because such waiver would allow the pilot period to continue uninterrupted after its current expiration date of September 30, 2015, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2015-69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-69, and should be submitted on or before October 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-24968 Filed 10-1-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75991; File No. SR-NYSE-2015-27]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending the Eighth Amended and Restated Operating Agreement of the Exchange To Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange and Amending Other Rules of the Exchange

September 28, 2015.

I. Introduction

On June 12, 2015, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder,³ a proposed rule change to amend the Eighth Amended and Restated Operating Agreement ("Operating Agreement") of the Exchange and to amend other rules of the Exchange, as described below. The

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

proposed rule change was published for comment in the **Federal Register** on June 30, 2015.⁴ The Commission received one comment letter on the proposed rule change⁵ and a response to the comment letter from the Exchange.⁶ On August 11, 2015, the Commission extended the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to September 28, 2015.⁷ This order approves the proposed rule change.

II. Description of the Proposal

NYSE proposes to: (i) Amend the Exchange's Operating Agreement to establish a Regulatory Oversight Committee ("ROC") as a committee of the Exchange's Board of Directors ("Board") and make conforming amendments to Exchange Rules 1, 46, 46A, and 497; (ii) terminate the Delegation Agreement ("Delegation Agreement") among the Exchange, NYSE Market (DE), Inc. ("NYSE Market (DE)"), and NYSE Regulation, Inc. ("NYSE Regulation"), delete Exchange Rule 20, which sets forth the terms of the delegation, and make conforming amendments to Section 4.05 of the Operating Agreement and Exchange Rules 0, 1, 22, 36, 37, 46, 48, 49, 54, 70, 103, 103A, 103B, 104, 422 476A, and 497; (iii) remove from the Exchange Rules certain organizational documents of NYSE Market (DE) and NYSE Regulation in connection with the proposed termination of the Delegation Agreement; (iv) amend the Operating Agreement to establish a Director Candidate Recommendation Committee ("DCRC") as a committee of the Board and set forth the process by which Non-Affiliated Director Candidates are named to the new DCRC; (v) amend the Operating Agreement to establish a Committee for Review ("CFR") as a subcommittee of the ROC and make conforming changes to Exchange Rules 308, 475, 476, 476A, and 9310; and (vi) replace references to the Chief Executive Officer of NYSE Regulation in Exchange

Rules 48, 49, and 89 with references to the Chief Regulatory Officer of the Exchange.

A. Establishing a ROC and Making Conforming Amendments to Exchange Rules

The Exchange proposes to add subsection (ii) to Section 2.03(h) of the Operating Agreement to establish a ROC and to delineate its composition and functions. The Exchange states that new Section 2.03(h)(ii) of the Operating Agreement would be substantially similar to the recently approved changes by the Exchange's affiliates, NYSE Arca, Inc. ("NYSE Arca") and NYSE MKT LLC ("NYSE MKT"), to establish ROCs,⁸ as well as Article III, Section 5(c) of the By-Laws of the NASDAQ Stock Market LLC ("NASDAQ") ("NASDAQ By-Laws").⁹ The ROC would be appointed annually and would have the following responsibilities:

- Oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.¹⁰

In furtherance of these functions, the Exchange proposes that the ROC shall have the authority and obligation to: (i) Review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (ii) meet regularly with the Chief Regulatory Officer ("CRO") in executive session; (iii) in consultation with the Exchange's Chief Executive Officer, establish the goals, assess the performance, and recommend the CRO's compensation; and (iv) keep the Board informed with respect to the foregoing matters.

With respect to the ROC's composition, Section 2.03(h)(ii) would provide that the ROC shall consist of at least three members, each of whom shall be a Director of the Exchange who

satisfies the independence requirements of the Exchange.¹¹ The Exchange states that a ROC comprised of at least three independent members has been recognized as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.¹²

In addition, Section 2.03(h)(ii) of the Operating Agreement would provide that the Board, on affirmative vote of a majority of Directors, at any time may remove a member of the ROC for cause, and also would provide that a failure of the ROC member to qualify as independent under the Company Director Independence Policy would constitute a basis to remove a member of the ROC for cause. If the term of office of a ROC member terminates, and the remaining term of office of such member at the time of termination is not more than three months, Section 2.03(h)(ii) would provide that during the period of vacancy, the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. To clarify the process for filling vacancies on any committee of the Exchange, including the ROC, the Exchange also proposes to amend Section 2.03(h) of the Operating Agreement to provide that vacancies in the membership of any committee shall be filled by the Board. The Exchange believes that the proposed rule change creating an independent Board committee to oversee the adequacy and effectiveness of the performance of its self-regulatory responsibilities is consistent with previously approved rule changes for other SROs and would enable the Exchange to undertake its regulatory responsibilities under a corporate governance structure that is consistent with its industry peers.¹³ Moreover, the Exchange believes that the proposed ROC would ensure the continued independence of the regulatory process.¹⁴ The Exchange states that oversight of the Exchange's self-regulatory responsibilities and regulatory performance, including review of the regulatory plan, programs, budget and staffing by a ROC composed of individuals independent of Exchange

⁴ See Securities Exchange Act Release No. 75288 (June 24, 2015), 80 FR 37316 ("Notice").

⁵ See letter from J. Robert Brown, Jr., Professor of Law & Director, Corporate & Commercial Law Program, University of Denver Sturm College of Law, to Brent J. Fields, Secretary, Commission, dated September 8, 2015 and received by the Commission on September 21, 2015 ("Professor Brown Letter").

⁶ See letter from Martha Redding, Senior Counsel and Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated September 24, 2015 and received by the Commission on September 24, 2015 ("NYSE Response Letter").

⁷ See Securities Exchange Act Release No. 75659, 80 FR 49285 (August 17, 2015).

⁸ See Securities Exchange Act Release Nos. 75148 (June 11, 2015), 80 FR 34751 (June 17, 2015) (approving NYSE MKT's establishment of a ROC of the exchange's Board of Directors) ("NYSE MKT Approval Order") and 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015) (approving NYSE Arca's establishment of a ROC of the exchange's Board of Directors) ("NYSE Arca Approval Order").

⁹ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order granting application of NASDAQ for registration as a national securities exchange) ("NASDAQ Approval Order").

¹⁰ See Notice, *supra* note 4, at 37317.

¹¹ The Exchange's independence requirements are set forth in the Company Director Independence Policy of the Exchange. See Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17) (approving, among other things, the Exchange's Company Director Independence Policy).

¹² See Notice, *supra* note 4, at 37317.

¹³ See *id.* See also NASDAQ Approval Order, NYSE MKT Approval Order and NYSE Arca Approval Order, *supra* notes 8 and 9.

¹⁴ See Notice, *supra* note 4, at 37317.

management and a CRO having general supervision of the regulatory operations of the Exchange that meets regularly with the ROC is integral to the proposal.¹⁵

The Exchange also proposes to make conforming amendments to Exchange Rules 1, 46, 46A and 497 by replacing references to “Board of Directors of NYSE” and “NYSE Regulation Board of Directors” with references to the ROC.

B. Terminating the Delegation Agreement, Deleting Exchange Rule 20, and Conforming the Operating Agreement and Other Exchange Rules

The Exchange proposes to terminate the Delegation Agreement and delete Exchange Rule 20, which sets forth the delegation of the Exchange’s regulatory functions to NYSE Regulation and the Exchange’s market functions to NYSE Market (DE),¹⁶ each of which is a subsidiary of the Exchange created in 2006 following the merger of New York Stock Exchange, Inc. with Archipelago Holdings, Inc.¹⁷ In connection with that transaction, NYSE Regulation became a separate not-for-profit entity, and its Board of Directors assumed the regulatory oversight functions and responsibilities of the Exchange that are proposed to be assumed by the ROC. The Exchange notes that, although the Delegation Agreement sets forth the terms under which the Exchange delegated its functions to NYSE Regulation and NYSE Market (DE), the Exchange retained ultimate responsibility for the operations, rules and regulations developed by NYSE Regulation and NYSE Market (DE) and for their enforcement.¹⁸

¹⁵ See *id.*

¹⁶ See Exchange Rule 20(a). Exchange Rule 20(b) requires that NYSE Market (DE) establish a Market Performance Committee and that NYSE Regulation establish a Regulatory Advisory Committee, each to include persons associated with member organizations and representatives of both those member organizations doing business on the Floor of the Exchange and those who do not do business on the Floor. The Exchange does not propose to retain these committees. Rather, the Exchange proposes that the Committee for Review, which would include persons associated with member organizations and representatives of both those member organizations doing business on the Floor of the Exchange and those who do not do business on the Floor, assume the advisory roles of these committees. See Section I.E., *infra*.

¹⁷ See Notice, *supra* note 4, at 37318.

¹⁸ The Exchange notes that functions delegated to NYSE Market (DE) included, among other things, operating the NYSE marketplace, including the automated systems supporting it; providing and maintaining a communications network infrastructure linking market participants for the efficient process and handling of quotations, orders, transaction reports and comparisons of transactions; acting as a Securities Information Processor for quotations and transaction information related to

With the termination of the Delegation Agreement, the Exchange proposes to re-integrate its regulatory and market functions.¹⁹ The Exchange believes that its proposal to establish a ROC to undertake the independent oversight of the Exchange’s regulatory responsibilities would ensure independent oversight of the regulatory process and would have the additional benefit of aligning the Exchange’s corporate governance practices with its industry peers.²⁰

The Exchange proposes to functionally separate its regulatory functions from its business lines.²¹ The Exchange’s CRO would head the Exchange’s regulatory department and continue to manage the Exchange’s regulatory functions, under the oversight of the proposed ROC. The regulatory staff supporting the regulatory functions of NYSE would report to the CRO. The Exchange believes that a CRO reporting to an independent ROC should add a “significant degree of independence” and should “insulate” regulatory activity from economic pressures and potential conflicts of interest.²²

The Exchange proposes to make certain conforming amendments to its Rules to reflect the termination of the Delegation Agreement and the re-integration of its regulatory and market operations. As further described in the Notice,²³ the Exchange proposes conforming amendments in Section 4.05 of the Exchange’s Operating Agreement, and Exchange Rules 0, 1, 22, 36 (Supplementary Material .30), 37, 46, 48, 49, 54(b), 70 (subparts (1) and (7) of Supplementary Material .40), 103, 103A, 103B, 104, 422, 476A and 497, by removing references to NYSE Regulation and NYSE Market²⁴ and, where applicable, replacing such deletions with references to the Exchange or to the applicable Exchange personnel, as appropriate, who will be carrying out the regulatory responsibilities on behalf

securities traded on NYSE and other trading facilities operated by NYSE Market (DE); administering the Exchange’s participation in National Market System Plans; and collecting, processing, consolidating and providing to NYSE Regulation accurate information requisite to operation of the surveillance audit trail. See *id.* at 37318 n.21.

¹⁹ See Notice, *supra* note 4, at 37322.

²⁰ See *id.* at 37318.

²¹ See *id.*

²² See *id.* (citing Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678, 74687 (December 24, 2003)).

²³ See *id.* at 37318–19.

²⁴ The Exchange notes that NYSE Market (DE) was formerly known as “NYSE Market, Inc.” Accordingly, references to “NYSE Market” in the Exchange Rules and Operating Agreement are references to NYSE Market (DE).

of the Exchange following the termination of the Delegation Agreement.

C. Deleting NYSE Market (DE) and NYSE Regulation’s Organizational Documents as Rules of the Exchange

With the termination of the Delegation Agreement, NYSE Regulation and NYSE Market (DE) no longer would be performing the Exchange’s regulatory and market functions, respectively. According to the Exchange, the previously filed constituent documents of NYSE Regulation and NYSE Market (DE) therefore no longer would constitute “rules of [the] exchange” under Section 3(a)(27) of the Act.²⁵ As a result, the Exchange proposes to remove the following NYSE Regulation and NYSE Market (DE) constituent documents as rules of the Exchange upon termination of the Delegation Agreement:

- Restated Certificate of Incorporation of NYSE Regulation, Inc.;
- Seventh Amended and Restated Bylaws of NYSE Regulation, Inc.;
- Independence Policy of NYSE Regulation, Inc.;
- Third Amended and Restated Certificate of Incorporation of NYSE Market (DE), Inc.;
- Fourth Amended and Restated Bylaws of NYSE Market (DE), Inc.; and
- Independence Policy of NYSE Market (DE), Inc.²⁶

D. Establishing a DCRC and Naming Non-Affiliated Director Candidates

Section 2.03(a)(iii) of the Operating Agreement provides that Non-Affiliated Director Candidates (also known as “Fair Representation Candidates”) are nominated by the nominating and governance committee (“NGC”) of the Intercontinental Exchange, Inc. (“ICE”) Board of Directors, which must designate as Non-Affiliated Director Candidates the candidates recommended jointly by the NYSE Market (DE) DCRC and the NYSE Regulation DCRC. Section 2.03(a)(iv) of the Operating Agreement describes the process whereby member organizations can nominate alternate candidates to those candidates selected by the NYSE Market (DE) DCRC and the NYSE Regulation DCRC.

²⁵ 15 U.S.C. 78c(a)(27).

²⁶ The Commission notes that on September 22, 2015, NYSE MKT LLC filed a proposed rule change to add the Third Amended and Restated Certificate of Incorporation of NYSE Market (DE), Inc. and the Eighth Amended and Restated Operating Agreement of New York Stock Exchange LLC as “rules of [the] exchange” of NYSE MKT in light of NYSE Market (DE), Inc.’s majority ownership interest in a facility of NYSE MKT. See Securities Exchange Act Release No. 75984 (September 25, 2015) (SR-NYSEMKT-2015-71).

The Exchange proposes to establish a NYSE DCRC as a committee of the Board by adding new subsection (h)(i) to Section 2.03 of the Operating Agreement, and making conforming changes to Section 2.03(a)(iii) and Section 2.03(a)(iv) by substituting the proposed NYSE DCRC for the NYSE Market (DE) DCRC and NYSE Regulation DCRC in the nominating process for Non-Affiliated Director Candidates. The Exchange states that, once the Delegation Agreement is terminated, neither the NYSE Market (DE) DCRC nor the NYSE Regulation DCRC should have a role in the nomination of Non-Affiliated Director Candidates process, as the Exchange no longer would be delegating any market or regulatory responsibilities to either entity.²⁷

Proposed Section 2.03(h)(i) of the Operating Agreement provides that the Board would appoint the members of the NYSE DCRC on an annual basis and that the NYSE DCRC would be responsible for recommending Non-Affiliated Director Candidates to the ICE NGC. Proposed Section 2.03(h)(i) also sets forth the compositional requirements for the NYSE DCRC.²⁸ Specifically, the NYSE DCRC would include individuals who are associated with a member organization, and would include at least one individual from each of the following categories, that:

- Engages in a business involving substantial direct contact with securities customers;
- is registered as a Designated Market Maker (“DMM”) and spends a substantial part of their time on the trading floor; and
- spends a majority of their time on the trading floor of the Exchange and has as a substantial part of their business the execution of transactions on the trading floor of the Exchange for other than their own account or the account of his or her Member

²⁷ See Notice, *supra* note 4, at 37320.

²⁸ The proposed requirements are substantially similar to the requirements for the DCRCs of NYSE Regulation, NYSE Market (DE), and NYSE MKT. See Seventh Amended and Restated Bylaws of NYSE Regulation, Inc., Article III, Section 5; Fourth Amended and Restated Bylaws of NYSE Market (DE), Inc., Article III, Section 5; and Sixth Amended and Restated Operating Agreement of NYSE MKT LLC, Section 2.03(h). The Exchange notes that NYSE MKT has a fourth category of requirements similar to the third category noted above but it includes an individual that engages in the execution of transactions on NYSE MKT’s trading floor for the associate person’s own account. Because neither the NYSE Market (DE) DCRC nor the NYSE Regulation DCRC, which the NYSE DCRC is replacing, has this fourth category, the Exchange does not propose to include it in the revised Operating Agreement. See Notice, *supra* note 4, at 37320 n.37.

Organization, but is not registered as a DMM.

As proposed, Section 2.03(h)(i) would provide that the Board appoint such individuals after appropriate consultation with representatives of member organizations. Furthermore, the Exchange proposes to replace references to “NYSE Market DCRC” and “NYSE Regulation DCRC” with “NYSE DCRC” in Section 2.03(a)(iii) and Section 2.03(a)(iv) of the Operating Agreement.

According to the Exchange, one benefit of the proposed rule change is that the Exchange’s process for selecting Non-Affiliated Director Candidates would be harmonized with a similar process in place at NYSE MKT, an affiliate of the Exchange.²⁹ Further, the Exchange believes that the proposed rule change would allow the Board to have a more direct role in the appointment of Non-Affiliated Director Candidates while complying with the fair representation requirement under Section 6(b)(3) of the Act,³⁰ which is intended to give members a voice in the selection of an exchange’s directors and the administration of its affairs.³¹ In particular, the Exchange notes that, as is the case with the NYSE Regulation DCRC and NYSE Market (DE) DCRC, the proposed NYSE DCRC would be comprised of persons associated with Exchange member organizations and selected after appropriate consultation with those member organizations. The proposed Operating Agreement also retains a process by which members could directly petition and vote for representation on the Board.³² The Exchange therefore believes that the proposal would continue to allow members to have a voice in the Exchange’s use of its self-regulatory authority, consistent with Section 6(b)(3) of the Act.³³

E. Establishing a Committee for Review and Conforming Exchange Rules

The Exchange proposes to establish a Committee for Review (“CFR”) as a subcommittee of the ROC by adding a new subsection (h)(iii) to Section 2.03 of the Operating Agreement and to make conforming changes to Exchange Rules 308, 475, 476, 476A, and 9310.³⁴ The proposed CFR would be the successor to the current CFR, which is a committee of NYSE Regulation’s Board of

Directors.³⁵ Section 2.03(h)(iii) of the Operating Agreement would provide that the Board shall annually appoint the members of the CFR. The Exchange notes that the proposed Section 2.03(h)(iii) of the Operating Agreement incorporates member organization association requirements of the current CFR.³⁶ The proposed CFR would be comprised of both Exchange directors who satisfy the NYSE’s independence requirements as well as non-directors.³⁷ The Exchange notes that because the majority of the Board would be independent and any Non-Affiliated Director must be independent, as a functional matter if the Exchange were to have a five-person Board, four of the five directors would qualify for CFR membership.³⁸ Non-directors serving on the proposed CFR would include representatives of member organizations that engage in a business involving substantial direct contact with securities customers (upstairs firms), DMMs, and floor brokers.³⁹ The Exchange notes that the proposed CFR, like the current CFR, would be selected after appropriate consultation with those members. The Exchange notes further that for any CFR vote, a majority of the members of the CFR casting votes would have to be directors of the Exchange.

The proposed CFR would be responsible for reviewing the disciplinary decisions on behalf of the Board and reviewing determinations to limit or prohibit the continued listing of an issuer’s securities on the Exchange.⁴⁰ Additionally, the Exchange proposes to incorporate the role of the Market Performance and Regulatory Advisory Committees into the proposed CFR.⁴¹ As a result, the proposed CFR would be charged with acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory

³⁵ See *id.* at 37320.

³⁶ See *id.* at 37321.

³⁷ See *id.* at 37320–21.

³⁸ See *id.* at 37320–21 n.42.

³⁹ See *id.* at 37321.

⁴⁰ The Exchange notes that these powers are currently set forth in the charter of the NYSE Regulation CFR, which also states that the CFR can provide general advice to the NYSE Regulation Board of Directors in connection with disciplinary, listing and other regulatory matters. The Exchange proposes to delineate the appellate and advisory powers of the proposed CFR in Section 2.03(h)(iii) of the Operating Agreement. Appeals of delisting determinations are governed by Rule 804.00 of the Exchange’s Listed Company Manual, which provides that delisting determinations are to be reviewed by a “Committee of the Board of Directors of the Exchange”. See Notice, *supra* note 4, at 37321 n.44.

⁴¹ *Id.* at 37321. The Exchange notes that the same profile of members who historically served on these advisory committees would be represented on the proposed CFR. *Id.*

²⁹ See Notice, *supra* note 4, at 37316.

³⁰ See 15 U.S.C. 78f(b)(3).

³¹ See Notice, *supra* note 4, at 37320.

³² NYSE’s Operating Agreement, Section 2.03(a)(iv).

³³ See Notice, *supra* note 4, at 37320 and 15 U.S.C. 78f(b)(3).

³⁴ See Notice, *supra* note 4, at 37320–21.

programs, rulemaking and regulatory rules, including trading rules. The Exchange states that the proposed CFR would therefore serve in the same advisory capacity as the Market Performance and Regulatory Advisory Committees.⁴²

According to the Exchange, member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.⁴³

Finally, the Exchange proposes to make conforming amendments to Exchange Rules 308, 475, 476, 476A and 9310 by generally replacing references to the current NYSE Regulation CFR with references to the “Committee for Review.”

F. Modifying Exchange Rules To Reference the Exchange’s Chief Regulatory Officer

The Exchange also proposes to amend Exchange Rule 48 (Exemptive Relief—Extreme Market Volatility Condition), Exchange Rule 49 (Emergency Powers) and Exchange Rule 86 (NYSE BondsSM) by replacing references to the Chief Executive Officer of NYSE Regulation with references to the CRO of the Exchange.

Exchange Rule 48 currently provides that, for purposes of the rule, a “qualified Exchange officer” means the Chief Executive Officer of ICE, or his or her designee, or the Chief Executive Officer of NYSE Regulation, or his or her designee. Exchange Rule 48 provides that the Exchange can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange could suspend Exchange Rules 15, 79A.30, and 123D(1) regarding obtaining certain prior Floor Official approvals and requirements for mandatory indications. Exchange Rule 49 addresses the Exchange’s emergency powers and defines the term “qualified Exchange officer” as, *inter alia*, the “NYSE Regulation, Inc. Chief Executive Officer” or his or her designee. Exchange Rule 86 currently provides that Clearly Erroneous Execution panels in connection with trades on NYSE MKT Bonds be comprised of the Chief Executive Officer of NYSE Regulation or a designee and representatives from two

members or member organizations that are users of NYSE Bonds.⁴⁴

The Exchange notes that “Chief Executive Officer” of NYSE Regulation is used in these three rules but CRO is used throughout the Exchange’s rules to designate the same person.⁴⁵ The Exchange, thus, proposes to replace references to “Chief Executive Officer” of NYSE Regulation in Exchange Rules 48, 49 and 86 with either the term “Chief Regulatory Officer” or “CRO”, as appropriate.

As noted above, the Commission received one comment letter on the proposed rule change.⁴⁶ The commenter states that, with respect to the existing system of the Exchange’s governance, the proposed rule change would replace a structural separation with a functional separation, in particular, by terminating the Delegation Agreement and establishing a ROC in lieu of NYSE Regulation.⁴⁷ The commenter expresses the concern that the Exchange’s proposal would not ensure sufficient insulation of the Exchange’s regulatory function from the commercial interests of its holding company.⁴⁸ The commenter enumerates the following specific concerns with the proposal: Unlike NYSE Regulation, the Exchange is a “for profit” entity; NYSE Regulation has a board consisting entirely of independent directors; NYSE Regulation limits the number of directors from the holding company who can sit on its board to less than a majority, while the Board could include a super-majority of directors from the holding company; the ROC would have little substantive authority and can only “review” the regulatory budget and “inquire” about the adequacy of resources for regulatory activities; the ROC would not be sufficiently insulated from the business activities of the holding company because the ROC’s membership could be composed of persons who also are directors of the holding company; the CRO position would not be adequately insulated from the commercial interests of the holding company; and the CFR would not effectively insulate the disciplinary review process from possible commercial influences.⁴⁹

⁴⁴ NYSE Bonds is the Exchange’s electronic bond trading platform. Rule 86 prescribes what bonds are eligible to trade on the NYSE Bonds platform and how bonds are traded on the platform, including the receipt, execution and reporting of bond transactions. See Notice, *supra* note 4, at 37321 n.50.

⁴⁵ See, e.g., Exchange Rules 13, 107B, 107C and 128.

⁴⁶ See Professor Brown Letter, *supra* note 5.

⁴⁷ *Id.* at 4–5.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.* at 6–7.

The commenter offers a number of suggested revisions to the proposed rule change that in his view would strengthen the independence of the Exchange’s regulatory function: The Board should consist entirely of independent directors, other than the Chief Executive Officer, and should not include any holding company directors or directors of affiliates; the ROC should consist entirely of independent directors; the ROC should have greater substantive authority over its budget and other critical functions and should have greater authority with respect to the CRO and the CRO’s compensation; CFR membership should be limited to members of the ROC and persons appointed by the ROC; and the provision regarding removal of a director “for cause” should be defined so as to restrict the Board from easily changing the ROC’s membership.⁵⁰ The commenter suggests that the Delegation Agreement could remain in place and the Exchange could seek modifications to, rather than replace, the existing governance system.⁵¹

The Exchange submitted a letter responding to the commenter’s letter.⁵² The Exchange discusses each of the commenter’s issues with its proposal and the commenter’s recommendations for revision.⁵³ With respect to the elimination of NYSE Regulation and the creation of a ROC, the Exchange states that, as a self-regulatory organization (“SRO”), it has always retained the “ultimate responsibility for the fulfillment of its statutory and self-regulatory obligations under the Act.”⁵⁴ With respect to the composition of the ROC, the Exchange notes that under the proposal the ROC would be required to be composed of at least three members, each of whom would be required to be a director of the Exchange that satisfies the independence requirements of the Company Director Independence Policy, which, according to the Exchange, is virtually identical to the NYSE Regulation Independence Policy.⁵⁵ The Exchange further states that its Operating Agreement recently was amended to remove the requirement that the Board consist of at least a majority of independent directors of the holding company.⁵⁶ In addition, the Exchange points out that its proposed ROC was modeled on the NASDAQ

⁵⁰ *Id.* at 8–9.

⁵¹ *Id.* at 8.

⁵² See NYSE Response Letter, *supra* note 6.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 7 (citing Securities Exchange Act Release No. 75105 (June 4, 2015), 80 FR 33005 (June 10, 2015)).

⁴² See Notice, *supra* note 4, at 37321.

⁴³ See *id.* and 15 U.S.C. 78f(b)(3).

ROC and has the same powers and its responsibilities are substantially similar to the ROCs of other SROs.⁵⁷ The Exchange also notes that the proposal “clearly provides that the CRO would report to the ROC”⁵⁸ and, given that fact, the ROC “clearly has the power to retain or dismiss the CRO, only it must do so in consultation with the Exchange’s Chief Executive Officer as part of the process of establishing goals, assessing performance, and recommending the CRO’s compensation.”⁵⁹

The Exchange also addresses the commenter’s suggested revisions to the Exchange’s proposal. As an initial matter, the Exchange states that the commenter “has not provided any credible reason why the current structure should remain or why the Exchange’s Proposal is not consistent with the requirements of the Act.”⁶⁰ The Exchange does not believe that directors that meet its independence standards are less independent because they also serve as directors of ICE or ICE affiliates.⁶¹ The Exchange further states that it “rejects the proposition that directors of NYSE Regulation are inherently more independent than independent directors of ICE that serve as independent directors of the Exchange.”⁶² Regarding the commenter’s suggestions about the ROC, the Exchange reiterated its position that the proposed ROC and its authority is consistent with prior exchanges’ provisions relating to ROCs that were found by the Commission to be consistent with the Act.⁶³ Regarding the commenter’s suggestion that the CFR be limited to members of the ROC and members appointed by the ROC, the Exchange states its view that the requirement that members of the CFR be independent directors of the Exchange is sufficient to ensure the integrity of the disciplinary appeals process.⁶⁴ With respect to the commenter’s suggestion that the proposal permitting removal of a ROC member “for cause” be revised to limit the Board’s ability to easily change the ROC’s membership, the Exchange notes that at least one SRO does not require “cause” as a basis for removing a ROC member.⁶⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange.⁶⁷ The Commission finds that the proposal also is consistent with the requirements of Section 6(b)(3) of the Act, which provides that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.⁶⁸ In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶⁹ Finally, the Commission finds that the proposal is consistent with Section 6(b)(6) of the Act, which requires that the rules of the exchange provide that its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of the Act, the rules or regulations thereunder, or the rules of the exchange.⁷⁰

As noted above, the commenter expresses the concern that the Exchange’s proposal would not ensure sufficient insulation of the Exchange’s regulatory function from the commercial interests of its holding company.⁷¹ The commenter also questions the adequacy of the independence of the directors of

the Exchange’s Board.⁷² In response, the Exchange states that the commenter has not provided an adequate reason why the Exchange’s current structure should remain or why the proposal is not consistent with the requirements of the Act.⁷³

As a preliminary matter, the Commission notes that several concerns raised by the commenter relate to the fact that the Exchange is part of a holding company structure. In that regard, the commenter suggests that the replacement of NYSE Regulation with the ROC would not provide sufficient insulation of the Exchange’s regulatory functions from the commercial interests of the holding company.⁷⁴ The Commission notes that, although the Exchange may be part of a holding company structure, the Exchange is obligated to satisfy its self-regulatory obligations under the Act and rules and regulations thereunder.⁷⁵ The Commission believes that the regulatory structure proposed by the Exchange is consistent with the Act and the rules and regulations thereunder, and is substantially similar to regulatory structures that were approved by the Commission for other exchanges.⁷⁶ In addition, contrary to the commenter’s understanding that the Operating Agreement “requires that the Board consist of at least a majority of independent directors from the holding company,”⁷⁷ the Operating Agreement no longer contains such a requirement pursuant to amendments to the Operating Agreement that recently were approved by the Commission.⁷⁸ The Commission notes that the Operating Agreement also requires that the Board consist of a majority of directors that satisfy the Company Director Independence Policy.⁷⁹

The commenter expresses the view that the ROC would not have sufficient substantive authority over the

⁵⁷ *Id.* at 8.

⁵⁸ *Id.*

⁵⁹ *Id.* at 9.

⁶⁰ *Id.* at 10.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 10–11.

⁶⁴ *Id.* at 11.

⁶⁵ *Id.*

⁶⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶⁷ 15 U.S.C. 78f(b)(1).

⁶⁸ 15 U.S.C. 78f(b)(3).

⁶⁹ 15 U.S.C. 78f(b)(5).

⁷⁰ 15 U.S.C. 78f(b)(6).

⁷¹ See Professor Brown Letter, *supra* note 5, at 6.

⁷² See NYSE Response Letter, *supra* note 6, at 10.

⁷³ See Professor Brown Letter, *supra* note 5, at 6–7.

⁷⁴ The Commission previously has stated that there is no “overriding regulatory reason to require exchanges to be not-for-profit membership organizations.” See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70880 (December 22, 1998) (“Regulation ATS Adopting Release”). In the Regulation ATS Adopting Release, the Commission also noted that “it is possible for a for-profit exchange to meet the standards set forth in Section 6(b) of the Exchange Act.” *Id.*

⁷⁵ See NASDAQ Approval Order, NYSE MKT Approval Order and NYSE Arca Approval Order, *supra* notes 8 and 9.

⁷⁶ See Professor Brown Letter, *supra* note 5, at 6.

⁷⁷ See Securities Exchange Act Release No. 75105 (June 4, 2015), 80 FR 33005 (June 10, 2015).

⁷⁸ NYSE’s Operating Agreement, Section 2.03(a)(i).

Exchange's regulatory program.⁸⁰ In response, the Exchange states that the ROC was modeled on the NASDAQ ROC and has the same powers, including the power to review the regulatory budget and inquire about available regulatory resources.⁸¹ The Commission believes that the Exchange's proposal to establish a ROC, as an independent committee of the Exchange to oversee the adequacy and effectiveness of the Exchange's regulatory operations, should help the Exchange to fulfill its statutory obligation to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the Exchange.⁸² In addition, the Commission believes that the composition of the ROC, which would consist of at least three members of the Board that satisfy the Company Director Independence Policy, should help ensure the independence of the regulatory function of the ROC. The Commission also believes that the Exchange's proposal to make conforming changes to various Exchange Rules to reflect the creation of the ROC is appropriate.⁸³ The Commission therefore finds that the proposed provisions relating to the ROC and its composition are consistent with the Act, including Sections 6(b)(1) and 6(b)(5) of the Act.

The commenter also raises a concern about the proposed functional separation, rather than the existing structural separation, between the Exchange's regulatory and market functions that would result from the Exchange's proposal to terminate the Delegation Agreement and delete Exchange Rule 20.⁸⁴ In response, the Exchange states that the Commission's prior approval of its current regulatory structure would not preclude alternative regulatory structures, such as a functional separation, that also would be consistent with the Act.⁸⁵ The Commission believes that the Exchange's proposal to re-integrate its regulatory and market functions into the Exchange, rather than to continue to have certain regulatory and market

duties performed by its subsidiaries, NYSE Regulation and NYSE Market, respectively, is consistent with the Act, and thus it is appropriate for the Exchange to terminate the Delegation Agreement and delete Exchange Rule 20, particularly in light of the Exchange's proposal to establish a ROC. The Commission notes that under the Delegation Agreement, the Exchange ultimately was responsible for fulfilling the self-regulatory obligations delegated to NYSE Regulation and NYSE Market (DE).⁸⁶ Thus, upon termination of the Delegation Agreement and deletion of Exchange Rule 20, the Exchange's regulatory responsibilities would remain unchanged; the major difference would be that the Exchange itself would directly carry out the regulatory responsibilities and market operations previously performed by its subsidiaries. The Commission also finds that it is consistent with the Act for the Exchange to make conforming changes to Exchange Rules to reflect the termination of the Delegation Agreement and deletion of Exchange Rule 20.⁸⁷

The commenter further states that the CFR would not effectively insulate the disciplinary review process from the possibility of commercial influences and expresses concern about the composition of the CFR.⁸⁸ In response, the Exchange states that the CFR would be appointed annually by the Board as a subcommittee of the ROC and would be comprised of both Exchange directors who satisfy the Company Director Independence Policy as well as member participants.⁸⁹ According to the Exchange, the CFR's mandate would include acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, and rulemaking and regulatory rules, including trading rules.⁹⁰ The Commission believes that the Exchange's proposal to establish a CFR is appropriate and would provide for the fair representation of members in the administration of the Exchange's affairs, and also would help enable the Exchange to ensure that members and persons associated with its members shall be appropriately disciplined for violations of the provisions of the Act, the rules or regulations thereunder, or the rules of the Exchange.⁹¹ The Commission therefore finds that the

proposed provisions relating to the CFR are consistent with the Act, including Sections 6(b)(3) and 6(b)(6) thereunder.⁹²

The Commission believes that the Exchange's proposal to create the NYSE DCRC as a committee of the Board that would recommend to the ICE NGC the Non-Affiliated Director candidates to serve on the Board, in place of the NYSE Regulation DCRC and the NYSE Market DCRC, provides an appropriate process for the nomination of Exchange members to serve on the Board. The Commission believes that the composition of the NYSE DCRC, along with the provision in the Operating Agreement that would allow members to directly nominate Non-Affiliated Director candidates through a petition process,⁹³ and the requirement that NYSE Group, Inc. must appoint or elect as the Non-Affiliated Directors those candidates nominated by the ICE NGC (or designate as Non-Affiliated Directors the candidates that emerge from the petition and voting process), should help to ensure the fair representation of members in the selection of the Exchange's directors. Thus the Commission finds that the proposal to establish the NYSE DCRC is consistent with the Act, including Section 6(b)(3) thereunder.⁹⁴

Finally, the Commission believes that it is consistent with the Act for the Exchange to make conforming revisions to various Exchange Rules to reflect the proposed changes to its governance structure. In this regard, the Commission believes that it is appropriate for the Exchange to delete the organizational documents of NYSE Regulation and NYSE Market (DE) and to replace references to the Chief Executive Officer of NYSE Regulation with references to the CRO in Exchange Rules 48, 49, and 86.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2015-27) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁵

Robert W. Errett,
Deputy Secretary.

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⁸⁰ See Professor Brown Letter, *supra* note 5, at 7.

⁸¹ See NYSE Response Letter, *supra* note 6, at 8.

⁸² The Commission notes that, under proposed Section 2.03(h)(ii) of the Operating Agreement, the responsibilities, enumerated functions, and authority of the ROC are substantially similar to those of other exchanges. See NASDAQ Approval Order, NYSE MKT Approval Order and NYSE Arca Approval Order, *supra* notes 8 and 9.

⁸³ See Notice, *supra* note 4, at 37317-18.

⁸⁴ See Professor Brown Letter, *supra* note 5, at 6.

⁸⁵ See NYSE Response Letter, *supra* note 6, at 4.

⁸⁶ See Delegation Agreement, Section I.

⁸⁷ See Notice, *supra* note 4, at 37318-19.

⁸⁸ See Professor Brown Letter, *supra* note 5, at 7.

⁸⁹ See NYSE Response Letter, *supra* note 6, at 4.

⁹⁰ *Id.*

⁹¹ 15 U.S.C. 78f(b)(3) and 15 U.S.C. 78(b)(6).

⁹² *Id.*

⁹³ NYSE's Operating Agreement, Section 2.03(a)(iv).

⁹⁴ 15 U.S.C. 78f(b)(3).

⁹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75993; File No. SR-NYSE-2015-41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program Until March 31, 2016

September 28, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 2015, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Liquidity Program (the "Retail Liquidity Program" or the "Program"), which is currently scheduled to expire on September 30, 2015, until March 31, 2016. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the pilot period of the Retail Liquidity Program,³ currently scheduled to expire on September 30, 2015, until March 31, 2016.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.⁴ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Retail Liquidity Providers ("RLPs") are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer ("PBBO"), called a Retail Price Improvement Order ("RPI"). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations ("RMOs") can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on September 30, 2015.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate

because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.⁵ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.⁶ Through this filing, the Exchange seeks to amend NYSE Rule 107C(m) and extend the current pilot period of the Program until March 31, 2016.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance

⁵ See *id.* at 40681.

⁶ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. See Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated September 17, 2015.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

³ See Securities Exchange Act Release No. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (NYSE-2014-35).

⁴ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) ("RLP Approval Order") (SR-NYSE-2011-55).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative before the current expiration of the pilot period. The Exchange stated that an immediate operative date would be consistent with the protection of investors and the public interest because the pilot period is set to expire on September 30, 2015, and a waiver would permit the beneficial aspects of the Program to continue uninterrupted. The Commission believes that waiving the 30-day operative delay is consistent

with the protection of investors and the public interest because such waiver would allow the pilot period to continue uninterrupted after its current expiration date of September 30, 2015, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2015-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2015-41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2015-41, and should be submitted on or before October 23, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015-24970 Filed 10-1-15; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 9310]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Electronic Commerce

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a Working Paper prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The public meeting will take place on Tuesday, October 27, 2015 from 10 a.m. until 12 p.m. EDT. This is not a meeting of the full Advisory Committee.

The UNCITRAL Secretariat has revised draft provisions on electronic transferable records, which are presented for in the form of a model law, for discussion during the next meeting of UNCITRAL's Working Group IV, which will meet November 9-13, 2015. The Working Paper, which is numbered WP.135 and includes WP.135/Add.1, is available at http://www.uncitral.org/uncitral/en/commission/working_groups/4Electronic_Commerce.html.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12), (59).

The purpose of the public meeting is to obtain the views of concerned stakeholders on the topics addressed in the Working Paper in advance of the meeting of Working Group IV. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at coffeems@state.gov.

Time and Place: The meeting will take place from 10 a.m. until 12 p.m. EDT in Room 356, South Building, State Department Annex 4, Washington, DC 20037. Participants should plan to arrive at the Navy Hill gate on the west side of 23rd Street NW., at the intersection of 23rd Street NW. and D Street NW. by 9:30 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email pil@state.gov providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email pil@state.gov not later than October 20, 2015. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email pil@state.gov to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99-399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107-56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Security Records System of Records Notice (State-36) at <http://www.state.gov/documents/organization/103419.pdf> for additional information.

Dated: September 21, 2015.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2015-25193 Filed 10-1-15; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015-059]

Petition for Exemption; Summary of Petition Received; the Goodwyn Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 22, 2015.

ADDRESSES: Send comments identified by docket number FAA-2015-2336 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200

New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Dan Ngo, (202) 267-4264. 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 25, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA-2015-2336.

Petitioner: The Goodwyn Group.

Section(s) of 14 CFR Affected: 45.27 (a), 61.113(a) and (b), 91.7(a), 91.105, 91.119 (c), 91.121, 91.151(b), 91.405(a), 91.407(a)(1), 91.409(a)(1) and (a)(2), and 91.417(a) and (b)

Description of Relief Sought: The petitioner is requesting relief to launch its small unmanned aircraft systems (sUAS) from a moving vessel such as a boat for the commercial purpose of aerial data collection of motor vessels and sailing vessels over open waters.

[FR Doc. 2015-25089 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Brunswick Executive Airport in Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from the Midcoast Regional Redevelopment Authority in Brunswick ME to waive the surplus property requirements for approximately 12.07 acres of airport property located at Brunswick Executive Airport in Brunswick, ME. The subject parcel is currently undeveloped and has been identified for commercial development on the current Airport Layout Plan. The airport will retain the land to generate long term lease revenue for the airport and thus, is requesting a release to change the property from aeronautical use to non-aeronautical use. It has been determined through study and master planning that the subject parcel will not be needed for aeronautical purposes is not contiguous to the airport proper. Full and permanent relief of the surplus property requirements on this parcel

will allow the airport to generate long term revenue through lease of the land. All lease revenue will continue to be subject to the FAA's revenue-use policy and dedicated to the maintenance and operation of the Brunswick Executive Airport.

DATES: Comments must be received on or before November 2, 2015.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, and follow the instructions on providing comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W 12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 12 New England Executive Park, Burlington, Massachusetts, Telephone 781-238-7618.

Issued in Burlington, Massachusetts on September 23, 2015.

Mary T. Walsh,

Manager, Airports Division.

[FR Doc. 2015-25092 Filed 10-1-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Amend Federal Grant Assurance Obligations at Elko Regional Airport (EKO), Elko, Nevada

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Land-Use Change Application to Amend Grant Agreement Obligations.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a land-use change authorization effecting approximately 12.2 acres of airport property at the Elko Regional Airport, Elko, Nevada which will provide for an amendment of the

Grant Agreement Assurance obligation that requires use of airport land for aeronautical purposes. Since the City of Elko, sponsor of the Elko Regional Airport, acquired the land in 1930, the property does not have an aeronautical purpose or planned to be used for an aeronautical purpose. The land-use change will authorize the release of the aeronautical-use obligation from the Grant Assurance Agreement for a proposed long term non-aeronautical commercial development. The 12.2 acres of airport land is identified as "future commercial" on the FAA conditionally approved Airport Layout Plan (ALP). The approximately 12.2 acres of airport property is currently zoned as "light industrial business park" and the land is proposed for retail mall development. The proposed developer will pay the costs to develop, manage, and improve the property for non-aeronautical commercial businesses. The City of Elko will lease the land at fair market value (FMV) to earn revenue for the airport thereby benefiting the airport and serving the interest of civil aviation. The proposed use will be compatible with the airport and will not interfere with the airport or its operation.

DATES: Comments must be received on or before November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address Mike N. Williams, Manager, Federal Aviation Administration, Phoenix Airports District Office, Phoenix Airports District Office, **Federal Register** Comment, 3800 N. Central Avenue, Suite 1025, 10th Floor, Phoenix, Arizona 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Mark Gibbs, Airport Director, Elko Regional Airport, 975 Terminal Way, Elko, Nevada 89801.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106-181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The City of Elko, Nevada, owner of the Elko Regional Airport, requested the Federal Aviation Administration to authorize a land-use change on approximately 12.2 acres of airport land at the Elko Regional Airport. The land-use change authorization will amend

the Grant Agreement Assurance obligations that require the use of the 12.2 acres of airport land for aviation purposes to allow for long term non-aeronautical use for revenue generating purposes. The City of Elko has owned this portion of land in fee simple since 1930 and was acquired for the airport without any use of federal funding or for noise abatement purposes. The land has been cleared and graded many years ago with no additional encumbrances. With the exception of a portion of the subject land being used for unsecured equipment storage by the Nevada Department of Transportation, the land is vacant and unimproved and has not been used for aeronautical purposes since the parcel of land was acquired. The City of Elko has intended the property for non-aeronautical development because the adjacent topography has made the land unsuitable for most aeronautical use. The parcels of land are located northeast of the secondary runway area, outside of the airport fence line adjacent to Taxiway B and Nevada State Highway 225 (Mountain City Highway).

The City of Elko has determined the fair market value of the land and will ensure the FMV rental income will be devoted to airport maintenance, operations and capital projects which will benefit the airport. The reuse of the property will not interfere with the airport or its operation; thereby, serve the interests of civil aviation.

Issued in Phoenix, Arizona, on September 20, 2015.

Mike N. Williams,

Manager, Phoenix Airports District Office, Western-Pacific Region.

[FR Doc. 2015-25086 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Manchester-Boston Regional Airport in Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(d), notice is being given that the FAA is considering a request from Manchester-Boston Regional Airport in Manchester, NH to waive the surplus property requirements for approximately 16.90 acres of airport property located at

Manchester-Boston Regional Airport in Manchester, NH.

The subject parcel is currently undeveloped and has been identified for commercial development on the current Airport Layout Plan. The airport will retain the land to generate a long term lease revenue for the airport and thus, is requesting a release to change the property from aeronautical use to non-aeronautical use. It has been determined through study and master planning that the subject parcel will not be needed for aeronautical purposes is not contiguous to the airport proper. Full and permanent relief of the surplus property requirements on this parcel will allow the airport to generate long term revenue through lease of the land. All lease revenue will continue to be subject to the FAA's revenue-use policy and dedicated to the maintenance and operation of the Manchester-Boston Regional Airport.

DATES: Comments must be received on or before November 2, 2015.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, and follow the instructions on providing comments.

- Fax: 202-493-2251

- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W 12-140, 1200 New Jersey Avenue SE., Washington, DC 20590

- Hand Delivery: Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 12 New England Executive Park, Burlington, Massachusetts, Telephone 781-238-7618.

Issued in Burlington, Massachusetts on September 23, 2015.

Mary T. Walsh,

Manager, Airports Division.

[FR Doc. 2015-25093 Filed 10-1-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0197]

Hours of Service of Drivers: R&R Transportation Group; Application for Exemption

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the R&R Transportation Group (R&R) an exemption from the minimum 30-minute rest break requirement of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The exemption is available only to R&R's drivers engaged in the transportation of materials that by their nature must be attended, such as radioactive materials, pharmaceuticals, and ammunition. The exemption provides these drivers the same regulatory flexibility that the HOS regulations allow drivers transporting explosives, *i.e.*, to use 30 minutes or more of on-duty attendance time to meet the HOS rest break requirements, provided they do not perform any other work during the break.

DATES: The exemption is effective October 2, 2015 and expires on October 2, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202-366-4325. Email: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

On December 27, 2011, FMCSA published a final rule amending the HOS regulations (49 CFR part 395) for drivers of CMVs (76 FR 81133). The final rule included a new provision requiring certain drivers to take a rest break during their duty day. Specifically, the rule states that "driving is not permitted if more than 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes" [49 CFR 395.3(a)(3)(ii)]. This provision took effect on July 1, 2013.

Under the HOS rules, a driver is on duty if he or she is "performing any other work in the capacity, employ, or service of a motor carrier" (§ 395.2). A driver is off duty when relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo it may be carrying. However, the Agency has recognized that under certain circumstances it is unsafe for CMVs to be left unattended so that the driver can take 30 minutes off duty. By regulation, FMCSA allows operators of CMVs transporting certain explosives to satisfy the rest-break requirement by using 30 minutes or more of on-duty attendance time providing they perform no other work during the break [49 CFR 395.1(q)]. Drivers employing this provision are required to annotate their duty-status record to indicate that they have used the exception.

The Agency has granted temporary exemptions of the type provided by 49 CFR 395.1(q) to drivers transporting security-sensitive radioactive materials (78 FR 32700, May 31, 2013), weapons, munitions, and sensitive/classified cargo (80 FR 20556, April 16, 2015), and oversize/overweight (OS/OW) loads (80 FR 34957, June 18, 2015).

Request for Exemption

R&R operates three for-hire motor carriers that transport property in interstate commerce: R & R Trucking, Inc., USDOT 382936; TNI USA Inc. NC dba AATCO, USDOT 513601; and NEI Transport, LLC, USDOT 676270. R&R indicates that these three entities operate 255 power units and that approximately 290 drivers would be covered by the exemption. R&R's application for exemption states that the goods it transports are of such a nature or value that its drivers must keep the CMV under constant observation to prevent theft or an adverse security incident. The application provides examples of the goods transported by R&R CMVs: weapons, ammunition, night-vision goggles, pharmaceuticals, and radioactive materials. R&R maintains constant attendance of such loads in order to protect the public from a major security or hazardous material event. R&R states that Federal contracts often require CMV drivers to maintain constant surveillance of the vehicle, and may require the driver of an escort CMV to maintain constant surveillance as well. In addition, R&R states that the U.S. Department of Homeland Security may require surveillance as part of a security alert posted in the National Terrorism Advisory System, and that some Federal agencies, in response to a threat, establish a security threat zone, or geo-fence, restricting or barring further movement of an R&R CMV. R&R states that the Department of Defense provides documentation to CMV drivers to alert roadside inspectors of surveillance requirements.

R&R requested an exemption from the HOS regulation pertaining to rest breaks [49 CFR 395.3(a)(3)(ii)] to allow R&R drivers providing surveillance services to be treated the same as CMV drivers attending explosives under § 395.1(q). R&R believes that transportation under the requested exemption would achieve a level of safety and security that is at least equivalent to what would be obtained by following the normal break requirements in § 395.3(a)(3)(ii). R&R states that it will restrict its drivers of such CMVs from performing any other on-duty functions while satisfying the 30-minute break requirement. R&R states that it will require its drivers to annotate their records of duty status to indicate on-duty periods used to satisfy the rest-break requirement in accordance with § 395.1(q).

It should be noted that there is no motive for a driver or carrier to claim this exemption when not entitled to it. A driver who is not required constantly to attend his or her vehicle must take

the minimum 30-minute rest break as off-duty time, which does not count against the driving window of 60 hours on duty in 7 days or 70 hours in 8 days. A driver claiming this exemption unnecessarily would be required to take the same rest breaks, but would be on-duty and the time would count against the 60- or 70-hour limit.

Public Comments

On July 13, 2015, FMCSA published notice of this application, and asked for public comment (80 FR 40120). No comments were received to the docket.

FMCSA Decision

FMCSA has evaluated R&R's application for exemption. The Agency believes that R&R's carriers will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)], and therefore grants this exemption, subject to the terms and conditions outlined below.

Terms of the Exemption

1. Drivers of R & R Trucking, Inc., USDOT 382936; TNI USA Inc. NC dba AATCO, USDOT 513601; and NEI Transport, LLC, USDOT 676270, who are transporting materials that by their nature must be attended, such as radioactive materials, pharmaceuticals, and ammunition, are exempt from the requirement for a 30-minute rest break in § 395.3(a)(3)(ii). Drivers of loads not moving in interstate commerce are not eligible for this exemption.

2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption and present it to law enforcement officials upon request.

3. The motor carriers operating under this exemption must maintain a "Satisfactory" safety rating with FMCSA, or be "Unrated." Motor carriers with "Conditional" or "Unsatisfactory" FMCSA safety ratings are prohibited from using this exemption.

4. The motor carriers operating under this exemption must maintain Safety Measurement System (SMS) scores below FMCSA's intervention thresholds, as displayed at <http://ai.fmcsa.dot.gov/sms/>.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from 12:01 a.m., October 2, 2015 through 11:59 p.m., October 2, 2017.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMV drivers operating under the terms of this exemption. The notification must be emailed to MCPSD@DOT.GOV and include the following information:

- a. Identification of Exemption: "R&R,"
- b. Name of operating motor carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver's name and license number and State of issuance,
- f. Vehicle number and State license plate number,
- g. Number of individuals suffering physical injury,
- h. Number of fatalities,
- i. The police-reported cause of the accident,
- j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- k. The driver's total driving time and total on-duty time period prior to the accident.

Termination

FMCSA believes the motor carriers engaged in these operations will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including immediate revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: September 25, 2015.

T.F. Scott Darling, III,
Acting Administrator.

[FR Doc. 2015–25132 Filed 10–1–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0094]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated August 20, 2015, the Twin Cities & Western Railroad (TCWR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 223.11—*Requirements for existing locomotives*. FRA assigned the petition Docket Number FRA–2015–0094.

TCWR has petitioned FRA to grant a waiver of compliance from 49 CFR part 223—Safety Glazing Standards, for one locomotive, TCWR 1207, which requires certified glazing in all windows. The subject locomotive is a recent purchase by TCWR. It is an Electro-Motive Diesel (EMD) SW1200 diesel switcher locomotive built by General Motors' EMD Division. Its windows do not have the proper safety glazing as required by 49 CFR part 223. Even though the locomotive is presently used as a switching unit, TCWR wants to equip this unit with ditch lights, an alerter, and other safety features to allow it to be used as a main line unit. As such, the TCWR is requesting a glazing waiver to place this unit into main line service.

TCWR is a Class III rail carrier based in Glencoe, MN. The railroad uses 294 miles of track in Minnesota and another 49 miles of track in South Dakota interchanging with Class I railroads (Canadian Pacific Railway, Union Pacific Railroad, BNSF Railway and Canadian National Railway) in the Twin Cities. TCWR is a key player in the economic health of western Minnesota and eastern South Dakota by moving goods and commodities from production/processing/shipping facilities of more than 50 shippers, 6 days per week, along its line. TCWR personnel have responsibility for day-to-day inspection and maintenance of the railroad track.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's

(DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202–493–2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, excluding Federal Holidays.

Communications received by November 16, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on September 28, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015–25007 Filed 10–1–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0078; Notice 1]

Bridgestone Americas Tire Operations, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Bridgestone Americas Tire Operations, LLC (BATO), has determined that certain Bridgestone bus tires do not fully comply with paragraph S6.5(e) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and Motorcycles*. BATO has filed an appropriate report dated July 7, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

DATES: The closing date for comments on the petition is November 2, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Deliver:** Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were

received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. *Overview*: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BATO submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BATO's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Tires Involved*: Affected are approximately 328 Bridgestone R192GZ size 12R22.5 bus tires sold in the U.S. territory of Guam and manufactured between January 1, 2004 and April 30, 2015.

III. *Noncompliance*: BATO explains that the noncompliance is that the sidewall of the subject tires clearly states the speed restriction in km/h, however, omits the English units in mph as required by paragraph S6.5(e) of FMVSS No. 119.

IV. *Rule Text*: Paragraph S6.5 of FMVSS No. 121 requires in pertinent part:

S6.5 *Tire Markings*. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section

(e) The speed restriction of the tire, if 90 km/h (55 mph) or less, shown as follows:

Max speed __ km/h (__ mph).

V. *Summary of BATO's Petition*: BATO believes that the subject noncompliance is inconsequential to motor vehicle safety. BATO states that Guam does not have interstate highways and that the speed limits throughout Guam (35 mph rural, 15 mph urban and 15–25 in school zones) are significantly lower than the speed restriction of the subject tires (55 mph), thus, BATO, believes that there is no risk of drivers consistently driving faster than the speed restriction on the tires, even if a driver is unfamiliar with metric units.

BATO also believes that most professional drivers would understand the speed restriction as stated in metric units. Since the subject tires cannot be used in a passenger vehicle application, and will be serviced and driven by professionals who understand the difference between English and metric units; it is unlikely an unqualified driver would mistakenly drive these tires faster than the speed restriction.

BATO notes that they have not received any complaints, claims, or warranty adjustments related to the subject tires and that these tires, meet all other performance requirements of FMVSS No. 119.

BATO has additionally informed NHTSA that it has corrected the noncompliance so that all future production of the subject tires complies with FMVSS No. 119.

In summation, BATO believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt BATO from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that BATO no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after BATO notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–25067 Filed 10–1–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Special Permits

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 2, 2015.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast,

Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in

accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 3, 2015.

Donald Burger,
Chief, General Approvals and Permits.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
16545-N ...		Veolia ES Technical Solutions, L.L.C., Lombard, IL.	49 CFR 173.21(b), 173.51, 173.54(a), 173.56(b), 173.340.	To authorize the transportation in commerce of certain riot control agents and fireworks to a disposal facility. (mode 1)
16549-N ...		Special Devices, Incorporated Mesa, AZ.	49 CFR 172.320, 173.56(b)	To authorize the transportation in commerce of certain pyrotechnic articles classed as Division 1.4S, UN0431, Articles pyrotechnic for technical purposes without being examined, classed, and approved under 49 CFR 173.56(b). (modes 1, 2, 3, 4)
16554-N ...		Apple, Inc., Cupertino, CA	49 CFR Subparts C through H of Part 172, 173.185(f).	To authorize the transportation in commerce of recalled lithium ion batteries contained in equipment in retail packaging by motor vehicle. (mode 1)
16558-N ...		National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.185(c)(1)(iv), 173.185(c)(4).	To authorize the transportation in commerce of certain lithium metal batteries contained in equipment in non-UN performance oriented packaging. (modes 1, 4)
16559-N ...		HTEC Hydrogen Technology & Energy Corporation, North Vancouver, BC, Canada.	49 CFR 173.302a	To authorize the transportation in commerce of certain non-DOT specification cylinders containing compressed hydrogen. (mode 1)
16560-N ...		LightSail Energy, Berkely, CA.	49 CFR 173.302a	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders used to transport certain non-liquefied compressed gases in commerce. (modes 1, 2, 3)
16563-N ...		Call2Recycle, Inc., Atlanta, GA.	49 CFR Subparts C through H of Part 172, 173.185(f).	To authorize the transportation in commerce of damaged or defective lithium ion cells and batteries and lithium metal cells and batteries and equipment containing these cells or batteries that originally met the requirements under 49 CFR 173.185(c). (modes 1, 2, 3)
16564-N ...		Carrier Corporation, Charlotte, NC.	49 CFR 173.306(e)(1)(i)	To authorize the transportation in commerce of new (unused) refrigerating machines containing up to 7,500 pounds of a Group A1 refrigerant in each pressure vessel. (modes 1, 3)
16565-N ...		Special Devices, Incorporated, Mesa, AZ.	49 CFR 172.320, 173.56(b)	To authorize the transportation in commerce of certain pyrotechnic actuators classed as Class 9 hazardous materials. (modes 1, 2, 3, 4)
16567-N ...		FM Global Research Campus, Glocester, RI.	49 CFR 173.185(f)	To authorize the transportation in commerce of certain damaged or defective lithium ion cells and batteries in alternative packaging. (mode 1)

[FR Doc. 2015-23370 Filed 10-1-15; 8:45 am]

BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Aviation Partners of Boynton Beach, LLC; D/B/A Hummingbird Air for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2015-9-14), Docket DOT-OST-2014-0116.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Aviation Partners of Boynton Beach, LLC d/b/a

Hummingbird Air fit, willing, and able, and awarding it a Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than October 5, 2015.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT-OST-2014-0116 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room W12-140), 1200 New Jersey Avenue SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X-56), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-9721.

Dated: September 21, 2015.

Susan L. Kurland,
Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2015-24552 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2015-0172]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is an annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT:

Yvette Rivera, Associate Director of Equal Employment Opportunity Programs, S-32, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W78-306, Washington, DC 20590, 202-366-5131 or by email at Yvette.Rivera@dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at <http://www.regulations.gov>. Electronic retrieval instructions are available under the help section of the Web site. An electronic copy is also available for download from the Government Printing Office's Electronic Bulletin Board at <http://www.nara.gov/fedreg> and the Government Printing Office's Web page at <http://www.access.gpo.gov/nara>.

No FEAR Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," now recognized as the No FEAR Act (Pub. L. 107-174). One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws" (Pub. L. 107-174, Summary). In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination" (Pub. L. 107-174, Title I, General Provisions, section 101(1)). The Act also requires the U.S. Department of Transportation (DOT) to provide this Notice to all DOT employees, former DOT employees, and applicants for DOT employment. This Notice is to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or

privileges of employment because of race, color, religion, sex, national origin, age, disability, genetic information, equal pay/compensation, marital status, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e-16 and 2000ff.

If you believe you were a victim of unlawful discrimination on the bases of race, color, sex (gender, pregnancy, sexual harassment, sexual orientation, or gender identity), national origin, religion, age (40 and over), disability (mental or physical), equal pay/compensation, genetic information, or retaliation, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with DOT (See, e.g., 29 CFR part 1614).

If you believe you were a victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act, against the head of an alleged discriminating agency, after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC) (See Contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the DOT administrative or negotiated grievance procedures, if such procedures apply and are available. Form OSC-11 is available online at the OSC Web site <http://www.osc.gov/index.htm>, under the filing tab (*Contact Information*). Additionally, you can download the

form under the same filing tab, under OSC Forms. Complete this form and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW., Suite 218 Washington, DC 20036-4505. You also have the option to call the Complaints Examining Unit at (800) 872-9855 for additional assistance.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A DOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, fail to take, or threaten to take, a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a DOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the OSC at 1730 M Street NW., Suite 218, Washington, DC 202-036-4505 using Form OSC-11. Alternatively, you may file online through the OSC Web site at <http://www.osc.gov>.

Disciplinary Actions

Under existing laws, DOT retains the right, where appropriate, to discipline a DOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC

initiates an investigation under 5 U.S.C. 1214 according to 5 U.S.C. 1214(f), DOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a DOT employee, or to violate the procedural rights of a DOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (e.g., EEO/ civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC Web site at <http://www.eeoc.gov> and the OSC Web site at <http://www.osc.gov>.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued on Washington, DC, on August 28, 2015.

Mary N. Whigham Jones,

Deputy Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2015-24996 Filed 10-1-15; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of fifteen individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: OFAC's actions described in this notice are effective on September 29, 2015.

FOR FURTHER INFORMATION CONTACT:

Associate Director for Global Targeting, tel.: 202/622-2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (www.treasury.gov/ofac). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Notice of OFAC Actions

On September 29, 2015, OFAC blocked the property and interests in property of the following fifteen individuals pursuant to E.O. 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism":

1. AL-SHA'IRI, Husayn Al-Salih Salih (a.k.a. AL-SHA'ARI, Hasan al-Salahayn Salih; a.k.a. "ABU-HABIB, Hasan"; a.k.a. "AL-LIBI, Abu-Habib"; a.k.a. "AL-SALIHIN, Habib"); DOB 01 Jan 1975 to 31 Dec 1975; POB Darna, Libya; citizen Libya; Passport 542858 (Libya); Personal ID Card 55252 (Libya) (individual) [SDGT].

2. IKANOVIC, Bajro; DOB 08 Nov 1976; POB Hrnici, Bratunac, Bosnia and Herzegovina; citizen Bosnia and Herzegovina; National ID No. JMB 0811976181415 (Bosnia and Herzegovina) (individual) [SDGT].

3. AL-RUMAYSH, Mu'tassim Yahya 'Ali (a.k.a. "ABU-RAYHANAH"; a.k.a. "AL-JEDDAWI, Abu-Rayhanah al-'Ansari"; a.k.a. "HANDALAH"; a.k.a. "RAYHANAH"); DOB 04 Jan 1973; POB Jeddah, Saudi Arabia; citizen Yemen; Passport 01055336 (Yemen); Residency Number 2054275397 (Saudi Arabia) issued 22 Jul 1998 (individual) [SDGT].

4. AL-HARBI, Nasir Muhammad 'Awad al-Ghidani (a.k.a. AL-HARBI, Nasir Muhammad 'Iwad al-Ghaydani; a.k.a. "AL-GHAYDANI, Abu-Bilal"; a.k.a. "AL-HARBI, Abu-Bilal"; a.k.a. "AL-NAJDI, Hammam"; a.k.a. "AL-RAS, Ra'i"; a.k.a. "BILAL"); Yemen; DOB 20 Jul 1974; alt. DOB 05 Sep 1974; POB al-Qasim, Saudi Arabia; citizen Saudi Arabia (individual) [SDGT].

5. AL-KARMUSH, Muwaffaq Mustafa Muhammad (a.k.a. AL KASAB, Muwafaq Mustafa Muhammad Ali; a.k.a. AL-KARMOUSH, Muafaq Mustafa Mohammed; a.k.a. AL-KARMUSH, Muwafaq Mustafa; a.k.a. AL-KARMUSH, Muwafaq Mustafa Muhammad 'Ali; a.k.a. AL-KARMUSH,

Muwaffaq Mustafa; a.k.a. AL-KARMUSH, Muwaffaq Mustafa Muhammad 'Ali Mahmud; a.k.a. EL KHARMOUSH, Muwaffaq Mustafa Mohammad; a.k.a. KARMOOSH, Muwafaq Mustafa Mohammed Ali; a.k.a. KARMUSH, Muwaffaq; a.k.a. MUHAMMAD, Muwaffaq Mustafa; a.k.a. "Abu Salah"; a.k.a. "AL-'AFRI, Abu Salah"); DOB 01 Feb 1973; citizen Iraq; Gender Male; Passport A5476394 (Iraq) (individual) [SDGT].

6. HELAL, Mounir Ben Dhaou Ben Brahimi Ben (a.k.a. HELEL, Mounir; a.k.a. HILEL, Mounir; a.k.a. "AL-TUNISI, Abu Maryam"; a.k.a. "IBRAHIM, Munir Bin Du Bin"; a.k.a. "RAHMAH, Abu"); DOB 10 May 1983; POB Ben Guerdane, Tunisia; Gender Male (individual) [SDGT].

7. FEBRIWANSYAH, Tuah (a.k.a. FACHRI, Muhammad; a.k.a. FACHRIA, Muhammad; a.k.a. FACHRY, Muhammad; a.k.a. FEBRIWANSAH, Tuwah; a.k.a. FEBRIWANSYAH BIN ARIF HASRUDIN, Tuah), Jalan Baru LUK, No. 1 RT 05/07, Kelurahan Bhakti Jaya, Setu Sub-District, Pamulang District, Tangerang Selatan, Banten Province, Indonesia; DOB 18 Feb 1968; POB Jakarta, Indonesia; nationality Indonesia; National ID No. 09.5004.180268.0074 (Indonesia) (individual) [SDGT].

8. IBRAHIM, Muhammad Sholeh (a.k.a. IBRAHIM, Mohammad Sholeh; a.k.a. IBRAHIM, Muh Sholeh; a.k.a. IBRAHIM, Sholeh; a.k.a. IBROHIM, Muhammad Sholeh); DOB Sep 1958; POB Demak, Indonesia; nationality Indonesia; Ustad (individual) [SDGT].

9. ALJARBA, Tarad Muhammad (a.k.a. ALJARBA, Tarad; a.k.a. "AL-SHIMALI, Abu-Muhammad"); DOB 20 Nov 1979; POB Iraq; nationality Saudi Arabia; Passport E704088 (Saudi Arabia) issued 26 Aug 2003 expires 02 Jul 2008 (individual) [SDGT].

10. MAHMOOD, Aqsa (a.k.a. LAYTH, Umm), Raqqa, Syria; DOB 11 May 1994; POB Glasgow, UK; nationality United Kingdom; alt. nationality Pakistan; Passport 720134834 (United Kingdom) issued 27 Jun 2012 expires 27 Jun 2022; National ID No. 3520162676986 (Pakistan) (individual) [SDGT].

11. HUSSANI, Omar (a.k.a. "AL-BRITANI, Abu Sa'eed"), High Wycombe, Buckinghamshire, United Kingdom; DOB 01 Jan 1986 to 31 Dec 1987; nationality United Kingdom; (individual) [SDGT].

12. KHAN, Hafiz Saeed (a.k.a. AHMAD, Sayed; a.k.a. HAFIZ, Said Khan; a.k.a. KHAN, Hafez Sayed; a.k.a. KHAN, Hafiz Sa'id; a.k.a. KHAN, Hafiz Said; a.k.a. KHAN, Hafiz Said Muhammad; a.k.a. KHAN, Shaykh Hafidh Sa'id; a.k.a. KHAN, Wali Hafiz Sayid; a.k.a. SAEED, Hafiz; a.k.a. SA'ID, Hafiz); DOB 01 Jan 1976 to 31 Dec 1978; alt. DOB 01 Jan 1977 to 31 Dec 1979; POB Mamondzowi Village, Orakzai Agency, Pakistan; nationality Pakistan (individual) [SDGT].

13. AL-SHAWAKH, Ali Musa (a.k.a. AL-'AUJAYD, Abdullah Shuwar; a.k.a. AL-HAMUD, 'Ali; a.k.a. AL-SHAWAGH, 'Ali Musa; a.k.a. AL-SHAWAKH, Ali al-Hamoud; a.k.a. AL-SHAWAKH, Muhammad 'Ali; a.k.a. AL-SHAWWAKH, Ibrahim; a.k.a. AWAS, Ali; a.k.a. DERWISH, 'Ali; a.k.a. HAMMUD, Ali; a.k.a. "AL-SAHL, Abu Luqman"; a.k.a. "AL-SURI, Abu Luqman"; a.k.a. "AYYUB, Abu"; a.k.a. "LUQMAN, Abu"); DOB 01 Jan 1973 to 31 Dec 1973; POB

Sahl village, Raqqa province, Syria; nationality Syria (individual) [SDGT].

14. LAABOUDI, Morad (a.k.a. LAABOUDI, Mourad; a.k.a. "ABU ISMAIL"; a.k.a. "AL-MAGHRIBI, Abu Ismail"; a.k.a. "AL-MAGRABI, Abu Isma'il"); DOB 26 Feb 1993; citizen Morocco; Passport UZ6430184 (Morocco); National ID No. CD595054 (Morocco) (individual) [SDGT].

15. AL-JABURI, Sami Jasim Muhammad (a.k.a. AL-'AJUZ, Sami Jasim; a.k.a. AL-'AJUZ, Sami Jasim Muhammad; a.k.a. A'RAJ, Sami; a.k.a. MUHAMMAD, Sami Jasim; a.k.a. "ASIA, Abu"; a.k.a. "ASIYA, Abu"; a.k.a. "HAMAD, Hajji"; a.k.a. "HAMID, Hajji"; a.k.a. "HAMID, Ustadh"; a.k.a. "SAMIYAH, Abu"; a.k.a. "SUMAYYAH, Abu"); DOB 01 Jan 1973 to 31 Dec 1973; alt. DOB 01 Jan 1970 to 31 Dec 1970; POB Al-Sharqat, Salah ad-Din Province, Iraq; alt. POB Mosul, Iraq; nationality Iraq (individual) [SDGT].

Dated: September 29, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015-25070 Filed 10-1-15; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

Commission on Care

ACTION: Notice of Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C., App. 2, the Commission on Care gives notice that it will meet on Monday, October 19, 2015, and Tuesday, October 20, 2015, at the Washington Marriott at Metro Center, 775 12th St. NW., Washington, DC 20005. The meeting will convene at 8:30 a.m. both days and end at 5:30 p.m. on October 19, and end at 12:00 p.m. on October 20. The meeting is open to the public.

The purpose of the Commission, as described in section 202 of the Veterans Access, Choice, and Accountability Act of 2014 (VACAA), is to examine the access of Veterans to health care from the Department of Veterans Affairs (VA) and strategically examine how best to organize the Veterans Health Administration (VHA), locate health care resources, and deliver health care to Veterans during the next 20 years. In undertaking this assessment, the

Commission will evaluate and assess the results of the Independent Assessment conducted by CMS Alliance to Modernize Healthcare (CAMH) in accordance with section 201 of VACAA.

On October 19, the Commission will hear from experts who will provide insights on work to be done by the Commission. In addition, presentations will be made by VHA on clinical health services. On October 20, the Commission will hear about access to VA health care and support services.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Commission's review to Sharon Gilles, Designated Federal Officer, Commission on Care, 1575 I (Eye) Street NW., Suite 240, Washington, DC 20005, or email at sharon.gilles@va.gov. Any member of the public wanting to attend may contact Ms. Gilles.

Dated: September 29, 2015.

Sharon Gilles,

Designated Federal Officer, Commission on Care.

[FR Doc. 2015-25066 Filed 10-1-15; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R6-ES-2015-0146];
[4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on petitions to list the greater sage-grouse (*Centrocercus urophasianus*), both rangewide and the Columbia Basin population, as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that the Columbia Basin population does not qualify as a distinct population segment. In addition, we find that listing the greater sage-grouse is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the greater sage-grouse or its habitat at any time.

DATES: The finding announced in this document was made on October 2, 2015.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R6-ES-2015-0146. 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, Mountain-Prairie Regional Office, 134 Union Blvd., Lakewood, CO 80228. Please submit any new information, materials, or questions concerning this finding to the U.S. Fish and Wildlife Service, Mountain-Prairie Regional Office, P.O. Box 25486, DFC, Mailstop 60120, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Michael Thabault, 303-236-9779.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish this document. Under the Endangered Species Act (*hereafter*, Act), a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of

its range. We issued a 12-month finding that greater sage-grouse was warranted for listing in 2010 (75 FR 13910, March 23, 2010). However, since that time, new information about the status of the species, potential threats, regulatory mechanisms, and conservation efforts indicates that listing is not warranted.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Based on new information about these factors and the adequacy of regulatory mechanisms and conservation efforts in managing them, we have determined that the greater sage-grouse is not in danger of extinction now or in the foreseeable future throughout all or a significant portion of its range and that listing the species is no longer warranted.

Based on the best available scientific and commercial information, we have determined that the primary threats to greater sage-grouse have been ameliorated by conservation efforts implemented by Federal, State, and private landowners. In 2010, we identified habitat loss, fragmentation, and inadequacy of existing regulatory mechanisms as factors leading to a warranted determination. Since that time, regulatory mechanisms through Federal and three State plans that incorporate conservation principles identified by the scientific experts have substantially reduced these risks in approximately 90 percent of the breeding habitat through avoidance and minimization measures. Advancements in oil and gas technologies have reduced the anticipated footprint of future development; the future conversion of sagebrush habitats to agriculture is unlikely to impact greater sage-grouse because high densities of breeding sage-grouse do not occur in habitats that are suitable for agriculture; and renewable energy development, although still a potential, is unlikely to occur in areas where greater sage-grouse occur in the highest densities. Fire and invasive species continue to occur in greater sage-grouse habitats, especially in the Great Basin, but existing management and commitments for suppression, restoration, and noxious weed treatments are reducing that impact.

Rangewide, a number of relatively large greater sage-grouse populations continue to be distributed across the landscape and are supported by undisturbed expanses of habitat. Some habitat loss associated with energy development, infrastructure, wildfire, and invasive plants will continue into the future. However, regulatory mechanisms provided by Federal and three State plans reduce threats on approximately 90 percent of the breeding habitat across the species' range.

Acronyms Used in This Document

We use many acronyms throughout this document. To assist the reader, we provide a list of the most frequently used acronyms here for easy reference:

AML Appropriate Management Level
AUM Animal Unit Months
BLM Bureau of Land Management
BSU Biologically Significant Unit
CCA Candidate Conservation Agreement
CCAA Candidate Conservation Agreement with Assurances
CED Conservation Efforts Database
CFR Code of Federal Regulations
CNRMP Cultural and Natural Resource Management Plan
COT Conservation Objectives Team
CRP Conservation Reserve Program
DoD U.S. Department of Defense
DOE Department of Energy
DOI U.S. Department of the Interior
DPS Distinct Population Segment
EIS Environmental Impact Statement
FIAT Fire and Invasives Assessment Tool
FLPMA Federal Land Policy and Management Act of 1976
FR Federal Register
GHMA General Habitat Management Area
GIS Geographic Information System
HMA Herd Management Areas
HMAP Herd Management Area Plan
INRMP Integrated Natural Resources Management Plan
LHS Land Health Standards
MZ Management Zone
NEPA National Environmental Policy Act
NFMA National Forest Management Act
NRCS Natural Resources Conservation Service
NSO No Surface Occupancy
NWR National Wildlife Refuge
PACs Priority Areas for Conservation
PHMA Priority Habitat Management Areas
RDF Required Design Features
ROW Right-of-Way
RFPA Rangeland Fire Protection Associations
SARA Canada's Species at Risk Act
SFA Sagebrush Focal Areas
SGI Sage Grouse Initiative
SGMAs Sage-grouse Management Areas
SGPA Sage-grouse Protection Area
SPR Significant portion of the range
USDA U.S. Department of Agriculture
USFS U.S. Forest Service
USGS U.S. Geological Survey
WAFWA Western Association of Fish and Wildlife Agencies
WNV West Nile virus

YTC Joint Base Lewis-McChord Yakima Training Center

Overview of Sections

The following is an outline of the major sections included in this document:

- Background
 - Previous Federal Actions
- Species Information
 - Bi-State Distinct Population Segment
 - Columbia Basin Population
 - Greater Sage-grouse Listable Entity Summary
- Distribution
- Habitat
- Life-History Characteristics and Seasonal Habitat Selection
- Sage-grouse Connectivity and Landscape Genetics
- Population Abundance and Trends
 - Abundance and Distribution Models
 - Population Abundance and Trends Summary
- Changes Since the 2010 Finding
 - New Scientific Information
 - Sagebrush Landscape Conservation Planning
 - Summary of New Information Since 2010
- Summary of Information Pertaining to the Five Factors
 - Habitat Fragmentation
 - Nonrenewable Energy Development
 - Infrastructure
 - Agricultural Conversion
 - Wildfire and Invasive Plants
 - Grazing and Rangeland Management

- Free-Roaming Equids
- Conifer Encroachment
- Mining
- Renewable Energy
- Urban and Exurban Development
- Recreation
- Climate Change and Drought
- Predation
- Disease
- Recreational Hunting
- Scientific and Educational Use
- Contaminants
- Military Activity
- Small Populations
- Regulatory Mechanisms
- Finding
 - Significant Portion of the Range
- Conclusion

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In general we must determine whether a petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether

species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal 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**. See below for further discussion of the limitations imposed through various means on this determination.

Previous Federal Actions

From 1999 to 2005, we received eight petitions to list the greater sage-grouse throughout its range or within specific populations (Table 1). Among those, two were petitions to list the bi-State Distinct Population Segment (DPS) of the greater sage-grouse (2002 and 2005), which we have addressed separately and, hence, are not included in this status assessment (see Bi-State Distinct Population Segment, below). The responses to the other six petitions and the outcomes of ensuing lawsuits and court settlements are detailed in the 2010 finding (75 FR 13910, March 23, 2010), and are summarized in Table 1.

TABLE 1—SUMMARY OF PREVIOUS FEDERAL ACTIONS FOR GREATER SAGE-GROUSE, INCLUDING THE EASTERN AND WESTERN SUBSPECIES AND COLUMBIA BASIN POPULATION

Petitioner	Date	Request of petition	90-day petition finding	Status review finding	Legal challenges	Determination upheld
Craig Dremann (Institute for Wildlife Protection. American Lands Alliance [lead] + 20 other organizations).	Jul. 2, 2002 Mar. 24, 2003 Dec. 29, 2003	List rangewide .. List rangewide .. List rangewide ..	These three petitions were combined in one substantial finding: Apr. 21, 2004 (69 FR 21484).	Not warranted; Jan. 12, 2005 (70 FR 2244).	Western Watersheds Project challenged in 2006.	Finding remanded in 2007; warranted finding published March 23, 2010 (75 FR 13910).
Institute for Wildlife Protection.	Jan. 24, 2002	List the western subspecies.	Non-substantial; Feb. 7, 2003 (68 FR 6500).	N/A	Institute for Wildlife Protection challenged.	Positive 90-day finding April 29, 2008 (73 FR 23170); part of March 23, 2010, finding, but determined it was not a recognized subspecies (75 FR 13910).
Institute for Wildlife Protection.	Jul. 3, 2002	List the eastern subspecies.	Non-substantial; Jan. 7, 2004 (69 FR 933).	N/A	Institute for Wildlife Protection challenged.	Judge ruled in favor of the Service on Sept. 28, 2004, and dismissed plaintiff case.
NW Ecosystem Alliance and Biodiversity Legal Foundation.	May 28, 1999	List the Columbian Basin population as a DPS.	Substantial; Aug. 24, 2000 (65 FR 51578).	Warranted but precluded; May 7, 2001 (66 FR 22984).	N/A	Committed to resolve the DPS status in the rangewide status review.

In 2010, we found that listing the greater sage-grouse rangewide was

warranted, but precluded by other higher priority actions. That finding was

based on continuing population declines, with some areas of local

extirpations, resulting from habitat fragmentation. At that time, habitat fragmentation was caused by a number of land use activities, but energy development, agricultural conversion, conifer encroachment, wildfire, and invasive species were of particular concern. Significant habitat fragmentation was expected to continue into the foreseeable future, and regulatory mechanisms were ineffective in addressing this threat. As a result of these findings, the greater sage-grouse was made a candidate for listing rangewide with a listing priority number of 8, indicating that threats were of moderate magnitude and imminent (75 FR 13910, March 23, 2010).

On May 10, 2011, we filed a multiyear workplan as part of a proposed settlement agreement with Wild Earth Guardians and others in a consolidated case in the U.S. District Court for the District of Columbia. On September 9, 2011, the Court accepted our agreement with the plaintiffs in *Endangered Species Act Section 4 Deadline Litig.*, Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D. D.C.) (known as the “Multi-District Litigation case”), on a schedule to publish proposed rules or not-warranted findings for the 251 species designated as candidates as of 2010 no later than September 30, 2016. The workplan included a deadline to submit a proposed rule or not-warranted finding to the **Federal Register** for greater sage-grouse, including any DPSs (but excluding the bi-State DPS), by September 30, 2015. Further, Congress prohibited the expenditure of funds to publish a proposed rule for the greater sage-grouse or the Columbian Basin population (Pub. L. Number 113–235). The publication of this finding complies with the workplan and is consistent with Congressional direction.

Species Information

Greater sage-grouse are birds in the Phasianidae family, which is a diverse taxonomic group consisting of over 50 genera including turkeys (*Meleagris* spp.), pheasants (*Phasianus* spp.), and partridges (*Perdix* spp.). 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) (4.4 and 6.6 pounds (lb)). Adult females are smaller, ranging in length from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2.2 and 4.4 lb). Males and females have dark grayish brown body plumage with many small gray and white spots, fleshy yellow combs over the eyes, long pointed tails, fully feathered legs and feet, 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).

Bi-State Distinct Population Segment

In 2010, we found the bi-State population to be a DPS because it is genetically unique and markedly separate from the rest of the greater sage-grouse range (75 FR 13910, March 23, 2010). This DPS has been addressed in a separate status review and was determined to be not warranted for listing (80 FR 22828, April 23, 2015). Therefore, the bi-State population of greater sage-grouse will not be addressed in this status review.

Columbia Basin Population

In 2001, we concluded in a 12-month finding that the Columbia Basin population of the western sage-grouse, a subspecies of the greater sage-grouse, was a valid DPS that warranted listing under the Act (66 FR 22984, May 7, 2001). The subspecies was previously described as being found in southern British Columbia, central Washington, and parts of Oregon, Nevada, and California. Since that 12-month finding, new information emerged that led us to conclude in 2010 that the best scientific and commercial information does not support the recognition of and the taxonomic validity of the western subspecies (75 FR 13910, March 23, 2010). In that finding, we also reported that we would reevaluate the status of the Columbia Basin population as it relates to the greater sage-grouse in the future. Therefore, in the following section we reevaluate the validity (*i.e.*, discreteness and significance) of the Columbia Basin population as a possible DPS with respect to the correct taxon to which it belongs: The greater sage-grouse (*Centrocercus urophasianus*).

Within our *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act* (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These elements include:

- (1) The discreteness of a population in relation to the remainder of the species to which it belongs;
- (2) The significance of the population segment to the species to which it belongs; and
- (3) The population segment's conservation status in relation to the Act's standards for

listing, delisting, or reclassification (is the population segment endangered or threatened).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon 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.

(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.

In our 2001 12-month finding on the Columbia Basin DPS (66 FR 22984, May 7, 2001), we found that the population, which is located in Washington, was physically discrete from other populations of what we then considered the western subspecies of greater sage-grouse in central and southern Oregon. Below, we reevaluate that finding giving consideration to new information and conducting our analysis with respect to the entire range of greater sage-grouse.

Markedly Separate—Greater sage-grouse in the Columbia Basin occur in four relatively small, disconnected areas. Two of these areas (the Army's Joint Base Lewis-McChord–Yakima Training Center (YTC) and Douglas County) have endemic populations, and two areas (Yakama Indian Nation and Lincoln County) are in the process of being repopulated by translocations of individuals from outside the Columbia Basin (WWHCWG 2010, p. 55; WWHCWG 2012, pp. A.2–3). Translocations began in 2004 with augmentation efforts on the YTC (Schroeder *et al.* 2014, p. 8; Stinson and Schroeder 2014, p. 15). Translocations to reestablish populations on Yakama Nation lands and in Lincoln County were initiated in 2006 and 2008, respectively (Schroeder *et al.* 2014, pp. 8–15).

The pre-European settlement distribution of greater sage-grouse is generally described as being continuous from central Oregon, north to the Columbia Basin (Schroeder *et al.* 2004, p. 368). However, this continuity was lost between the pre- and post-settlement period, mostly due to habitat fragmentation (Schroeder *et al.* 2000, pp. 105, 110; 2004, pp. 369–370). Breeding populations of greater sage-grouse in the Columbia Basin are now separated by approximately 250

kilometers (km) (155 miles (mi)) of fragmented and unsuitable habitat from the next nearest breeding population, the Baker population in Oregon (Johnson *et al.* 2011, p. 409, Knick *et al.* 2013, p. 1544). The second closest breeding population, in central Oregon, is approximately 260 km (162 mi) from the nearest breeding population in the Columbia Basin (Johnson *et al.* 2011, p. 409, Knick *et al.* 2013, p. 1544). The area between these populations consists of relatively small patches of fragmented *Artemisia* spp. (sagebrush) within a matrix of croplands (Knick *et al.* 2003, pp. 615–618). At the narrowest point, sagebrush habitats on either side of this forested mountain range are approximately 25 km (15 mi) apart, and no historical greater sage-grouse records exist for this area (Knick *et al.* 2013, p. 1544).

No documented instances exist of greater sage-grouse moving between the Columbia Basin and any other greater sage-grouse populations without the aid of translocations. Seasonal migration in sage-grouse over 100 km (62 mi) has been observed (Hagen 1999, p. 39; Tack *et al.* 2012, p. 65), but in Washington, seasonal movements tend to be less than 30 km (19 mi) between breeding and wintering areas (Schroeder and Vander Haegen 2006, entire; WWHCWG 2010, pp. 54–55). Despite documentation of extensive seasonal movements in this species (Fedy *et al.* 2012, p. 1066; Tack *et al.* 2012, p. 65; Davis *et al.* 2014, pp. 715–716), the natal dispersal abilities of sage-grouse have been shown to be low (Dunn and Braun 1985, p. 622; Thompson 2012, p. 193). Based on data from radio-marked greater sage-grouse, the maximum distance translocated birds in the Columbia Basin moved from the point of release was 85 km (53 mi). The average maximum distance removed from the release site for all birds with two or more locations was only 14 km (9 mi) (Schroeder *et al.* 2014, p. 17).

The ability of greater sage-grouse to move through the landscape is affected by many factors, including the presence of suitable habitats or topographic features that impede movement (Schulwitz *et al.* 2014, p. 568; Row *et al.* 2015, pp. 1965–1966). An assessment of habitat linkages between greater sage-grouse in Washington and Oregon showed relatively high landscape resistance to greater sage-grouse movements and no modeled linkages between the Columbia Basin and other greater sage-grouse populations (WWHCWG 2010, pp. 57–59). A separate modeling effort evaluating contemporary connectivity among leks (communal breeding centers where

males perform courtship displays) spanning the Great Basin and Columbia Basin also showed little to no movement potential between the Columbia Basin and other greater sage-grouse populations (Knick *et al.* 2013, p. 1548).

Analysis of genetic variation across the range of greater sage-grouse is consistent with relatively short-distance dispersal, with gene flow (the transfer of genetic material from one population to another) decreasing as the distance between populations increases (*i.e.*, isolation by distance) (Oyler-McCance *et al.* 2005, p. 1306). Landscape resistance can also influence patterns of gene flow in greater sage-grouse, with broad-scale distribution of low-quality nesting and wintering habitats identified as the most important factors driving patterns of effective dispersal (Row *et al.* 2015, pp. 1963–1964). Landscape-scale analyses of genetic variation show low levels of gene flow between the Columbia Basin and other populations of greater sage-grouse (Oyler-McCance *et al.* 2005, p. 1306). Analysis of allele frequencies in greater sage-grouse on the YTC prior to augmentation efforts showed that these individuals had low genetic diversity and were distinguishable from individuals translocated from Oregon and Nevada (Blankenship *et al.* 2011, pp. 7, 10); a result that is consistent with little to no contemporary gene flow.

Greater sage-grouse have been translocated to the Columbia Basin from Idaho, Oregon, Nevada, and Wyoming (Livingston *et al.* 2006, pp. 2–3; Schroeder *et al.* 2014, pp. 8, 14–15). Moving greater sage-grouse from other areas into the Columbia Basin population means that, while this population is physically discrete from other populations, it has been connected through human intervention. Genetic data collected post-augmentation on the YTC confirms that breeding between endemic individuals and translocated individuals has occurred (Blankenship *et al.* 2011, p. 10). It is unknown if translocated greater sage-grouse released on the Yakama Nation or in Lincoln County are interbreeding with endemic populations of greater sage-grouse. However, at least one bird translocated to Lincoln County is known to have dispersed to the Douglas County population (Schroeder *et al.* 2014, p. 17). In addition, two males released in Lincoln County moved to the Douglas County population for a few days early in the 2015 breeding season, but returned to Lincoln County and were observed strutting on the Lincoln County lek (McPherron, USFWS, pers. comm. 2015).

International Boundaries—Greater sage-grouse occurrences were documented in British Columbia from 1864 to 1918 (Campbell and Ryder 2010, p. 7), in the Okanogan Valley, an area considered part of the Columbia Basin ecosystem. From 1918 to the 1950s, no occurrence records were reported (Campbell and Ryder 2010, entire). Translocations were conducted to reintroduce greater sage-grouse in the late 1950s, but given the lack of occurrence records since the 1960s, the species is considered extirpated from the province (Campbell and Ryder 2010, pp. 7–10). Therefore, greater sage-grouse in the Columbia Basin are not delimited by international governmental boundaries.

Summary for Discreteness—Greater sage-grouse in the Columbia Basin are physically separated from the nearest populations by approximately 250 to 260 km (155 to 162 mi). Information on movement and dispersal ecology, telemetry data, habitat and connectivity modeling, and genetic analyses, when viewed together, suggest that greater sage-grouse are unlikely to move between the Columbia Basin population and other greater sage-grouse populations. Based on this information alone, we could conclude that the Columbia Basin population is discrete based on marked separation from other populations as a consequence of physical and ecological factors. However, ongoing translocation efforts provide a connection that artificially links the Columbia Basin population to other populations of greater sage-grouse. The connectivity provided by human-intervention complicates any conclusions about the Columbia Basin population's discreteness. Therefore, we will assume that the population could be discrete and move on to assess the significance of the population to the taxon.

Significance

If a population segment is considered discrete under one or more of the conditions described in our DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used “sparingly” (see Senate Report 151, 96th Congress, 1st Session) while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the DPS's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in

determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722, February 7, 1996), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the population segment represents 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 population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

In our 2001, 12-month finding on the Columbia Basin DPS, we found that the population was significant to the western subspecies because it occurred in a unique ecological setting to the subspecies and because loss of the Columbia Basin would have resulted in a significant gap in the range of the western subspecies (66 FR 22984, May 7, 2001, p. 22992). Below we reevaluate these findings giving consideration to new information and conducting our analysis on the significance of the population segment to the greater sage-grouse species, rather than to the no-longer-recognized western subspecies.

Unusual or Unique Ecological Setting—In our 12-month finding published in 2001, relative to unusual or unique ecological setting, we found that:

(1) The Columbia Basin is a unique ecosystem, whose characteristics were the result of a unique combination of elevation, soil, influences of historical geologic processes, and climatic conditions; as a result, sagebrush habitats in the Columbia Basin could be differentiated from sagebrush habitats outside of the Columbia Basin by a number of floristic characteristics, including the presence of *Juniperus* spp. (juniper) woodlands, salt-desert shrub habitats, and the type and distribution of sagebrush taxa and forb species;

(2) Sage-grouse occupying the Columbia Basin were, "necessarily," differentially exploiting the resources that are available, as

compared with sage-grouse in central and southern Oregon; and that these differences in exploitation of resources had bearing on their food and cover preferences, distribution, movements, reproductive fitness, and ultimately, their survival; and

(3) The unique elements of the Columbia Basin held different management implications for western sage-grouse within this ecosystem (66 FR 22984, May 7, 2001).

Below, we reevaluate these findings giving consideration to new information and conducting our analysis on the entire greater sage-grouse range, rather than the no-longer-recognized western subspecies range.

As stated in the DPS Policy, occurrence in an unusual ecological setting may indicate that a population segment represents a significant resource warranting conservation under the Act (61 FR 4722, February 7, 1996). In considering whether the population occupies an ecological setting that is unusual or unique for the taxon, we evaluate whether the habitat includes unique features not used by the taxon elsewhere and whether the habitat shares many features common to the habitats of other populations. We further evaluate whether any of these differences could play an important biological role with respect to the remainder of the taxon, such as by contributing to the taxon's prospects for survival, to a degree that the population warrants conservation under the Act.

The Columbia Basin represents a separate floristic province within the range of the greater sage-grouse and is unique in that none of the ecosystems within the range of the greater sage-grouse are exactly the same with respect to elevation, soil, influences of historical geologic processes, and climatic conditions. As we found in 2001, these differences have resulted in some differences to the types of sagebrush and other vegetative components present in the ecosystem (66 FR 22984, May 7, 2001, pp. 22989–22991). However, simply the occurrence of a species within a definable ecosystem does not, by itself, make it significant to the taxon under the DPS Policy. Sagebrush-dominated plant communities vary considerably across the range of greater sage-grouse (West and Young 2000, pp. 259–267), and specific habitat components used by greater sage-grouse can vary due to biotic and abiotic factors (Connelly *et al.* 2011a, p. 70). Yet, common to all greater sage-grouse is the use of sagebrush and their dependence on this habitat for food and cover during all periods of the year (Connelly *et al.* 2004, pp. 4–1–4–19).

The greater sage-grouse appears to be fairly adaptable to a variety of conditions as it: (1) Occurs throughout a wide variety of sagebrush habitats in western North America; (2) occurs and breeds from less than 610 m (2,000 ft) to more than 3,000 m (9,842 ft) above sea level; (3) spans a variety of climatic conditions from relatively wet montane sagebrush communities to dry sagebrush types; and (4) uses a wide range of understory vegetation during the breeding and brood-rearing periods (Aldridge and Brigham 2002, pp. 440–442; Connelly *et al.* 2004, pp. 4–1–4–19; Schroeder *et al.* 2004, pp. 366–368; Guttery 2011, pp. 20, 50–51). Stated more simply, the species is able to occupy a broad range of sagebrush communities throughout western North America. Therefore, the ability of the Columbia Basin population of greater sage-grouse to exist within a particular amalgamation of habitat features does not necessarily contribute to the survival of the greater sage-grouse species, or otherwise serve an important biological role with respect to the taxon.

The degree to which regional differences in habitat components affect greater sage-grouse distribution, reproductive fitness, and survival is complex (Connelly *et al.* 2011a, pp. 71–83). Greater sage-grouse in the Columbia Basin are comparable to other populations of greater sage-grouse in their date of nest initiation, variation in the date of nest initiation, length of incubation, nest success, lek visitation by females, and fidelity of males to leks (Schroeder 1997, pp. 937–939; Schroeder and Robb 2003, pp. 295–296). Differences reported for the Douglas County population include higher reproductive effort than greater sage-grouse in other regions and lower fidelity to nest sites (Schroeder 1997, p. 939; Schroeder and Robb 2003, p. 296). The degree to which these differences are the result of habitat fragmentation in north-central Washington or other factors is unknown (Schroeder and Robb 2003, p. 297). Nevertheless, greater sage-grouse in the Columbia Basin appear to have reproductive output and survival estimates that are within the range of values observed elsewhere across the range of the species (Stinson *et al.* 2004, p. 6, Connelly *et al.* 2011b, pp. 56–58).

Under the DPS Policy, a determination of significance can be made if a population segment persists in a unique or unusual ecological setting that is significant to the taxon to which it belongs. Although the Columbia Basin differs in some ways from other habitats that the greater sage-grouse inhabits, this is not unusual for the greater sage-grouse rangewide given the diversity of

sagebrush habitats the species utilizes across its range. Further, nothing about the Columbia Basin population's life history or habitat use is unique when compared to other populations across the range. Given that Columbia Basin habitat and birds fall within the natural range of variability for greater sage-grouse across its range, we conclude that the best information available indicates that the Columbia Basin population is not significant to the species as a whole because of persistence in an unusual or unique ecological setting.

Significant Gap in the Range of the Taxon—In our 12-month finding published in 2001, relative to gap in the range, we found that:

(1) Columbia Basin greater sage-grouse represent the extreme northwestern extent of greater sage-grouse range and the northernmost extent of the historical distribution of the western sage-grouse;

(2) The Columbia Basin historically encompassed roughly 55 percent of the entire range of western sage-grouse; and

(3) Due to its potential isolation, greater sage-grouse in the Columbia Basin are likely experiencing increased directional selection due to marginal and varied habitats at the taxon's range periphery, exhibiting genetic consequences of reduced gene flow from other population segments, and responding (and will continue to respond) to the different anthropogenic (human caused) influences in the region (66 FR 22984, May 7, 2001).

Below, we reevaluate these findings giving consideration to new information and conducting our analysis on the entire greater sage-grouse range, rather than the previously designated western subspecies' range.

Greater sage-grouse in the Columbia Basin are the northwestern extent of the sage-grouse range, but greater sage-grouse in Alberta and Saskatchewan and northern Montana make up the northernmost extent of the range. To assess the degree to which being the northwestern extent of the range makes the population significant, we must consider the proportion of individuals in this extent of the range and the amount of habitat available there for greater sage-grouse; being a peripheral population, by itself, does not connote significance to the taxon. Relative to the rest of the range of greater sage-grouse (excluding the bi-State DPS), the Columbia Basin is estimated to contain only 0.6 percent of the rangewide population estimate (Doherty *et al.* 2015, entire), 2.7 percent of the rangewide distribution of sagebrush habitats (Knick 2011, p. 25), and 4 percent of the total occupied range (Knick 2011, p. 25).

In addition, given new information since 2001, we must reevaluate our conclusion relative to the likelihood of directional selection due to the isolation of this peripheral population. The best available population and genetic data suggest that greater sage-grouse in the Columbia Basin have undergone a severe reduction in population size, and are now isolated from other populations (Schroeder *et al.* 2000, pp. 106–109; Oyler-McCance *et al.* 2005, p. 1307). This has resulted in the loss of genetic diversity, and the population now has the lowest levels of genetic diversity, as measured in mitochondrial and nuclear markers, reported for any greater sage-grouse population (Oyler-McCance *et al.* 2005, p. 1307). However, the extent to which this isolation is causing “selection” or has resulted in the development of traits in greater sage-grouse that are adapted to the Columbia Basin is not definitive.

Morphological or behavioral differences in greater sage-grouse may be indicators of adaptive traits not revealed through analysis of neutral genetic markers. Comparisons of greater sage-grouse in the Columbia Basin with other greater sage-grouse populations suggest they are heavier than birds in Idaho, Nevada, Oregon, and California, but are similar in mass to greater sage-grouse in northern Colorado to Alberta (Schroeder 2008, pp. 5–9). Although some wing and tail measurements differed between greater sage-grouse from the Columbia Basin and elsewhere, the comparison included only a small number of other populations, measurement bias was unknown, and the conclusion of the author was that the available morphometric data did not illustrate any unique morphological characteristics in the Columbia Basin birds (Schroeder 2008, p. 10). Similarly, an assessment of the available behavioral data did not reveal any substantial differences in greater sage-grouse behavior in the Columbia Basin (Schroeder 2008, pp. 9–10).

In summary, loss of the Columbia Basin population would not result in a significant gap in the range of greater sage-grouse. This area represents less than 1 percent of the rangewide population estimates and less than 3 percent of sagebrush habitat. While loss of this population would reduce the occupied range of the species, it would not remove a habitat type found nowhere else in the range nor would it create a barrier to the movement of birds from other populations. Although the Columbia Basin population is peripheral and isolated, there is no evidence that it has been isolated for long periods of evolutionary time,

resulting in significant adaptive traits that might indicate its loss would be significant to the taxon.

Marked Genetic Differences—In our 12-month finding published in 2001, we found that the results from rangewide genetic studies were “suggestive” and demonstrated a marked difference between the population segment of greater sage-grouse within the Columbia Basin and the population segment in central and southern Oregon. However, we concluded that these results did not necessarily indicate that genetic differentiation of this population segment is significant to the remainder of the taxon, as we were unsure to what extent the forces of isolation, adaptive change, genetic drift, and/or inbreeding may have influenced the regional profiles of greater sage-grouse (66 FR 22984, May 7, 2001). Below, we reevaluate these findings giving consideration to new information and conducting our analysis on the entire greater sage-grouse range, rather than the previously recognized western subspecies range.

Additional rangewide studies of neutral genetic variation since 2001 support the conclusion that greater sage-grouse in the Columbia Basin segregate from the other populations when evaluated using quantitative measures of genetic diversity (Benedict *et al.* 2003, pp. 308–309; Oyler-McCance *et al.* 2005, pp. 1304–1305). The reason that genetic diversity can be significant to a species is that the presence of novel haplotypes (set of genes inherited from one parent) or alleles (a variant form of a gene) could provide the species with adaptive capacity if faced with deteriorating environmental conditions. However, the quantitative differences in genetics between this population and the species as a whole were largely the result of greater sage-grouse in the Columbia Basin having extremely low levels of genetic diversity (Oyler-McCance *et al.* 2005, p. 1307), rather than a being a function of having a large proportion of novel haplotypes or alleles.

Evaluation of mitochondrial DNA (mtDNA) revealed that approximately 90 percent of the sampled greater sage-grouse in the Columbia Basin had a single mitochondrial DNA haplotype, while only one novel haplotype was present (Oyler-McCance *et al.* 2005, pp. 1298–1300). This novel haplotype (Haplotype DS) was in the same grouping as one of the most common haplotypes observed in greater sage-grouse (Haplotype X) with only a single base-pair difference from this common haplotype (Oyler-McCance *et al.* 2005, pp. 1299, 1301). This indicates that only

a single mutational event was necessary to produce this novel haplotype, which could have occurred over a relatively short amount of evolutionary time. Thus, the available genetic evidence from studies of mtDNA does not lead us to conclude that the populations in Washington are markedly genetically different from other populations of greater sage-grouse found throughout the Great Basin.

Nuclear genetic data evaluated using microsatellite markers showed that populations in the Columbia Basin had the lowest genetic diversity of the 46 populations of greater sage-grouse studied (Oyler-McCance *et al.* 2005, p. 1307). Although genetic distance comparisons showed that the Columbia Basin populations were some of the most differentiated of all greater sage-grouse populations, this finding is largely a reflection of the small number of alleles found there (Oyler-McCance *et al.* 2005, p. 1307). Therefore, while statistically different, these differences cannot be attributed to greater sage-grouse being isolated for a long period of evolutionary time, which might have indicated that they had developed some adaptive traits not found elsewhere in the range of greater sage-grouse.

Summary for Significance—We have considered significance of the Columbia Basin population by evaluating the uniqueness of the ecological setting; the potential for a significant gap in the range of greater sage-grouse if the population was lost; and genetic

distinctness from other greater sage-grouse populations. We conclude that the Columbia Basin greater sage-grouse do not occur in a unique ecological setting, and their loss would not result in a significant gap in the range of the greater sage-grouse. While genetic diversity is low, the population is not markedly genetically different from other populations of greater sage-grouse. Based on this information, we find that this population does not meet the definition of significance as defined in our 1996 DPS policy.

Greater Sage-Grouse Listable Entity Summary

In 2010, we determined that the bi-State population qualified as a DPS under the Act. At that time, we deferred any other decisions about potential DPSs, including an assessment of the Columbia Basin population, until this status review. After consideration of the distinctness and significance of the Columbia Basin population, giving consideration to new information, and conducting our analysis on the significance of the population to the greater sage-grouse rangewide instead of to the previously recognized western subspecies, we have determined that it does not meet the criteria for a DPS. Therefore, the Columbia Basin population will be considered together with the other populations in the greater sage-grouse range (hereafter referred to as sage-grouse). Specifically, when we discuss sage-grouse in the Great Basin,

we are including Columbia Basin in those discussions. The remainder of this status review will consider all populations and habitat across the range of the species, with the exception of the bi-State DPS.

Distribution

Prior to European settlement of western North America in the 19th century, sage-grouse occurred in an area that today would cover 13 States and 3 Canadian provinces—Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, British Columbia, Alberta, and Saskatchewan (Schroeder *et al.* 2004, p. 369; Figure 1). Sagebrush habitats that potentially supported sage-grouse occurred over approximately 1.2 million square kilometer (km²) (460,000 square miles (mi²)) before 1800 (Schroeder *et al.* 2004, p. 366). Currently, sage-grouse occur in 11 States (California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming), and 2 Canadian provinces (Alberta and Saskatchewan), occupying approximately 56 percent of their historical range (Schroeder *et al.* 2004, p. 369; Figure 1). Approximately 2 percent of the total range of sage-grouse occurs in Canada, with the remainder in the United States (Knick 2011, p. 24).

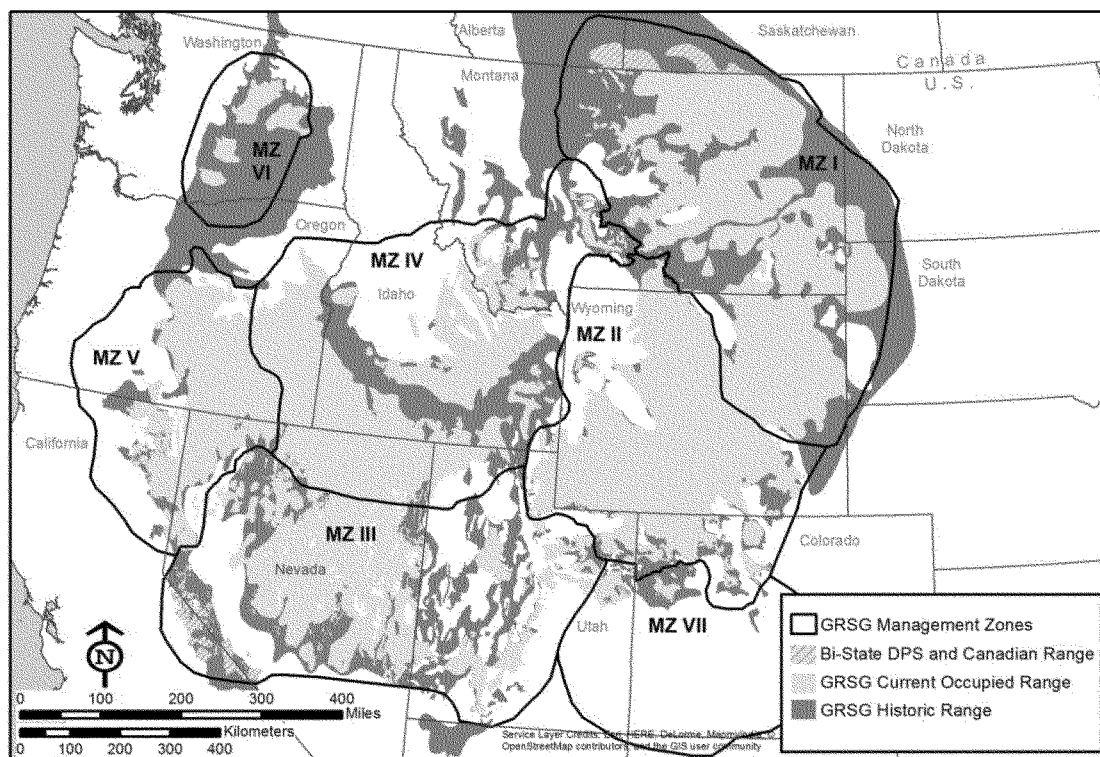


Figure 1. Current occupied and historical range of sage-grouse (derived from Schroeder *et al.* 2004 and updated by the Service) and the WAFWA Sage-Grouse Management Zones (Stiver *et al.* 2006, p. 1–6).

The Western Association of Fish and Wildlife Agencies (WAFWA) Conservation Strategy for Greater Sage-grouse (Stiver *et al.* 2006, p. 1–6) delineated seven sage-grouse Management Zones (MZ; Figure 1) to guide conservation and management. The boundaries of these MZs were delineated based on their ecological and biological attributes (floristic provinces) rather than on political boundaries (Stiver *et al.* 2006, p. 1–6); therefore, vegetation is similar within each MZ, and sage-grouse are likely to respond similarly to environmental factors and management actions. For this reason, we conducted analyses for some potential threats at the MZ-scale. While the Conservation Objectives Team (COT) Report (see *Conservation Objectives Team Report* below for further description) identifies Priority Areas for Conservation (PACs) as the areas needed for the species persistence, not all data used in our potential analyses was available at the PAC scale and the data did not provide a consistent rangewide data set, so PACs were not used as the unit of analysis for the impact analysis.

Sagebrush occurs in two natural vegetation types that are influenced by elevation, temperature, and patterns of precipitation (Miller *et al.* 2011, pp. 147–148). In general, the Great Basin portion of the range, which encompasses MZs III, IV, V, and VI, is lower in elevation and experiences less precipitation. The Rocky Mountain portion of the range, which encompasses MZs I, II, and VII, generally is higher in elevation and has greater precipitation. Due to the variance in the ecological conditions, the regions have differential susceptibility to potential threats (see Summary of Information Pertaining to the Five Factors, below).

Sage-grouse currently occupy a portion of their historical range and are more concentrated in certain Core Areas. Sage-grouse have been extirpated from Nebraska, British Columbia, and Arizona (Schroeder *et al.* 1999, p. 2; Young *et al.* 2000 p. 445; Schroeder *et al.* 2004, p. 369). Changes from the estimated historical distribution are the result of sagebrush alteration and degradation (Schroeder *et al.* 2004, p.

363; Knick and Connelly 2011, p. 6). The current distribution of sage-grouse is estimated at 703,453 km² (271,604 mi²; USFWS 2015a). Approximately half of the sage-grouse occur in the Rocky Mountain portion of the range and half in the Great Basin portion of the range. Management Zones with the highest relative amounts of birds are MZ II (37.5 percent of the rangewide population estimate) and MZ IV (30.7 percent of the rangewide population estimate). As a result, impacts in these MZs may have greater impact to the species rangewide (see Summary of Information Pertaining to the Five Factors, below).

Habitat

Sage-grouse depend on a variety of shrub-steppe habitats throughout their life cycle and are considered a sagebrush obligate (Patterson 1952, p. 48). Sage-grouse use a variety of sagebrush species such as *Artemisia tridentata wyomingensis* (Wyoming big sagebrush), *A. t. vaseyana* (mountain big sagebrush), *A. t. tridentata* (basin big sagebrush), *A. nova* (black sagebrush),

A. frigida (fringed sagebrush), *A. cana* (silver sagebrush), and *A. arbuscula* (little sagebrush) (Miller *et al.* 2011, pp. 145–151). Sage-grouse distribution is strongly correlated with the distribution of sagebrush vegetation (Schroeder *et al.* 2004, p. 364).

Sagebrush is the most widespread vegetation in the intermountain lowlands in the western United States (West and Young 2000, p. 259). Sagebrush occurs in two natural vegetation types that are delineated by temperature and patterns of precipitation (Miller *et al.* 2011, pp. 147–148). The first, sagebrush-steppe, ranges across the northern portion of sage-grouse occupied 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. Sagebrush is a co-dominant plant, along with perennial bunchgrasses, in sagebrush-steppe. The second vegetation type, Great Basin sagebrush, occurs south of sagebrush-steppe, and extends from the Colorado Plateau westward into Nevada, Utah, and California (Miller *et al.* 2011, pp. 147–148). In the Great Basin sagebrush zone, sagebrush is usually the dominant plant layer accompanied by sparse understories. Other sagebrush types within the sage-grouse occupied range include mixed-desert shrubland in the Bighorn Basin of Wyoming, and grasslands in eastern Montana and Wyoming that also support silver

sagebrush and *A. filifolia* (sand sagebrush) (Miller *et al.* 2011 p. 148).

Sagebrush is long-lived, with plants of some species surviving up to 150 years (West 1983, p. 340). Sagebrush is resistant to environmental extremes, with the exception of fire and occasionally defoliating insects (West 1983, p. 341). Natural sagebrush recolonization 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). Although seed viability and germination are high, seed dispersal is limited (West and Young 2000, p. 260). Additionally, sagebrush seeds typically do not remain viable for more than one growing season, and evidence suggests that seeds do not persist in the soil more than 1 year; however, seeds have higher odds of persisting in the seed bank if they are buried (Wijayratne and Pyke 2012, p. 438). Productivity of plants associated with the sagebrush understory varies widely and is influenced by moisture availability, soil characteristics, climate, and topographic position (Miller *et al.* 2011, pp. 151–154). Forb abundance can be highly variable from year to year and is largely affected by the amount and timing of precipitation.

Sage-grouse depend on large areas of contiguous sagebrush to meet all seasonal habitat requirements (Connelly *et al.* 2011a, pp. 82–83; Wisdom *et al.* 2011, p. 465). Sage-grouse exhibit strong site fidelity (loyalty to a particular area, even when the area no longer provides habitat) to seasonal habitats used for

breeding, nesting, brood-rearing, and wintering (Connelly *et al.* 2004, p. 3–1; Connelly *et al.* 2011b, p. 60). Little information is available regarding minimum sagebrush patch sizes required to support populations of sage-grouse. Home range calculations range from 4 to 615 km² (1.5 to 237.5 mi²; Connelly *et al.* 2011b, p. 60), and migratory populations (which are discussed in more detail below) may use areas exceeding 2,700 km² (1,042 mi², 667,185 acres; Leonard *et al.* 2000, p. 269; Davis *et al.* 2014, p. 713). Large seasonal and annual movements emphasize the landscape nature of the species (Knick *et al.* 2003, p. 624; Connelly *et al.* 2011b, p. 60).

Federal lands encompass the majority of the sage-grouse occupied range, with MZs III, IV, and V being more than 60 percent federally owned (Table 2). Primary Federal land managers within the sage-grouse occupied range include Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), which together manage 51 percent of the sage-grouse occupied range. Other Federal owners include the National Park Service, Department of Defense (DoD), the Service, and Department of Energy (DOE). Private lands comprise approximately 39 percent of the species' occupied range, with the largest proportion of private lands occurring in MZs I and VI. Tribal lands cover approximately 3 percent, and State lands cover approximately 5 percent of the current sage-grouse occupied range.

TABLE 2.—PERCENT OF THE CURRENTLY OCCUPIED SAGE-GROUSE RANGE WITHIN MANAGEMENT ZONES, BY SURFACE MANAGING AGENCY

Management zone	BLM	USFS	Other Federal	Tribal	State	Private
I Great Plains	16	2	1	5	8	69
II Wyoming Basin	49	2	2	3	6	38
III Southern Great Basin	69	14	1	1	2	13
IV Snake River Plain	52	8	3	1	5	30
V Northern Great Basin	62	7	6	1	2	23
VI Columbia Basin	5	0	13	11	7	63
VII Colorado Plateau	39	0	0	25	11	25
Rangewide Totals	45	6	2	3	5	39

Life-History Characteristics and Seasonal Habitat Selection

During the breeding season, male sage-grouse gather together to perform courtship displays on areas called leks. These areas are often characterized by having bare soil, shortgrass-steppe, windswept ridges, exposed knolls, or other relatively open sites (Connelly *et al.* 2004, pp. 3–7). Leks are often surrounded by denser shrub-steppe

cover used for shelter and to escape predators. 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 *et al.* 1999, p. 4).

After mating, females travel to nesting areas characterized by sagebrush with an understory of native grasses and forbs that provides cover, an insect prey

base, and herbaceous forage for pre-laying and nesting females (Connelly *et al.* 2000a, p. 971; Connelly *et al.* 2004, pp. 4–18). Females typically move 1.3 to 5.1 km (0.8 to 3.2 mi) from leks to nest (Connelly *et al.* 2011b, p. 62), although the juxtaposition of habitats, disturbance, and the extent of habitat fragmentation may influence nest location distance from leks (Connelly *et al.* 2011b, p. 62 and references therein).

Sage-grouse clutch size ranges from six to nine eggs with an average of seven eggs (Connelly *et al.* 2011b, p. 62). Males do not participate in incubation of eggs or rearing chicks.

The likelihood of a female nesting in a given year averages 82 percent in the eastern portion of the range and 78 percent in the western portion of the range (Connelly *et al.* 2011b, p. 63). Nest success varies widely, and the average nest success for sage-grouse is 51 percent in non-altered habitats and 37 percent in altered habitats (Connelly *et al.* 2011b, p. 58). Re-nesting occurs only if the original nest is lost (Schroeder *et al.* 1999, p. 11) with an average re-nesting rate of 28.9 percent (Connelly *et al.* 2004, pp. 3–11). Approximately 2.25 chicks per female may be necessary to maintain stable to increasing populations (Connelly *et al.* 2000a, p. 970). Due to low chick survival and limited re-nesting, there is little evidence that populations of sage-grouse produce large annual surpluses (Connelly *et al.* 2011b, p. 67).

Females rear their broods near the nest site for the first 2 to 3 weeks following hatching (Connelly *et al.* 2004, p. 4–8). Forbs and insects are essential nutritional components for chicks (Connelly *et al.* 2004, p. 4–9). Therefore, early brood-rearing habitat must provide adequate cover adjacent to areas rich in forbs and insects to ensure chick survival during this period (Connelly *et al.* 2004, p. 4–9).

Approximately 12 weeks after hatching, sage-grouse gradually move from sagebrush uplands to more mesic (wet) areas during the late brood-rearing period (Peterson 1970, p. 149) as herbaceous vegetation dries during the hot summer (Connelly *et al.* 2000a, p. 971). Summer use areas can include sagebrush habitats as well as riparian areas, wet meadows, and *Medicago* spp. (alfalfa) fields (Schroeder *et al.* 1999, p. 4). These areas provide an abundance of forbs and insects for both females and chicks (Schroeder *et al.* 1999, p. 4; Connelly *et al.* 2000a, p. 971). Males and broodless females will also use more mesic areas in close proximity to sagebrush cover during the late summer, often arriving before females with broods (Connelly *et al.* 2004, p. 4–10).

During the winter, sage-grouse depend almost exclusively on sagebrush for both food and cover (Thacker *et al.* 2012, p. 588). Winter areas are characterized by large expanses of big sagebrush and tall shrubs, predominantly located on relatively gentle south- or west-facing slopes that provide more favorable thermal conditions and above snow forage (Doherty *et al.* 2008, p. 192; Hagen *et al.*

2011, p. 536; Dzialak *et al.* 2013, p. 16). The timing of movement to winter ranges varies considerably, but peaks around mid-October through late November (Schroeder *et al.* 1999, p. 10). Sage-grouse exhibit fidelity to winter sites (Berry and Eng 1985, p. 239); however, some birds shift winter habitat use in response to severe conditions (Smith 2010, p. 8).

The availability of winter habitat is important to sage-grouse persistence. Across the range of sage-grouse, winter habitat comprised from 6.8 to 18 percent of the total landscape used by different populations (Dzialak *et al.* 2013, p. 10; Smith *et al.* 2014, p. 12). Winter habitat availability is reduced during severe winters when heavy snowfall and increasing snow depths further decrease or even eliminate access to sagebrush. During harsh winters, birds become even more concentrated in the few remaining areas of exposed sagebrush (Hupp and Braun 1989, p. 828). As a result, the loss of winter habitats used in harsh winter conditions can have impacts disproportionate to their makeup on the landscape (Swenson *et al.* 1987, p. 128). During the average winter, sage-grouse typically experience low over-winter mortality, estimated at 2 to 4 percent, but could be as high as 15 percent (Connelly *et al.* 2000b, p. 229; Wik 2002, p. 40; Sika 2006, p. 90; Bruce *et al.* 2011, p. 421). During notably severe winters, however, higher mortality rates have been documented (Moynahan *et al.* 2006, p. 1,536; Anthony and Willis 2008, p. 544). In some cases, the locations of these wintering habitats are known, but there is not a consistent data set of this information across the range of the species.

The distances sage-grouse move between seasonal habitats are highly variable across the occupied range (Connelly *et al.* 1988, pp. 119–121). Sage-grouse may migrate between two or three distinct seasonal ranges, or not migrate at all. Non-migratory sage-grouse have seasonal movements of less than 10 km (6.2 mi; Connelly *et al.* 2000a, pp. 968–969), while birds in migratory populations (which are discussed in detail below) may travel well over 100 km (62 mi) (Tack *et al.* 2012, p. 65).

Despite the documentation of extensive seasonal movements in this species (Fedy *et al.* 2012, p. 1066; Tack *et al.* 2012, p. 65; Davis *et al.* 2014, p. 716), the dispersal abilities of sage-grouse are assumed to be low. One study estimated median natal dispersal distances of 8.8 km (5.5 mi) for females and 7.4 km (4.6 mi) for males (Dunn and Braun 1985, p. 622); another study

estimated natal dispersal distances of 3.8 km (2.4 mi) for males and 2.7 km (1.7 mi) for females (Thompson 2012, p. 193). Small-scale differences in habitat are not likely to influence sage-grouse dispersal at landscape scales. Rather, the arrangement of habitat quality was more influential on sage-grouse dispersal (Row *et al.* 2015, pp. 1964–1965) than the presence of unsuitable habitats.

Sage-Grouse Connectivity and Landscape Genetics

Habitat-based measures show that maintaining population connectivity is essential for sage-grouse population persistence. Connectivity between sage-grouse populations declined from 1965 to 2007 due to the loss of leks that historically provided connectivity and lower numbers of birds left to disperse (Knick and Hanser 2011, p. 395). As connectivity declined, isolated leks, those leks with low connectivity, were lost first (Knick and Hanser 2011, p. 395), with small decreases in lek connectivity resulting in large increases in probability of lek abandonment (Knick and Hanser 2011, p. 403). This suggests that as connectivity between leks at the edge of the range is lost, the probability these leks will persist is likely to decline (Knick and Hanser 2011, p. 396).

Maintaining sagebrush distribution is the most important factor in maintaining sage-grouse population connectivity (Knick and Hanser 2011, p. 404). Habitat loss decreases the connectivity between seasonal habitats, increasing the potential that a population may be lost (Doherty *et al.* 2008, p. 194). Loss of connectivity can increase population isolation (Knick and Hanser 2011, p. 402 and references therein) and, therefore, lead to a higher probability of loss of genetic diversity and extirpation due to stochastic events. Habitat fragmentation, habitat loss, and altered habitat disturbance regimes (e.g., fire frequency), rather than stochastic events, were identified as the likely primary influences on sage-grouse population trend (Knick and Hanser 2011, p. 403). Large areas of unsuitable habitat, such as mountain ranges, have been found to segregate sage-grouse and restrict genetic mixing (Row *et al.* 2015, p. 1965; Crist *et al.* 2015, p. 16).

Studies of genetic information among populations have revealed patterns of sage-grouse movement and isolation across the landscape. A genetic analysis revealed that the movement of individuals tends to be among neighboring populations and is unlikely to occur over great distances (Oyler-McCance *et al.* 2005, entire; Oyler-

McCance and Quinn 2011, p. 91). Genetic analysis further indicated that sage-grouse in fragmented areas on the periphery of the range in Colorado, Utah, and Washington were not extensively moving between or breeding with other nearby populations (Oyler-McCance and Quinn 2011, p. 92).

A recent analysis shows that core population centers and the habitat between those centers are important for maintaining connectivity (Crist *et al.* 2015, p. 18). This study examined the connectivity of populations across the range of sage-grouse and found that 20 of 188 priority areas contributed the most to range-wide connectivity (Crist *et al.* 2015, p. 11). These results affirm the conclusion by Knick and Hanser (2011) that relatively large populations in southwestern Wyoming, and straddling the borders between Idaho, Nevada, Oregon, and Utah, were the most highly connected areas within the range of sage-grouse (Crist *et al.* 2015, p. 11) and, therefore, essential to species persistence. However, other priority areas likely contribute to maintaining connections by serving as habitat pathways between and within priority areas, or by maintaining local connectivity in an area (Crist *et al.* 2015, p. 11). Active management will be essential to maintain connectivity between priority areas and to ensure long-term species persistence (Crist *et al.* 2015, p. 16).

Population Abundance and Trends

Estimating population sizes and trends of sage-grouse is difficult due to the large, 11-State range of the species, incomplete sampling, and challenges counting females (Garton *et al.* 2011, pp. 295–296). As a result, sage-grouse population sizes are estimated from counts of male sage-grouse on leks during the breeding season (Garton *et al.* 2011, p. 296). While lek surveys do not provide an accurate estimate of total population, the annual counts of males on leks provide the best indicator of sage-grouse trends (Stiver *et al.* 2006, p. 3–2; WAFWA 2015, p. 2). The relationship of lek survey data to actual population size is unknown (WAFWA 2008, p. 3). When counts are done according to a standardized protocol, these counts can be a useful metric of long-term population trends (Connelly *et al.* 2004, p. 6–6; Johnson and Rowland 2007, p. 20; WAFWA 2008, p. 3, Blomberg *et al.* 2013a, p. 1590, Gregory and Beck 2015, p. 7).

Recent work by MacKenzie and Evans (2015) has indicated the current sampling framework across the range of sage grouse which makes interpreting trend and population data difficult.

However, their analysis has indicated that there has been a long-term decline in the number of males per lek which is consistent with other recent trend analyses (Garton *et al.* 2015 and WAFWA 2015). The analysis goes on to indicate that over time and in virtually all management zones the probability of extinction of leks has been relatively stable. Additionally, the probability of recolonization of leks had been decreasing until the mid-1990s but that probability has stabilized to the current point in time. The conclusion of this work indicates that over the last 15 years the rate of extinction of leks and the probability of recolonization of leks has been remarkably stable.

Sage-grouse populations increase and decrease over time, making assessments of population size and short-term trends difficult. The length of these population cycles appears to vary across the range, but most populations have an 8- to 10-year population cycle (Rich 1985, pp. 5–8; Fedy and Doherty 2011, pp. 919–922). The drivers of the cycle are unknown, but may be caused by the amount and timing of precipitation (Rich 1985, p. 14; Fedy and Doherty 2011, p. 921).

In the 2010 finding, we concluded that rangewide, sage-grouse were experiencing a long-term decline in abundance (75 FR 13910, March 23, 2010, pp. 13920–13923). We noted the difficulty in determining the actual rate and magnitude of the declines, but noted that three independent studies had concluded that declines were occurring (Connelly *et al.* 2004, p. 6–71; WAFWA 2008, p. 12; Garton *et al.* 2011, pp. 307–359). In particular, the 2008 WAFWA analysis of lek-count data collected from 1965 to 2007 estimated a long-term decline of 3.1 percent per year during 1965 to 2007 (WAFWA 2008, p. 12). That assessment also found the rate of decline slowed from 1985 to 2007 to an average annual decline of 1.4 percent (Connelly *et al.* 2004, p. 6–71; WAFWA 2008, p. 58). A 2011 study (Garton *et al.* 2011, entire) assessed declining trends similar to the Connelly *et al.* (2004) and WAFWA (2008) analyses. Garton *et al.* (2011, p. 374) also predicted future population declines.

Both Garton *et al.* (2011) and WAFWA (2008) have updated their lek trend analyses to include additional data from 2013 through 2015 (Garton *et al.*, 2015; WAFWA 2015). Garton *et al.* (2015) examined the trend in the years 1965–2013 and reported that the rate of decline has decreased for MZs I, II, and VI when compared to their previous analyses (1965–2007). There was insufficient data from the other MZs to do a similar comparison, but the

updated analyses suggest that MZs I–VI have all experienced a long-term abundance decline (Garton *et al.* 2015). Insufficient data in MZ VII prevented a trend analysis in both Garton *et al.* 2011 and Garton *et al.* 2015. The updated WAFWA analyses reported declines in all MZs since 1965, with the exception of MZ III, where a slight increase was noted. In MZ III, the increasing trend was not uniform across the management zone, as peripheral populations are continuing to decline. The rates of decline have increased in MZs I and V in recent years (WAFWA 2015, pp. 17, 26), while the overall rate of decline across the species' range has slowed in recent years. In five MZs, most of the population estimates are primarily trending down at the periphery of the species' range (WAFWA 2015, p. 1), indicating that the denser, interior population areas are more insulated from declining trends. The number of males counted on leks range-wide in 2015 has increased 63 percent since the most recent population trough in 2013 (WAFWA 2015, p. 1).

Analysis of trend data is sensitive to the start and stop dates of the period analyzed due to the cyclic nature of sage-grouse populations. Garton *et al.* (2015) examined data only through 2013, at which time most populations were experiencing a cyclic decline. Lek counts increased in nearly all locations in 2014 and 2015 (WAFWA 2015, p. 1). However, both updated trend analyses are consistent with previous studies showing a long-term rangewide decline of sage-grouse has occurred since 1965 (75 FR 13910, March 23, 2010, p. 13922). The rate of decline lessened during 1985 to 2007, with an average annual decrease of 1.4 percent (Connelly *et al.* 2004, p. 6–71; WAFWA 2008, p. 58). The updated WAFWA analysis reported that, rangewide, rates of declines were less for the past 10 years (2005–2015) than the long-term decline rates (1965–2015) (WAFWA 2015, pp. 10–11).

Abundance and Distribution Models

We developed two models for use in this status assessment: (1) Population Index Model and (2) Occupied Breeding Habitat Distribution Model. These models were developed to evaluate risk to sage-grouse populations and benefits of conservation actions designed to ameliorate those risks. Our models, built with collaboration from WAFWA, are used as metrics for risk analyses and general Geographic Information System (GIS) queries. Full discussions of how the models were created and used are below.

In the 2010 finding, we assessed impacts to sage-grouse and their habitat based on the portion of occupied range where a disturbance occurred. This approach was based on the best available GIS data at that time, but may have overestimated some impacts, because all lands within the occupied range were assumed to provide habitat. We used this analysis in 2010 because current information available to us about the occupied sage-grouse range was developed at a very broad scale and included large areas of non-habitat. The Occupied Breeding Habitat Distribution Model was developed to more accurately portray the breeding areas that are important to sage-grouse. The

Occupied Breeding Habitat Distribution Model uses sage-grouse lek data as a proxy for landscapes important to breeding sage-grouse, because leks are central to the breeding ecology of sage-grouse. We developed a model that statistically links habitat characteristics around known lek locations to habitat features such as the amount of sagebrush or tree cover within a 6.4-km (4-mi) radius. The output of the model is a prediction of the probability that each 120-m² (393-ft²) area within a sage-grouse management zone provides habitat to support a breeding population of sage-grouse (Figure 2). These spatial predictions of occupied breeding habitat are then able to be linked with spatially

explicit risk models to better understand how potential impacts to sage-grouse overlap with breeding habitat. A consistent data set for other important seasonal habitat is not available, so while the model may not specifically include other seasonal habitats, it is the best available information for predicting impacts to the species consistently across the range. This model was the primary tool used to assess how the location and scope of potential threats may impact the species currently and into the future (see Summary of Information Pertaining to the Five Factors, below).

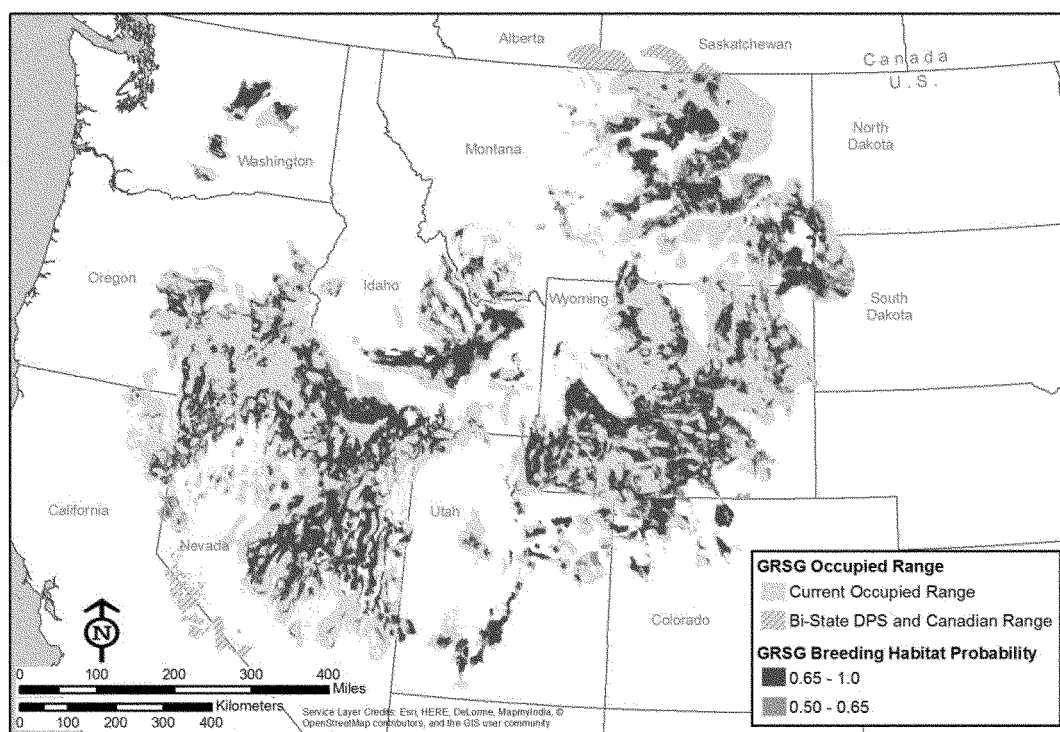


Figure 2. Modeled distribution of occupied sage-grouse breeding habitat.

We developed the Population Index Model to spatially identify Core Areas on the landscape that contain population centers of sage-grouse (Figure 3). We did this because sage-grouse populations are highly clumped, and relatively small areas can contain a disproportionate amount of sage-grouse. To create our Population Index Model, we used lek data to identify hotspots using standard statistical methods. We used the Occupied Breeding Habitat Distribution Model to develop our final

Population Index Model. The model results are grids that represent an index to the relative amount of breeding birds for each 120 m² (393 ft²) within management zones. Similar to our Occupied Breeding Habitat Distribution Model, our Population Index Model can be linked with other spatially explicit risk models or conservation actions to understand spatial overlap with sage-grouse populations. We would expect high levels of future impacts to occur if current sage-grouse population centers

overlap areas with high probabilities of future land use activities. Conversely, we would expect future impacts to be low, if current sage-grouse population centers do not overlap areas with high probabilities of future land use activities. The Population Index Model was used to assess potential impacts from Nonrenewable Energy and Agricultural Conversion (see Summary of Information Pertaining to the Five Factors, below).

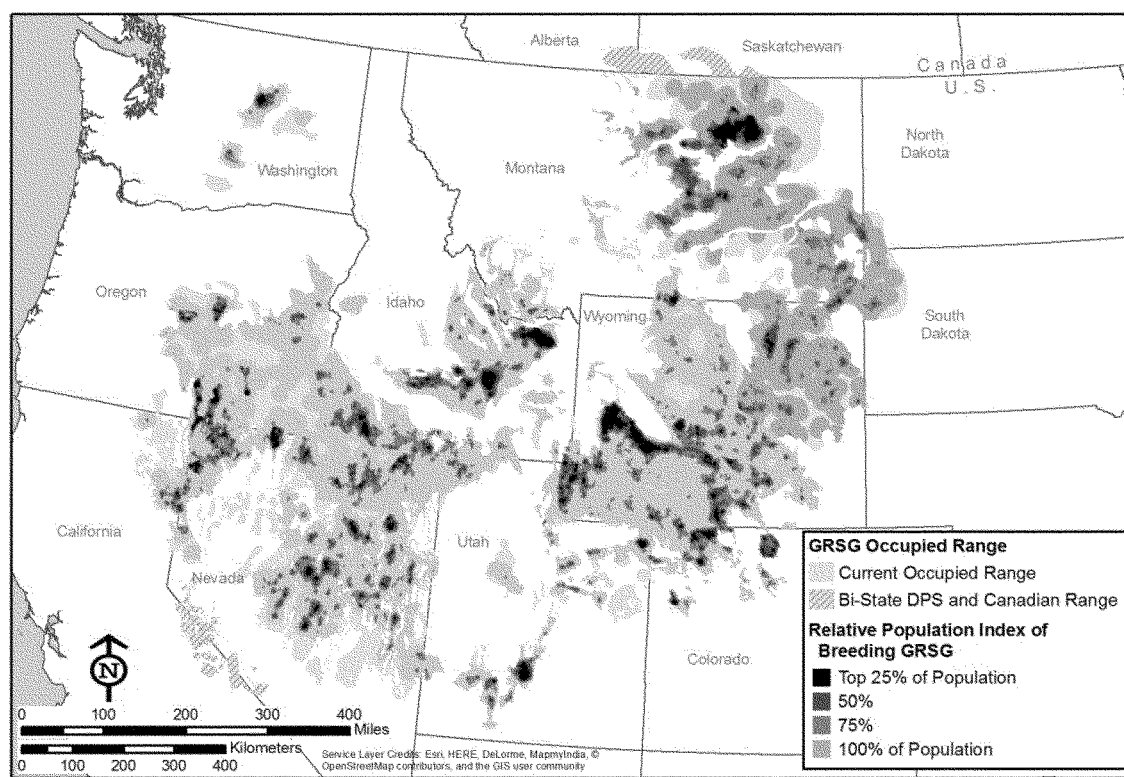


Figure 3. Population Index of breeding sage-grouse. Darker areas illustrate the highest densities of breeding sage-grouse.

Unfortunately we did not receive population or habitat data from the two Canadian provinces within the species range and, therefore, could not include these areas in our modeling efforts. The abundance of sage-grouse is low in both Canadian provinces (Alberta Environment and Sustainable Resource Development 2013, p. 8). Due to the low number of birds remaining in Canada, coupled with the limited amount of existing habitat in Canada, we do not anticipate that the exclusion of these areas affects the outcome of this range-wide model.

Population Abundance and Trends Summary

Estimating sage-grouse abundance is difficult due to changes in seasonal distributions, the cryptic coloration, and behavior of females and their offspring, and the lack of a systematic survey protocol and sampling scheme across the range of the species (WAFWA 2015, pp. 44–46). Lek counts do not provide a precise estimate of population size; however, these counts provide a useful index to the population size that detects population changes over time (Johnson and Rowland 2007, p. 20). Although an imperfect measure, peak counts of males

on leks are the best available information about the number of sage-grouse in an area (Johnson and Rowland 2007, p. 20) and are the accepted method to assess sage-grouse abundance trends (WAFWA 2015, p. 2; Garton *et al.* 2015, entire).

Information reviewed for the 2010 finding indicated a long-term decline of sage-grouse abundance since lek count surveys were initiated in the 1960s. New information since 2010 confirms that long-term declines have occurred from 1965 to 2014 across all MZs where sufficient data exist to make inferences (Garton *et al.* 2011, 2015, entire; WAFWA 2008, 2015, entire). While models agree about downward abundance trends since the 1960s, the actual rates of decline differ among MZs and studies. Our confidence in these rates of decline is limited due to a variety of statistical sampling issues associated with counting peak males on leks (see Johnson and Rowland 2007, pp. 17–20), as well as the cyclic nature of sage-grouse populations. Regardless, the best information available indicates that the rangewide population of sage-grouse is declining.

Changes Since the 2010 Finding

The landscape of the western United States has undergone significant changes since the onset of European settlement, including the dramatic alteration of key sage-grouse habitats. Despite human population growth and accompanying development, sagebrush habitats persist on millions of acres across 11 States in the west. Sage-grouse numbers have declined since pre-European settlement, but sage-grouse distribution (Figure 3) has remained relatively unchanged since our first status review in 2005 (70 FR 2244, January 12, 2005). In other words, despite historical and current population declines, sage-grouse are still distributed throughout their range.

The 2005 status review found that, despite a growing number of serious threats, large numbers of birds continued to be distributed across the range (70 FR 2244, January 12, 2005, p. 2279). At that time, 92 percent of the known active leks occurred in 8 of 41 populations; 5 of those populations were so large and expansive that they were subdivided into 24 subpopulations to facilitate analysis (Connelly *et al.* 2004, p. 13–4). We subsequently

determined that the species did not warrant listing, but emphasized the need for ongoing sage-grouse and sagebrush conservation efforts to moderate the rate and extent of habitat loss for the species in the future (70 FR 2244, January 12, 2005, p. 2279). Following the 2005 finding, the Western Association of Fish and Wildlife Agencies (WAFWA) released a rangewide conservation strategy for sage-grouse, which established an overarching goal of maintaining and enhancing populations and distribution of sage-grouse “by protecting and improving sagebrush habitats and ecosystems that sustain these populations” (Stiver *et al.* 2006, p. i). The WAFWA conservation strategy included actions such as increasing capabilities in habitat restoration, habitat conservation, research, and improving regulatory mechanisms. The WAFWA conservation strategy also identified quantifiable conservation goals (Stiver *et al.* 2006, pp. 1–8).

In 2010, we conducted a second status review for sage-grouse (75 FR 13910, March 23, 2010, entire). Although the species remained widely distributed across the landscape, we found it warranted for listing under the Act due to continued loss and fragmentation of habitat exacerbated by a lack of adequate regulatory mechanisms to address habitat loss. The primary drivers of habitat fragmentation identified were renewable and nonrenewable energy development in prime sage-grouse habitats, continued expansion of supporting infrastructure, the spread of invasive annual grasses and associated changes in wildfire regimes, and the lack of adequate regulatory structures to address these impacts. In addition, trend data showed a continuation of population declines identified in 2005. Without regulatory mechanisms in place to control continued habitat loss and fragmentation, we determined the sage-grouse was at risk of extinction in the foreseeable future and, therefore, warranted protection under the Act. However, due to the workload of managing higher priority species, we designated the sage-grouse a “candidate” species, assigning it a listing priority number of 8 to indicate the moderate magnitude of imminent threats. Species with lower listing priority numbers are addressed before those with higher priority numbers.

We also concluded that the extinction risk was not imminent. As noted in the 2010 finding when determining its listing priority status: “We consider the threats that the sage-grouse faces to be moderate in magnitude because the

threats do not occur everywhere across the range . . . 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. 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. We believe the ability of these population centers to maintain high densities in the presence of several threat factors is an indication that the magnitude of threats is moderate overall” (75 FR 13910, March 23, 2010, pp. 14008–14009). The 2010 finding has galvanized a rangewide conservation effort that includes new management plans developed by Federal and State agencies to establish regulatory mechanisms adequate to address identified threats.

New Scientific Information

Since 2010, the already voluminous scientific literature on sage-grouse has been augmented by extensive, newly published research on sage-grouse biology, sagebrush habitat, and impacts to both. We collected this information for our status review through a direct request to our conservation partners and through general literature reviews. We have used this data to inform our understanding of the current status of sage-grouse and how its status has changed since 2010. All relevant published resources, as well as unpublished data, were considered in our status review. Not all of this new information is cited in this document, as it either did not provide additional information on impacts to the species or response to conservation, or was repetitive of other studies already cited in our assessment. In addition, we considered all new scientific information presented to us in response to our data call for this status review, information received during our previous annual Candidate Notice of Review data calls, data entered into the Conservation Efforts Database (CED), and recently published articles. Several articles providing new information since 2010 are summarized below.

New population trend analyses incorporating up to 7 years of additional data have been completed (Garton *et al.* 2015, WAFWA 2015) and provide greater insight into population cycling and species status. We recognize the difficulty in detecting short-term trends for a species with decadal cycles; longer term trends show a small, but detectable decline since the 1960s. For more information, see Population Abundance and Trends section, above.

An evolving appreciation of mechanisms that affect sage-grouse and sagebrush habitats assisted in the development of new applied science for conservation efforts, including wildfire and invasive management (Chambers *et al.* 2014a, entire), conifer removal (Miller *et al.* 2014, entire), and energy development (Patricelli *et al.* 2013, entire; Drouin 2014). These important, applied conservation tools have been essential in assessing species and habitat persistence and aiding the minimization of impacts to the species and its habitat. Specifically, the resilience and resistance matrix developed by WAFWA and published in 2014 provided a new applied science framework to better understand the likelihood of habitats to ability to resist *Bromus tectorum* (cheatgrass) invasion and recover following wildfire (Chambers *et al.* 2014a, entire). Conservation actions designed to minimize risk have also been furthered by application of new scientific information and tools. For example, the Natural Resources Conservation Service (NRCS) Sage Grouse Initiative (SGI) has incorporated new scientific research on impacts to guide the development of grazing plans, conifer removal, fence marking, and other conservation actions on private lands to benefit sage-grouse and its habitat (NRCS 2015a, entire).

The U.S. Geological Survey (USGS) compiled the findings of published scientific literature evaluating the influence of human activities and infrastructure on sage-grouse (Manier *et al.* 2013, entire). An additional report (Manier *et al.* 2014, entire) provided information on biologically relevant buffer distances around sage-grouse habitats to help reduce habitat avoidance caused by human disturbance and infrastructure. The revised and amended BLM and USFS Federal Plans adopted and incorporated the recommendations in the Manier *et al.* report (2014), as discussed below in the *Sagebrush Landscape Conservation Planning* section. These new analyses and tools, plus all the other information we considered, are addressed throughout this document and our administrative record.

Many partners across the range of the sage-grouse are working to conserve sage-grouse habitat. In 2014, we developed the CED, a spatially explicit, online platform for efficiently collecting data from conservation partners about their sage-grouse conservation efforts. More than 100 partners across the range of the species entered information about 6,200 projects into the CED. Of these projects, 44 percent (2,700 projects) cover more than 1.2 million ha (3

million ac) and were deemed complete and effective at addressing the primary threats identified in the Conservation Objectives Team (COT) Report (See *Sagebrush Landscape Conservation Planning* section below for a description of this report) (USFWS 2013, entire). Examples of these projects include conservation easements, conifer removal, and treatments to remove or reduce invasive weeds and annual grasses. The other 3,500 projects (56 percent), as reported in the CED, were of more limited scope and scale; and some did not contain enough information for us to reliably assess their effectiveness or implementation even on a local scale. Thus, while these efforts will continue to be helpful in conserving sage-grouse and its habitat now and into the future, we took a conservative approach and did not rely on these efforts in this finding.

Sagebrush Landscape Conservation Planning

The expansive range of sagebrush habitat has compelled managers to take a landscape approach to conservation efforts, with sage-grouse assuming the focus of these efforts for the past decade. In 2006, WAFWA developed a comprehensive strategy for conserving habitat for the benefit of this species. The strategy outlined the need to develop partnerships among local, State, Provincial, Tribal, and Federal agencies, non-governmental organizations, and private landowners to design and implement cooperative actions to support robust populations of sage-grouse and the landscapes and habitats upon which they depend (Stiver *et al.* 2006, p. i). This was the first of several

documents to outline the conservation needs of the species and its habitat.

In 2011, the BLM assembled a National Technical Team (NTT) of sage-grouse and sagebrush habitat experts to identify the best available science-based information to guide the development of Federal land management plans for the greater sage-grouse (BLM 2011a, entire). The NTT Report proposed conservation measures based on habitat requirements and other life-history aspects of the species. The NTT Report also described the scientific basis for some of the conservation measures proposed within each of the Federal land planning program areas. These conservation measures included actions such as development of sage-grouse specific habitat objectives relative to domestic livestock management, criteria to inform leasing decisions in sage-grouse habitats, and monitoring of sage-grouse and their habitats (BLM 2011a, entire).

Conservation Objectives Team Report

In 2013, we, together with the States, chartered a team of sage-grouse and habitat experts to identify the conservation goals for the species. The Conservation Objectives Team (COT) Report was a ground-breaking, collaborative approach to develop rangewide conservation objectives for the sage-grouse, both to inform this finding and to inform the collective conservation efforts of the many partners working to conserve the species (USFWS 2013, entire). The highest level objective identified in the COT Report is minimization of habitat threats to the species so as to meet the objective of the 2006 WAFWA Greater Sage-grouse Comprehensive Conservation Strategy: Reversing negative population trends

and achieving a neutral or positive population trend.

The conservation principles of redundancy, representation, and resilience guided the development of the conservation goals, priority areas for conservation, conservation objectives, and measures included in the COT Report (USFWS 2013, p. 12). The COT Report found that satisfying these conservation principles for sage-grouse meant having multiple, geographically distributed populations across the species' range (USFWS 2013, p. 12). The COT Report further stated, "By conserving well distributed sage-grouse populations across geographic and ecological gradients, species adaptive traits can be preserved, and populations can be maintained at levels that make sage-grouse more resilient in the face of catastrophes or environmental change" (USFWS 2013, pp. 12–13).

In particular, the COT Report, using State information, identified the habitats most critical for the conservation of the species, which were described as Priority Areas for Conservation (PAC, Figure 4) (USFWS 2013, entire). Priority Areas for Conservation are "... the most important areas needed for maintaining sage-grouse representation, redundancy and resilience across the landscape" (USFWS 2013, p. 13). Identifying PACs ensured that conservation partners direct their efforts to the highest priority habitats. Since the completion of the COT Report, improved habitat mapping and further discussions with the States has resulted in changes to the PAC map in Nevada, Montana, and Utah. For the purposes of this document, we refer to those areas that were added as Important Priority Areas.

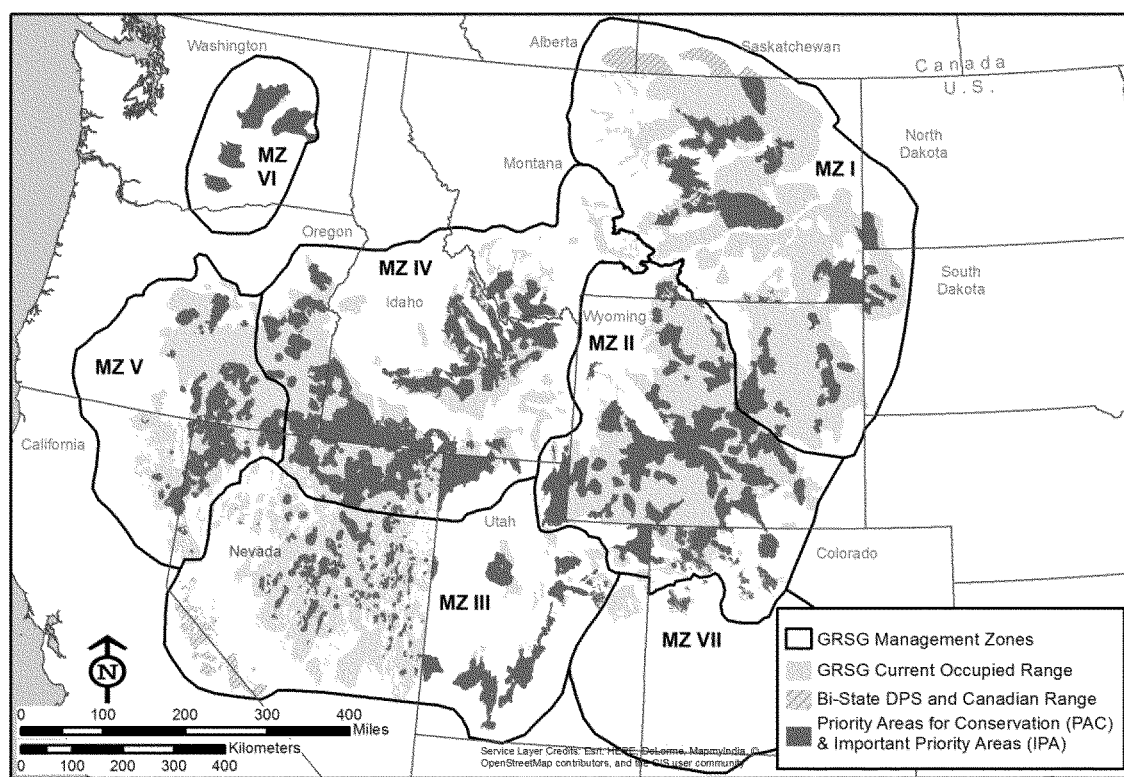


Figure 4 — Sage-grouse Priority Areas for Conservation (PACs) including modifications to incorporate Important Priority Areas.

Federal and State Planning Efforts

As discussed above, in 2010 we concluded that sage-grouse populations were well-distributed across the occupied range, but without the habitat protections provided by adequate regulatory mechanisms, populations were likely to become smaller, fewer, and separated by fragmentation, placing the species at risk of extinction in the future (75 FR 13910, March 23, 2010, p. 13986). Because the 2010 finding indicated that adequate regulatory protections could prevent the need to list sage-grouse, numerous Federal and State agencies undertook planning efforts to improve regulatory mechanisms and conserve sage-grouse into the future. A centerpiece of all of the conservation efforts is the protection of the most important habitats for sage-grouse that are necessary to maintain redundant, representative, and resilient populations (*i.e.*, PACs). These important habitats for conservation were identified in conservation planning efforts (Figure 4) as the places where large, undisturbed expanses of sagebrush habitat were supporting leks and the highest density of breeding birds (USFWS 2013, p. 15). These

important habitats for conservation also correspond with the population centers referred to in the 2010 finding. The maintenance of these areas and the birds that use them would provide a network of resilient and connected populations across the landscape that would provide for long-term species viability.

Using the recommendations provided in the COT Report (USFWS 2013, entire) and the NTT Report (BLM 2011a, entire), the Federal agencies developed conservation strategies to protect the important habitats for conservation. These strategies focus not only on the most important habitats for conservation, but also on conservation objectives to address the greatest threats to the species, as identified in the COT Report (USFWS 2013, pp. 31–52).

While 10 of the 11 States in the range of the sage-grouse updated their State plans to conserve the species by incorporating new information, which is a testimony to their concern and commitment to protect the grouse and its habitats, not all of these plans have been implemented or are regulatory in scope. We will specifically highlight the regulatory conservation actions mandated by the State plans in Wyoming, Montana, and Oregon

because they provide the greatest degree of regulatory certainty in addressing potential threats on State and private lands not under the jurisdiction of Federal plans. We appreciate the work that each State has completed, but not all planning efforts met a level of certainty for implementation and effectiveness. We acknowledge that sage-grouse conservation plans have been developed for Colorado, Idaho, Nevada, North Dakota, South Dakota, and Utah that could provide long-term benefits to sage-grouse. For example, the Idaho Plan includes the following measures: Technical and monetary assistance for fire rehabilitation and restoration efforts in areas where wildfire has impacted both State and Federal lands; assistance with implementation of Federal landscape fuels management projects on lands adjacent to Federal lands (such as the extension of fuel break projects onto State lands); development, coordination, and training for Rangeland Fire Protection Associations (RFPAs); and adoption of a general strategy to reduce Idaho Plan ownership of key habitat within Core Habitat Areas through land exchanges with BLM. We encourage all of the States to fully implement their

sage-grouse plans as they will further contribute to the long-term conservation of the sage-grouse.

In this section, we provide a summary of the various conservation programs and efforts put in place at the Federal, State, and local levels that are most important to our analysis of regulatory mechanisms in addressing potential threats to sage-grouse: The Federal plans, State plans in Wyoming, Montana, and Oregon; and the voluntary conservation efforts on private lands provided by SGI and Candidate Conservation Agreements with Assurances (CCAAs). The Wyoming Plan is analyzed based on its 7-year track record of implementation, and SGI is also analyzed based on its accomplishments to date.

The sections below provide an analysis of the implementation and effectiveness of the Federal plans, Montana program, Oregon efforts, and Secretarial Order 3336 pursuant to our Policy for Evaluation of Conservation Efforts (PECE) (68 FR 15100, March 28, 2003). The purpose of PECE is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the effectiveness of the conservation efforts to contribute to make listing a species unnecessary. In this finding, we evaluated the certainty that the Federal Plans, and the Montana and Oregon Plans will be implemented into the future and the certainty that they will be effective in addressing threats, based on the best available science and professional recommendations provided in the COT and other scientific literature and reports. We also evaluated the Secretarial Order using PECE, which is discussed below in the *Wildfire and Invasive Plants* section.

The Federal plans and three State Plans provide protective, regulatory mechanisms for the majority of the most important habitat for sage-grouse. The Federal Plans divide habitat into two habitat management area categories—Priority Habitat Management Areas (PHMAs) and General Habitat Management Areas (GHMAs). Priority Habitat Management Areas largely correspond to PACs (USFWS 2013, p. 13) and State-identified Core Areas (BLM and USFS 2015, entire). The PHMAs are the highest priority for conservation because they contain large, undisturbed expanses of breeding

habitat and the highest densities of sage-grouse. The most restrictive conservation measures, such as excluding certain activities and requiring avoidance and minimization measures, apply to 64 percent of the species' breeding habitat designated as PHMAs (USFWS 2015a). The Federal and three State plans protect an additional 26 percent of breeding habitat in GHMAs (USFWS 2015a) that contain fewer leks and sage-grouse than PHMAs, but provide habitat and connectivity between populations. As discussed above in Sage-Grouse Connectivity and Landscape Genetics, connectivity between core population areas has been identified as an important strategy to ensure long-term sage-grouse persistence (Crist *et al.* 2015, p. 17). The required conservation measures in GHMAs are less restrictive than in PHMAs and provide greater land-use flexibility, but still deliver measures that minimize potential impacts. To assess the effectiveness of the Federal Plan, we completed a geospatial analysis of how much the areas designated as PHMAs and GHMAs overlapped with areas modeled as breeding habitat. Collectively, the regulatory mechanisms provided by the Federal plans and three State plans reduce potential impacts to approximately 90 percent of the sage-grouse breeding habitat rangewide (USFWS 2015a). Later in this document, we will discuss how all of these conservation efforts are expected to address adverse effects from potential threats, and lastly, we will assess the adequacy of these efforts as regulatory mechanisms (See *Regulatory Mechanisms*, below).

Federal Plans

The BLM and USFS sage-grouse planning effort was unprecedented in scope and scale, and represents a significant shift from management focused within administrative boundaries to managing at a landscape scale. This effort also represented a concerted effort by the agencies to balance their multiple-use mandates with conservation objectives. The BLM and USFS completed this effort by issuing amendments or revisions to 98 land management plans governing over half of the occupied range. These land management plans are the principal regulatory documents for the activities allowed on BLM and USFS lands, are grounded in the agencies' organic statutes (*e.g.*, Federal Land Management and Policy Act, National Forest Management Act), and are at the core of the agencies' National Sage-Grouse Conservation Strategy outlined in their

plan revisions and amendments. We were a key partner working closely with BLM and USFS throughout the process to develop and complete the Federal Plans. In this section, we will discuss the Federal plans across the 11-State range of sage-grouse, except for the plans in Wyoming. For Wyoming, because the Federal and State plans work together to conserve sage-grouse on all lands, they will be discussed together in a separate section below.

The BLM and USFS have broad authorities to manage the lands and resources within their jurisdiction. 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, which direct management at a local level. Resource Management Plans are the basis for all actions and authorizations involving BLM-administered lands and resources. 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). The NFMA specifies that the USFS must have a Land and Resource Management Plan (16 U.S.C. 1600) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. For the purposes of this document, Resource Management Plans and Land and Resource Management Plans are collectively referred to as Federal Plans.

Under FLPMA, the BLM is required to establish Resource Management Plans for the management and use of public lands in accordance with the principles of multiple-use and sustained-yield. Similarly, pursuant to the NFMA, the USFS is required to establish plans for the management and use of National Forest System lands in accordance with the principles of multiple-use and sustained-yield. The Federal Plans are the basis for on-the-ground actions that the BLM and USFS undertake and authorize. Decisions in Federal Plans guide future land management actions and subsequent site-specific implementation decisions. Land use plan decisions establish goals and objectives for resource management (desired outcomes) and the measures needed to achieve these goals and objectives (land use allocations for the BLM; Standards and Guidelines for the USFS).

These Federal Plans are regulatory mechanisms. The Federal Plans establish goals and objectives and measures to address the potential

threats to sage-grouse and sage-grouse habitat. The Federal Plans establish mandatory constraints and were established after notice and comment and review under the National Environmental Policy Act (NEPA). Therefore, changes to the Federal Plans would require additional notice and comment and further analysis under NEPA. All future management authorizations and actions undertaken within the planning area must conform to the Federal Plans, thereby providing reasonable certainty that the plans will be implemented. The BLM has already made substantial financial commitments to ensure success of actions identified in their Plans, including allocating more than 10 million dollars to support fire management (DOI 2015a, entire). In 2015, BLM directed resources to fund monitoring crews, and funded activities, like data management, to ensure successful implementation of the monitoring commitments; and BLM's fiscal year 2016 budget request included an additional 8 million dollars to directly support monitoring the implementation and effectiveness of the land use plans (Lueders, BLM, 2015, pers. comm.). The Department of the Interior identified additional high-priority actions that the BLM will complete in the next 5 years including prioritizing control of invasive plants and removal of free-roaming equids from high-priority sage-grouse habitat (DOI 2015a, entire). Based upon past Federal land planning efforts, we expect these plans to be implemented for the next 20–30 years. The BLM and USFS have committed to full funding and implementation of these plans, and have included monitoring and adaptive management to ensure their long-term effectiveness.

The Federal Plans represent a paradigm shift in western Federal lands management in their focus on maintaining large expanses of the sagebrush ecosystem for the benefit of sage-grouse and many other species. Federal Plans are structured around a layered management approach that aims to preclude or minimize additional surface disturbance in priority conservation habitats, while providing some management flexibility in sage-grouse habitat areas that are less critical for conservation. In addition to these land use allocations and associated conservation actions, the Federal Plans include direction for wildfire and invasive species management, minimization measures, mitigation strategies, monitoring, and adaptive management that provide further conservation benefits for sage-grouse, as

discussed below. There are differences across 98 plans as necessary to address differing ecological conditions; however, the general regulatory framework is consistent amongst all the plans. Because of the commitments from the Federal Government to implement these plans and because of the Plans' consistency with the COT Report recommendation for measures to reduce threats, these Federal Plans provide substantial conservation benefits to sage-grouse, now and in the future.

Land Management—The Federal Plans adopt a tiered land use allocation regime that provides the greatest level of protection for the most important habitats. We, together with State agencies, helped the BLM and USFS designate priority habitat areas using the best available scientific data to identify the location of the highest quality habitat with the greatest number of breeding sage-grouse. These areas largely coincide with the PACs identified in the COT Report (USFWS 2013, p. 14) and were designated by BLM and USFS in the Federal Plans as Priority Habitat Management Areas (PHMAs) (BLM and USFS 2015, entire). Based on our recommendation to further protect sage-grouse population centers that have been identified in the scientific literature as critically important for the species and areas identified through our analysis as important for conservation, BLM and USFS designated areas as Sagebrush Focal Areas (SFA) and added protections that would further limit new, human-caused surface disturbance in SFAs. Lastly, BLM and USFS designated General Habitat Management Areas (GHMAs) that represent areas with fewer leks and lower densities of breeding birds where disturbance is limited, while providing greater flexibility for land use activities.

Federal Plans mapped approximately 27 million ha (67 million ac) of sage-grouse habitat, of which 14 million ha (35 million ac) were designated as PHMAs, 4.5 million ha (11 million ac) were designated as SFAs (and overlap generally with PHMAs), and 13 million ha (32 million ac) were designated as GHMAs (no habitat was mapped in Washington, as minimal habitat occurs on BLM and USFS land in that State). The Federal Plans authorize and establish allowable resource uses for each of these Management Area designations. The Federal Plans also establish stipulations for certain authorizations to protect resources. Land use allocations of specific activities are generally categorized as:

- **Exclusion/Closed:** Areas that are not available for development or use of particular resources; or
- **Avoidance:** Areas to be avoided but may be available for development or use of particular resources with special stipulations; or
- **Open:** Areas open to development or use of particular resources, although use may be restricted by stipulations.

Using this targeted and tiered approach to habitat conservation, the Federal Plans have a number of components for conserving sage-grouse and their habitats. The primary components of the Federal Plans are a combination of: (1) Land use allocations; (2) human-caused disturbance caps and density limitations; (3) lek buffers; (4) monitoring; (5) adaptive management; (6) mitigation; and (7) a landscape-scale strategy for addressing the threat of fire and invasive grasses.

The BLM, USFS, and other partners recognize the variability in habitat value across sage-grouse habitat, both in terms of habitat characteristics and habitat quality. Priority sage-grouse habitats are areas that have the highest conservation value to maintaining or increasing sage-grouse populations. These areas include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors (BLM 2011a, p. 7). The BLM developed a rangewide Breeding Bird Density Map to highlight locations where the highest densities of breeding males were found on leks (Doherty *et al.* 2010a). Using this information and additional State agency expertise, BLM highlighted seasonal habitats needed for the sage-grouse (BLM 2011a, p. 7). In those instances where the BLM State offices did not complete this delineation, BLM relied upon the Breeding Bird Density maps (Doherty *et al.* 2010a, entire; BLM 2011b, entire). An Instructional Memorandum (IM; IM 2012–043) established two habitat categories. Preliminary Priority Habitat forms the basis for PHMA in the final plans and represents the habitat designated to maintain distribution and sustainable sage-grouse populations (BLM 2011b, entire). The second category was Preliminary General Habitat, the precursor to GHMA, which represents areas with fewer leks and lower densities of breeding birds where disturbance is limited, while providing greater flexibility for land use activities. Many of these areas were already impacted by human activities or wildfire. General sage-grouse habitat is described as occupied (seasonal or year-round) habitat outside of priority habitat (BLM 2011a, p. 9).

The Federal Plans focus on land use management within these two management areas (Figure 5). The

discussion below analyzes PHMA and GHMA separately to distinguish the different management considerations in

the most important habitats (PHMA) and the measures provided in other occupied habitats (GHMA).

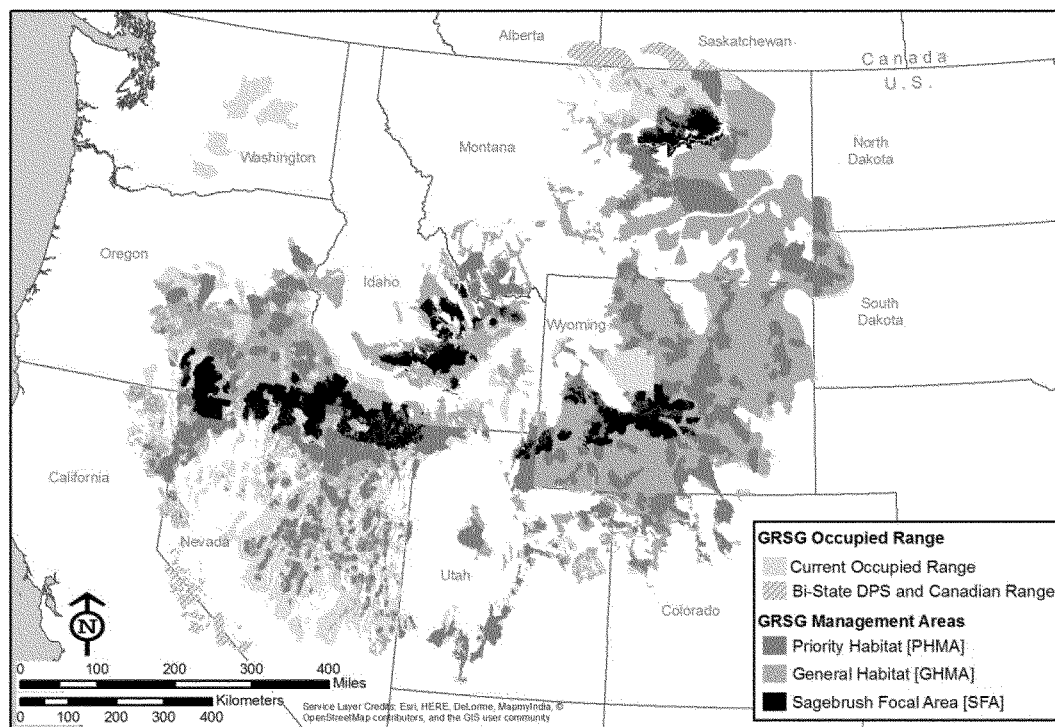


Figure 5. Federal Plan management areas and focal areas.

Priority Habitat Management Areas— The BLM and USFS evaluated the occupied habitat within their jurisdiction and designated the areas with the best habitat and the majority of the leks as PHMAs. Approximately 14 million ha (35 million ac) were designated as PHMA (Figure 5), corresponding with approximately 64 percent of breeding habitat. The PHMA consists of the most important habitat on Federal lands occupied by the species. Because this is the most important habitat on Federal lands within the range of the species, the land use allocations and other measures are more restrictive in these habitats. Below we analyze the land use allocations and other measures in the revised and amended Federal Plans to conserve and maintain these important habitat areas on Federal lands. The Federal Plans in Wyoming are discussed separately below with the Wyoming State strategy as they collectively address all lands in Wyoming in a coordinated effort.

Fluid Minerals (Including Oil, Gas, and Geothermal): Under the revised or amended Federal Plans, PHMAs are closed to new leasing or subject to leasing with No Surface Occupancy

(NSO). No surface occupancy areas are open to leasing, but human-caused surface-disturbing activities, such as development of well pads, cannot be conducted on the surface of the land. Access to oil and gas deposits would require directional drilling from outside the boundaries of the NSO areas. There will be no waivers, exceptions, or modifications, unless the following condition is met: “A lease exception may be considered where a portion of the proposed lease is determined to be in non-habitat, the area is not used by sage-grouse, nor would it have direct, indirect or cumulative effects to sage-grouse or its habitat. The determination would be made by a team of agency sage-grouse experts, including an expert from the state wildlife agency, the Service, and BLM/USFS. All exceptions must be approved by the State Director.” Further, priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of sage-grouse habitat. The implementation of these priorities will be subject to valid existing rights and any applicable law or regulation, including, but not limited to,

30 U.S.C. 226(p) and 43 CFR 3162.3–1(h).”

On existing leases, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees’ rights to drill and produce fluid mineral resources. The BLM will work with the lessee, operator, or project proponent in developing for the lease an application for a permit to drill to avoid and minimize impacts to sage-grouse or its habitat and will ensure that the best information about the sage-grouse and its habitat informs and helps to guide development of such Federal leases. See the *Nonrenewable Energy* section below for a further discussion of valid existing rights.

Fluid minerals land use allocation decisions are more complex than the typical open, avoidance, and closed/exclusion decisions. Allocative decisions within the Federal Plans for fluid minerals can be one of the following:

- **Open:** These areas are open to leasing with minor to no constraints, subject to existing laws and regulations, and formal orders, as well as any standard terms and conditions.

- Open with moderate constraints: These are areas where it has been determined that moderately restrictive lease stipulations may be required to mitigate impacts. These stipulations include timing limitations and controlled surface uses.

- Open with major constraints: These are areas where it has been determined that highly restrictive lease stipulations are required to mitigate impacts.

- No Surface Occupancy (NSO): These areas are open to leasing, but surface-disturbing activities are precluded. Access to oil and gas deposits would require directional drilling from outside the boundaries of the NSO areas. The NSO areas are also avoidance areas for Rights-of-Way (ROWs); no ROWs would be granted in NSO areas unless there are no feasible alternatives.

- Closed: These are areas where it has been determined that other land uses or resource values cannot be adequately protected with even the most restrictive lease stipulations and appropriate protection can be ensured only by closing the lands to leasing.

In 2010, there were few habitat restrictions specific for sage-grouse for fluid mineral leasing on Federal lands within the range of the species. The new land use allocations in the Federal Plans designating PHMAs as either closed or open with NSO restrictions represent an unprecedented change in the management of areas important for sage-grouse (PHMAs) with fluid mineral potential. These land use allocations are consistent with the COT Report (USFWS 2013, p. 43) recommendations to reduce and eliminate disturbance in PACs. Closing areas to development and requiring NSO with only very limited exceptions, substantially reduces the potential for future disturbance in PHMAs. Considered together, these measures avoid or minimize impacts to fluid mineral development in priority habitat for conservation; this signifies a substantial improvement in the effectiveness of regulatory mechanisms since the 2010 finding.

Non-Energy Leasable Minerals: Under the Federal Plans, PHMAs are closed to new permits for non-energy leasable minerals (e.g., phosphate, sodium, potassium), but expansion of existing operations could be considered, subject to specific conditions outlined in the plans. This provision reduces the potential impacts from non-energy leasable mineral development. The BLM leases certain solid minerals on public and other Federal lands. When mineral rights owned by the Federal Government underlie privately owned surface lands, the BLM can also lease these minerals. The restrictions in PHMAs reduce the likelihood that future development to non-energy leasable minerals will occur in these areas. Closing areas is an effective measure to reduce disturbance.

Mineral Materials: Since July 23, 1955, common varieties of sand, gravel, stone, pumice, pumicite, and cinders were removed from the General Mining Law and placed under the Materials Act of 1947, as amended. Use of salable minerals requires either a sales contract or a free-use permit (free permit for personal, noncommercial use). Under the Federal Plans, PHMAs are closed to new mineral material sale with limited exceptions for free use permits (described below) and the expansion of existing active pits, subject to compensatory mitigation and disturbance caps. Required design features (RDF) will be applied to all free use permits to minimize any potential impacts. As with other mineral development, disturbance in important habitat areas will be minimized through disturbance caps, lek buffers, and other measures. The closure of PHMAs to the sale of mineral materials effectively eliminates new impacts from this activity in PHMAs providing effective conservation in the most important habitats for the species.

Solar/Wind: The Federal Plans generally exclude new utility scale and commercial solar and wind developments from PHMAs. Limited exceptions must be based on an explicit rationale that biological impacts to sage-grouse will be avoided. Rights-of-way are required for wind testing, associated development structures, or solar energy development projects implemented on public lands. In Nevada, California, Utah, and Colorado, the Solar Energy Development Programmatic EIS (BLM 2012, entire) excludes development of utility-scale solar facilities outside the Solar Energy Zones and variance areas (variance areas are potentially available for utility-scale solar energy development, subject to additional environmental review), protecting a majority of the sage-grouse habitat in these States. Exclusion is an effective tool to reduce disturbance and minimize impacts in the most important habitats for conservation on federally managed lands because the activity will not be allowed in important habitats.

Rights-of-way: Under the Federal Plans, PHMAs are either avoidance or exclusion areas for both major and minor rights of way with limited exceptions, which must be based on an explicit rationale that biological impacts to sage-grouse are being avoided. Existing designated corridors for major transmission lines and pipelines will remain open. Federal Plans designate existing and potential ROW corridors to minimize adverse environmental impacts and the proliferation of separate ROWs (43 CFR part 2806). Any new

disturbance within these corridors would count towards the disturbance cap. All new, modified, or deleted corridors will require a land use plan amendment (including NEPA analysis and notice and comment), thereby limiting new or expanded corridors in priority habitats for conservation in the future.

Livestock Grazing: The Federal Plans have not substantively changed livestock land use allocations; however, the BLM and USFS have committed to implementation of vegetative standards and habitat objectives specifically for sage-grouse based on local ecological conditions and prioritization of monitoring in PHMAs to determine if they are meeting sage-grouse habitat objectives consistent with site-specific guidelines or ecological site descriptions. The Federal Plans call for grazing to benefit or be neutral to sage-grouse, including in times of drought. Specifically, the BLM and USFS have committed to implementing the following measures in the Federal Plans:

- The habitat assessment framework (Stiver *et al.* 2010, entire) will be used to monitor progress at achieving rangeland health objectives at multiple spatial scales.

- The BLM and USFS will prioritize the following first in SFAs followed by PHMAs outside of the SFAs: (1) The review of grazing permits/leases, in particular to determine if modification is necessary prior to renewal, and (2) the processing of grazing permits/leases. In setting workload priorities, precedence will be given to existing permits/leases in these areas not meeting Land Health Standards, with focus on those containing riparian areas, including wet meadows. The BLM may use other criteria for prioritization to respond to urgent natural resource concerns (e.g., fire) and legal obligations.

- The NEPA analysis for renewals and modifications of livestock grazing permits/leases that include lands within PHMAs will include specific management thresholds based on sage-grouse Habitat Objectives Table and Land Health Standards (43 CFR 4180.2) and defined responses that will allow the authorizing officer to make adjustments to livestock grazing without conducting additional NEPA analysis.

- Allotments within SFAs, followed by those within PHMAs, and focusing on those containing riparian areas, including wet meadows, will be prioritized for field checks to help ensure compliance with the terms and conditions of the grazing permits. Field checks could include monitoring for actual use, utilization, and use supervision.

- At the time a permittee or lessee voluntarily relinquishes a permit or lease, the BLM and USFS will consider whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives.

- Structural range improvements will be managed to benefit or not adversely affect sage-grouse by restricting locations of ranch

facilities (e.g., fences, windmills, and corrals) around leks, marking or removing fences, and controlling invasive plants.

Prioritizing the onsite monitoring to the most important areas for sage-grouse consistent with the rangewide monitoring plan, the certainty of implementation is improved because monitoring and management changes will occur in the most important areas for sage-grouse first. The vegetative objectives in the Federal Plans were developed using the best available scientific information, taking into consideration ecological differences across the range of the species. The Federal Plans specifically cite to the literature relied upon to develop these objectives. The Federal Plans commit to implementation of any habitat enhancement projects and other activities to meet these objectives. The monitoring framework is designed to add consistency to this effort and will, with adaptive management, provide additional certainty that measures will be implemented to meet habitat objectives. These changes represent a significant change from having virtually no or only general land health standards for sage-grouse to a system that establishes specific standards for sage-grouse, prioritizes the most important habitats, and targets monitoring to ensure compliance. This framework represents an effective suite of measures that reduces the impacts from improper grazing.

Sagebrush Focal Areas—Sagebrush Focal Areas (SFAs) are the areas that the Federal Plans manage as the highest priority lands in PHMAs for sage-grouse conservation (Figure 5). The BLM requested input from us about additional conservation opportunities, and we provided a memo that identified “strongholds” for sage-grouse (USFWS 2014a, entire). These “strongholds” represented areas identified in the scientific literature as essential for the persistence of the species. Some of the important characteristics of these areas include large, contiguous blocks of Federal lands; high population connectivity; and high densities of breeding birds (USFWS 2014a, entire). Our recommendations directly informed the BLM and USFS development of SFAs, important conservation units within which land managers will apply the most conservative strategies to protect sage-grouse and habitat. Sagebrush Focal Areas encompass 4.5 million ha (11 million ac) of federally administered lands in PHMAs (BLM and USFS 2015, entire). All of the measures listed above in PHMAs also apply in SFAs; in addition, the

following more restrictive measures also apply in SFAs.

Locatable Minerals: The General Mining Law of 1872, as amended, opened the public lands of the U.S. to mineral acquisition by the location and maintenance of mining claims. Mineral deposits subject to acquisition in this manner are generally referred to as locatable minerals. Locatable minerals include metallic minerals (e.g., gold, silver, lead, copper, zinc, and nickel), nonmetallic minerals (e.g., fluorspar, mica, gypsum, tantalum, heavy minerals in placer form, and gemstones), and certain uncommon variety minerals. Under the Federal Plans, the BLM and FS have recommended that lands in SFAs be withdrawn from location and entry under the Mining Law, subject to valid existing rights. (BLM and USFS 2015). Under FLPMA, the first step of the withdrawal process implementing that recommendation is for the Secretary (or Deputy or Assistant Secretary) to “propose” a withdrawal. 43 U.S.C. 1714(b). Upon publication of such a proposal in the **Federal Register**, the lands are immediately segregated from location and entry under the Mining Law as specified in the notice for a period of two years. That segregation temporarily has essentially the same effect as a withdrawal; that is, it closes the lands to location and entry under the Mining Law, subject to valid existing rights. Although the Secretary is free to make a final decision prior to or after its expiration, the segregation is intended to allow time for public input and allow time for her to make a final decision as to whether to withdraw the lands. The Assistant Secretary took this first step and proposed withdrawal of the SFAs on September 16, 2015. The BLM will publish notice of the proposal concurrent with the announcement of the BLM Records of Decision, which will segregate the lands. After public involvement and preparation of various reports, including a NEPA analysis, the Secretary will make a final decision as to whether to withdraw the lands. 43 CFR 2310.3–2, 3. A withdrawal aggregating more than 5,000 acres is limited by law to a term of 20 years (subject to renewals) and is subject to Congressional notification. 43 U.S.C. 1714(c).

Fluid Minerals (Including Oil, Gas, and Geothermal): The Federal Plans manage SFAs as NSO, without waiver, exception, or modification, for fluid mineral leasing (with the exception of plans in Wyoming, as discussed below). No Surface Occupancy is where areas are open to leasing but surface-disturbing activities associated with development of the lease cannot be

conducted on the surface of the land. Access to oil and gas deposits would require horizontal/directional drilling from outside the boundaries of the NSO areas. This is the most restrictive designation that allows for development of resources and protects habitat.

Habitat Management: BLM and USFS will prioritize management and conservation actions in SFAs, including, but not limited to, review of livestock grazing permits/leases, free-roaming equid gathers, fire management projects, and sagebrush restoration projects. Ensuring these areas are analyzed first provides certainty that, if degraded habitat conditions occur in the most important areas for the species, management actions will be taken and possible restoration will occur.

The actions identified for implementation in the SFAs are more restrictive versions of the measures described above for PHMAs. As such, the measures implemented within SFAs are more effective at reducing threats within these important areas. These measures have been determined to be effective because they eliminate or reduce the impacts from new development or improper grazing on Federal lands in SFAs.

General Habitat Management Areas—The Federal Plans designate approximately 12.5 million ha (31 million ac) as GHMA (Figure 5), which corresponds with approximately 27 percent of breeding habitat rangewide. The GHMAs represent habitats that contain fewer leks and sage-grouse than PHMAs. The designation as GHMAs provide sage-grouse conservation by protecting habitat and connectivity between populations and potential refugia in the event of catastrophic events such as wildfire. While the amelioration of threats in GHMAs will likely be less than in PHMAs due to less stringent required conservation measures, GHMAs do have restrictions that benefit sage-grouse conservation.

Specifically, the Federal Plans contain the following measures that apply in GHMAs:

Fluid minerals (Including Oil, Gas, and Geothermal): General Habitat Management Areas are open with constraints. Areas with standard constraints may be open to mineral leasing with no specific management decisions defined in the Federal Plans; however, these areas are subject to lease terms and conditions. Terms and conditions may include but not be limited to concentrating development, moving or supporting infrastructure, or reducing project footprints, thereby reducing habitat impacts. Moderate constraints include controlled surface

use, which can reduce habitat impacts and timing limitations which reduce human activities during the times sage-grouse are most sensitive to their presence.

Non-Energy Leasable Minerals:

General Habitat Management Areas are open to non-energy leasable mineral development, subject to stipulations. In GHMA, development, including mineral exploration, is subject to lek buffers to protect breeding birds, timing restrictions to reduce human activities in important seasonal habitats while sage-grouse are present, mitigation requirements, and other protective measures discussed throughout this section, thereby reducing and minimizing the impacts to the species and its habitat.

Rights-of-Way: For major transmission lines and pipelines, GHMAs are either avoidance or exclusion areas, and may be available for installation of pipeline and transmission lines/ROWs within existing infrastructure corridors. Protective stipulations such as limiting road use (to minimize disturbance to birds) or eliminating perching areas (to reduce predation) will be incorporated into the ROW grants to protect sage-grouse and its habitat. For minor ROWs (e.g., roads), GHMAs are open and subject to stipulations that will protect sage-grouse and its habitat, such as lek buffers and seasonal restrictions (BLM and USFS 2015, entire). For solar and wind energy rights of way, GHMAs are either designated avoidance or exclusion areas with limited exceptions and available for location of new utility scale and/or commercial development ROWs only with special stipulations that minimize the impact to sage-grouse.

Mineral Materials: General Habitat Management Areas can be open to new mineral material sales and free use permits subject to mitigation requirements and application of RDFs that will protect sage-grouse and its habitat.

Livestock Grazing: Federal Plans call for grazing to benefit or be neutral to sage-grouse in GHMAs and PHMAs. However, GHMAs will be the lower priority for monitoring as they comprise habitat with fewer leks and sage-grouse.

*Measures Applicable in Both PHMA and GHMA—*In addition to specific land use allocations described above, the new Federal Plans include other protective measures that will further limit disturbance and impacts to sage-grouse and their habitats. Additionally the plans include monitoring and adaptive management to help ensure that implementation of the allocative decisions and limitations on disturbance are effective at conserving

sage-grouse and their habitats, and mitigation provisions where disturbance cannot be avoided. These measures apply regardless of the habitat designation (PHMA, SFA, or GHMA).

Land Tenure: The land tenure land use allocation refers to whether the BLM or USFS intend to dispose of, or retain, Federal lands. A land use allocation of retain means that the agencies will seek to retain the land in Federal ownership, with limited exceptions. An allocation of dispose means that the agencies may transfer the land out of Federal ownership. Under the Federal Plans, PHMAs and GHMAs will be retained in Federal management, with limited exceptions. Those limited exceptions may occur when: (1) The agency can demonstrate that disposal of lands will provide a net conservation gain to the sage-grouse; or (2) the agency can demonstrate that the disposal of lands will have no direct or indirect adverse impact on conservation of sage-grouse. The land tenure allocation ensures that BLM and USFS lands within PHMAs and GHMAs will be managed for sage-grouse into the future.

Trails and Travel Management: Travel management regulations require BLM and USFS to establish lands as open, limited, or closed to off-road vehicle use. In open areas all types of vehicle use is permitted at all times, anywhere in the area. Limited areas are restricted at certain times, in certain areas, and/or to certain vehicular use. Closed areas are those that are closed to all types of vehicle use and include units of the National Wilderness Preservation System. Areas that have not been designated in one of these categories are undesignated and have no restrictions on motorized access.

In PHMA and GHMA, temporary closures will be considered in accordance with several regulations, including Closures and Restrictions (43 CFR subpart 8364); Designated National Area (43 CFR subpart 8351); Use of Wilderness Areas, Prohibited Acts, and Penalties (43 CFR subpart 6302); and Conditions of Use (43 CFR subpart 8341). These regulations help control access to sensitive areas and have been employed strategically in the past to minimize access and disturbance during critical time periods such as spring breeding. These measures ensure that travel management decisions in PHMA and GHMA are made with consideration of sage-grouse conservation needs. These measures help to address concerns with potential disturbance due to travel on Federal lands and will continue to be used by the agencies as needed.

Disturbance Caps and Density

*Limitations—*Each Federal Plan includes a disturbance cap that will serve as an upper limit (the maximum disturbance permitted). Anthropogenic disturbance has been identified as a key impact to sage-grouse. To limit new anthropogenic disturbance within sage-grouse habitats, the Federal Plans establish disturbance caps, above which no new development is permitted (subject to applicable laws and regulations; e.g., General Mining Law of 1872, and valid existing rights). This cap acts as a backstop to ensure that any implementation decisions made under the Federal Plans will not permit substantial amounts of new disturbance within the distribution of sage-grouse on BLM and USFS lands.

For all States, except Wyoming and Montana, the BLM and USFS have established a 3 percent disturbance cap at two spatial scales—the Biologically Significant Unit (BSU) and at the project scale within PHMAs (BLM and USFS 2015, entire). The BSU is a geographical/spatial area, defined in conjunction with the States, within sage-grouse habitat that contains habitats supporting several interconnected populations. The disturbance cap calculation includes all anthropogenic disturbances in PHMAs at the project scale regardless of land ownership. If 3 percent disturbance is reached at the project level scale, no further anthropogenic disturbances will be permitted by BLM or USFS within PHMAs in the analysis area until the disturbance has been reduced to less than the cap. For BSUs the disturbance calculations will include anthropogenic disturbances in all habitat designations. Those disturbance calculations will be completed on an annual basis by the BLM's National Operation Center. If 3 percent disturbance is reached, the Federal land management agencies will examine all activities under their authority to determine if adaptive management is necessary (depending on the spatial scale at which the 3 percent cap is hit). In Montana, the same disturbance cap approach is used, but disturbance is limited to 5 percent, due to more detailed mapping and disturbance calculations. Wyoming uses a different approach to limiting disturbance in Core Areas, as discussed in Wyoming State and Federal Plans, below. As previously stated, sage-grouse are sensitive to disturbance, and small amounts of development within sage-grouse habitats can negatively affect sage-grouse population viability (Knick and Connelly 2011, p. 1). Thus, limiting future disturbances in sage-grouse

habitats is an essential component of reducing or eliminating effects related to disturbance, as recommended in the COT Report (USFWS 2013, p. 13).

In addition to the percent disturbance cap at the BSU and project scales, the BLM and USFS will use a density cap related to the density of energy and mining facilities during project-scale authorizations. If the disturbance density is greater than an average of 1/259 ha (1/640 ac) in PHMA, the project will either be deferred or co-located in an existing disturbed area (subject to applicable laws and regulations, such as the General Mining Law of 1872, valid existing rights, etc.).

Lek Buffers—Sage-grouse leks are communal breeding centers that are representative of the breeding and nesting habitats. Conservation of these areas is crucial to maintaining sage-grouse populations. Protective buffers around leks conserve these important habitats (Manier *et al.* 2014, pp. 1–2).

To develop “biologically relevant and socioeconomically practical” lek buffer distances for use in the Federal Plans, the DOI commissioned the USGS to review the scientific information on conservation buffer distances for sage-grouse. The result was the publication of a USGS Open-File Report, entitled *Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review*, in 2014 (Manier *et al.* 2014, entire). In addition to the land use allocations described in this section, the BLM and USFS will apply the lek buffer distances specified as the lower end of the interpreted range in PHMAs as described in the report unless justifiable departures are determined to be appropriate (see below). The lower end of the interpreted range of the lek buffer distances are presented in Table 3. Note that for many potential activities in PHMAs, the Federal Plans land use allocations result in no or few activities allowed in these important areas (*e.g.*, no surface occupancy restrictions). Thus, for those types of projects, buffers are unnecessary in PHMAs because the activity is already restricted.

TABLE 3—LEK BUFFER DISTANCES IN FEDERAL PLANS

Disturbance	Lek buffer
Linear Features (<i>e.g.</i> , roads).	5 km (3.1 mi).
Infrastructure related to energy development.	5 km (3.1 mi).
Tall structures (communication or transmission towers, transmission lines).	2 km (1.2 mi).

TABLE 3—LEK BUFFER DISTANCES IN FEDERAL PLANS—Continued

Disturbance	Lek buffer
Low structures (<i>e.g.</i> , fences, rangeland structures).	2 km (1.2 mi).
Surface disturbance (human activities that alter or remove natural vegetation).	5 km (3.1 mi).
Noise and related disruptive activities.	0.4 km (0.25 mi).

The BLM and USFS may approve actions in PHMAs that are within the applicable lek buffer distance identified above only if the BLM or USFS determine that a buffer distance other than the distance identified above offers the same or greater level of protection to sage-grouse and its habitat. The BLM or USFS will make this determination based on best available science, landscape features, and other existing protections, with input from the local State fish and wildlife agency. The BLM or USFS will explain its justification for determining that the approved buffer distances meet these conditions in its project decision.

For actions in GHMAs, the BLM and USFS will apply the lek buffer distances in Table 3 as required conservation measures to fully address any impacts to sage-grouse identified during the project-specific NEPA analysis. However, if it is not possible to locate or relocate the project outside of the applicable lek buffer distance(s) identified above, the BLM or USFS may approve the project only if: (1) Based on best available science, landscape features, and other existing protections, (*e.g.*, land use allocations, State regulations), the BLM or USFS determine that a lek buffer distance other than the applicable distance identified above offers the same or a greater level of protection to sage-grouse and its habitat, including conservation of seasonal habitat outside of the analyzed buffer area; or (2) the BLM or USFS determines that impacts to sage-grouse and its habitat are minimized such that the project will cause minor or no new disturbance (*e.g.*, co-location with existing authorizations); and (3) any residual impacts within the lek buffer distances are addressed through compensatory mitigation measures sufficient to ensure a net conservation gain, as outlined in the Mitigation Strategy (see below). By applying lek buffers in addition to other measures, the Federal Plans provide an additional layer of protection to the habitat in closest proximity to leks and the areas

documented in the literature to be the most important for breeding and nest success (Manier *et al.* 2014, entire).

Required Design Features—Required Design Features (RDFs) are best management practices to reduce potential effects to sage-grouse for certain project-level features. The RDFs establish the minimum specifications for certain activities to help mitigate adverse impacts. Because of site-specific circumstances, some RDFs may not apply to some projects (*e.g.*, a resource is not present on a given site) and/or may require slight variations (*e.g.*, a larger or smaller protective area). The need to apply RDFs to a project or to modify RDFs to address any concerns unique to a project is determined during the project-specific planning and environmental assessment. All variations in RDFs would require that at least one of the following be demonstrated in the NEPA analysis associated with the project/activity:

- A specific RDF is documented to be not applicable to the site-specific conditions of the project/activity (*e.g.*, due to site limitations or engineering considerations). Economic considerations, such as increased costs, do not necessarily require that an RDF be varied or rendered inapplicable;
- An alternative RDF is determined to provide equal or better protection for greater sage-grouse or its habitat;
- A specific RDF will provide no additional protection to sage-grouse or its habitat.

While the applicability and overall effectiveness of each RDF cannot be fully assessed until the project level when the project location and design are known, the Federal Plans include the requirement to implement appropriate RDFs and these RDFs are expected to further minimize impact to the species and its habitat. These RDFs were developed based on the COT and NTT conservation objectives and the best professional judgment of BLM and USFS wildlife biologists. For example, any project that includes the development of a pond or similar water feature would require RDFs that direct the design, construction, and maintenance of the pond so that it would not provide habitat for mosquitos that could carry West Nile virus (WNV).

Monitoring—While monitoring does not in and of itself reduce impacts, it is an integral component of any conservation program’s long-term success. We take into consideration monitoring when evaluating the overall adequacy and effectiveness of a conservation strategy. The regulations for the BLM (43 CFR 1610.4–9) and the USFS (36 CFR part 209, published July

1, 2010) require that Federal Plans establish intervals and standards, as appropriate, for monitoring and evaluations based on the sensitivity of the resource to the decisions involved. Pursuant to these regulations, an interagency team developed *The Greater Sage-grouse Monitoring Framework* that describes the methods to be used to collect monitoring data and to evaluate implementation and effectiveness of the sage-grouse planning strategy and the conservation measures contained in the Federal Plans (BLM and USFS 2014, entire).

To ensure that the BLM and the USFS are able to make consistent assessments about sage-grouse habitats across the range of the species, this framework lays out the methodology—at multiple scales (broad, mid, fine, and site scales)—for monitoring of implementation and disturbance and for evaluating the effectiveness of the BLM and USFS actions to conserve the species and its habitat. Monitoring efforts will include data for measurable quantitative indicators of sagebrush availability, anthropogenic disturbance levels, and habitat conditions. Implementation monitoring results will allow the BLM and the USFS to evaluate the extent that decisions from their Federal Plans to conserve sage-grouse and their habitat have been implemented. State fish and wildlife agencies will continue to collect population monitoring information, which will be incorporated into effectiveness monitoring as it is made available.

Managing and monitoring sage-grouse habitats are complicated by the differences in habitat selection across the range and habitat use by individual birds within a given season. Therefore, the monitoring framework evaluates multiple habitat suitability indicators to evaluate plan effectiveness. Descriptions of these habitat suitability indicators for each scale are provided in the “*Sage-Grouse Habitat Assessment Framework: Multiscale Habitat Assessment Tool*” (Stiver *et al.* 2010, entire).

Results from monitoring data will define when habitat objectives are not being achieved, disturbance caps have been breached, and adaptive management triggers have been met (see below). Having a consistent framework for all management units will allow the agencies to track information and trends across management units, which has not been possible in the past. The BLM and USFS have and committed to increased monitoring, and we expect the results to give the agencies valuable data to assist and improve implementation and improve the overall effectiveness of the BLM and USFS plans.

Adaptive Management—Like monitoring, adaptive management is a key element of complex long-term conservation strategies, particularly where there is uncertainty. Adaptive management is a decision process that promotes flexible resource management decision-making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. This flexibility is critical for ensuring long-term conservation of sage-grouse into the future, as it will allow the Federal Plans to adjust to changed conditions or new science that cannot be foreseen at this time. Careful monitoring of these outcomes both advances scientific understanding and helps with adjusting resource management directions as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. An effective adaptive management program will ultimately improve the overall effectiveness of the conservation program through time.

Adaptive management will help ensure that sage-grouse conservation measures in the Federal Plans are effective, and if they are not effective, that corrective actions will be implemented. Each planning area (with the exception of the Lander and North Dakota Plans) has identified adaptive management soft and hard triggers and responses. Soft triggers represent an intermediate threshold indicating that management changes are needed at the project/implementation level to address habitat and population losses. If a soft trigger is met, the BLM will apply more conservative or restrictive implementation conservation measures to mitigate for the specific causal factor in the decline of populations and/or habitats, with consideration of local knowledge and conditions. These types of adjustments will be made to preclude meeting a hard trigger (which signals more severe habitat loss or population declines). Hard triggers represent a threshold indicating that immediate action is necessary to stop a deviation from sage-grouse conservation objectives as set forth in the Federal Plans. Tripping a hard trigger will result in BLM or USFS switching to a more restrictive alternative from the Final Environmental Impact Statement either in whole or in part to address the causal factors (*e.g.*, immediate cessation of authorizing land use authorizations within the area). After the hard-trigger is tripped, the BLM or USFS will determine the causal factor and develop and implement a corrective strategy.

While adaptive management is not a land use allocation decision, the Federal Plans have developed species and habitat triggers and tied them to appropriate management actions in the Federal Plans, providing an additional certainty that action will be taken if the species or habitat objectives are not being met.

Mitigation—All of the Federal Plans require that impacts to sage-grouse habitats are mitigated and that compensatory mitigation provides a net conservation gain to the species. All mitigation will be achieved by avoiding, minimizing, and compensating for impacts following the regulations from the White House Council on Environmental Quality (CEQ) (40 CFR 1508.20; *e.g.*, avoid, minimize, and compensate), hereafter referred to as the mitigation hierarchy. If impacts from BLM/USFS management actions and authorized third party actions that result in habitat loss and degradation remain after applying avoidance and minimization measures (*i.e.*, residual impacts), then compensatory mitigation projects will be used to provide a net conservation gain to the species. Any compensatory mitigation will be durable, timely, and in addition to that which would have resulted without the compensatory mitigation.

The Federal Plans will establish a Management Zone Greater Sage-Grouse Conservation Team (hereafter, Team) to help guide the conservation of sage-grouse, within 90 days of the issuance of the Record of Decision. This Team will develop a Management Zone Regional Mitigation Strategy using the BLM's Regional Mitigation Manual as a framework. The Team will also compile and report on monitoring data (including data on habitat condition, population trends, and mitigation effectiveness) from States across the MZs and will use these data to either modify the appropriate Regional Mitigation Strategy or recommend adaptive management actions. Requiring mitigation for residual impacts provides additional certainty that, while impacts will continue at reduced levels on Federal lands, those impacts will be offset to a net conservation gain standard.

Fire and Invasives Assessment Tool (FIAT)—The Federal Plans recognize that fire and invasive plants are the primary impact to sage-grouse habitat in the Great Basin. The BLM and USFS convened an interagency team to develop a rangewide assessment and step-down approach to address these impacts (*i.e.*, FIAT). The result was the “*Greater Sage-Grouse Wildfire, Invasive Annual Grasses and Conifer Expansion*

Assessment” report (BLM 2014, entire). The FIAT assessments are incorporated in the Federal Plans. The assessments identify the habitats most resistant and resilient to wildfire and invasive plants to target fire management and ecosystem restoration activities (BLM and USFS 2015, entire). The FIAT Assessments ensure that wildfire and invasive plant management and restoration resources are deployed in the landscapes where they will be most effective in reducing this potential threat.

As part of the assessment process, Instructional Memorandum (IM) 2014–134 was released August 28, 2014. This IM, in part, provided guidance for the BLM field offices to cooperate with interagency partners to complete FIAT assessments at local scales for five priority landscapes in sage-grouse habitat, which roughly corresponded to PACs in the Great Basin as identified in the COT Report (USFWS 2013, p. 14) (*i.e.*, Central Oregon, Northern Great Basin, Snake/Salmon/Beaverhead, Southern Great Basin, Western Great Basin/Warm Springs Valley). For each priority landscape, regional findings were stepped down to describe local conditions by Project Planning Area (PPA) and associated treatment needs and management priorities. Each PPA contained emphasis areas, *i.e.*, portions of a PAC with important habitat characteristics and sage-grouse populations that are impacted by wildfire, invasives, and conifer encroachment. The assessments were included in the Federal Plans. The FIAT Assessments are described in more detail in the *Wildfire and Invasive Plants* section, below.

Federal Plans Summary

The Federal Plans provide major new regulatory mechanisms to protect sage-grouse from land use activities on more than half of the occupied range. In 2010, the Federal land management plans did not contain, for the most part, sage-grouse specific measures, and areas important to the species were open to land uses that could disturb habitat (75 FR 13910, March 23, 2010, p. 13982). Since then, the BLM and USFS have amended or revised 98 plans to address threats to the species (BLM and USFS 2015, entire). The Federal Plans exclude or reduce habitat-disturbing activities in PHMAs that contain the most important habitats for conservation. General Habitat Management Areas are still being managed for the benefit of sage-grouse, but BLM and USFS have flexibility to site development or leasing in GHMAs to keep priority areas intact. While some disturbance can occur in the GHMAs, as they contain fewer sage-

grouse when compared to PHMAs, protective measures for activities in those areas minimize impacts and require mitigation. The combination of restrictive PHMAs and less restrictive GHMAs provide conservation for sage-grouse on approximately 27 million ha (67 million ac) while still enabling the multiple uses that are part of the BLM and USFS missions. While there are impacts associated with on-going activities, the Federal Plans provide adequate mechanisms to reduce and minimize new disturbance in the most important areas for the species. By following COT Report and NTT guidance and restricting impacts in the most important habitat, the Federal Plans ensure that high-quality sage-grouse lands with substantial populations are minimally disturbed and sage-grouse within this habitat remain protected.

Wyoming State and Federal Plans

Approximately 37 percent of estimated sage-grouse abundance occurs in Wyoming (Doherty *et al.* 2010a, p. 21). The Wyoming Basin, the majority of which occurs within the State of Wyoming, has been identified as one of two areas with the highest population connectivity (Knick and Hanser 2011, p. 391). Therefore, conservation of this area is essential to the persistence of sage-grouse into the future. We have also identified this area as a stronghold for the species (USFWS 2014a).

The Wyoming Plan relies on the protection of important sage-grouse habitats in the State using a suite of avoidance and minimization measures. Important habitats (Core Areas) were identified by the highest densities of males attending leks, and added associated habitats through a scientific process engaging State wildlife experts and local working groups. Core Areas encompass approximately 83 percent of the breeding population of sage-grouse in Wyoming on approximately 24 percent of the total land surface of the State (Budd, Wyoming Wildlife and Natural Resource Trust, pers. comm. 2015). Additional connectivity areas were identified for protection to ensure population movements. Protective measures associated with the Wyoming Plan (described below) do not extend to lands located outside the identified Core Areas but that are still within occupied sage-grouse habitat. In non-Core Areas, the minimization measures are implemented to maintain habitat conditions such that there is a 50 percent likelihood that leks will persist over time (Wyoming Game and Fish Department 2009, pp. 30–35). While impacts to sage-grouse are possible in

non-core habitats, the majority of primary habitats necessary for long-term conservation of sage-grouse in Wyoming are included in the identified Core Areas. Core Area maps are reviewed and adjusted every 5 years to allow for the incorporation of new data that ensures the most important areas for sage-grouse receive protections. For example, the State of Wyoming reviewed the Plan in 2015 and added 58,191 ha (143,794 ac) to the Core Areas.

The key component of the Wyoming Plan is the application of State regulatory measures associated with the Wyoming Plan on all lands in Wyoming (6 million ha (15 million ac)) as any project requiring a State permit must meet the conditions of the strategy regardless of land ownership. Specifically, the Wyoming Plan applies to all activities that require permits from Wyoming’s Industrial Siting Council (ISC) (Wyoming E.O. 2015–4, entire). The Federal Plans in the State incorporate the Wyoming strategy, thereby ensuring implementation of the strategy on Federal land surfaces and subsurface regardless of the need for a State permit (see further discussion below). The completion of the Federal plans also facilitates greater coordination between the State and Federal agencies in implementing and monitoring the Wyoming Plan. This addition to the Wyoming Plan further increases the value of this effort in conserving sage-grouse by covering all lands in the State with a single regulatory framework to reduce affects to sage-grouse in the most important habitats in the State. Therefore, the strategy conserves sage-grouse through an effective regulatory mechanism for conservation.

The Wyoming Plan first encourages projects to be re-located outside of Core Areas by reducing restrictions in non-Core Areas for development activities. Where projects cannot be relocated, the Plan requires a combination of restricted development densities, development disturbance caps, seasonal restrictions, and lek buffers to minimize habitat disturbance within Core Areas. Surface disturbance is limited to 5 percent within Core Areas reducing fragmentation and degradation of habitat (Wyoming E.O. 2015–4, Attachment A, p. 6; Wyoming E.O. 2015–4, Attachment B, p. 5). While 5 percent is greater than the 3 percent used in other States, habitat disturbance monitoring in Wyoming is conducted at a much finer scale and is, therefore, more inclusive in the number and extent of disturbances measured. Additionally, Wyoming includes natural disturbances, such as wildfire, in the

disturbance measure, which is not included in any other State. Therefore, the higher disturbance cap permitted in Wyoming is not more permissive as a simple comparison of the numbers suggests. Limiting development to one site per 259 ha (640 ac) on average reduces the disturbance footprint to a level where impacts to sage-grouse are minimal, if nonexistent (Holloran 2005, p. 58; Taylor *et al.* 2012a, p. 31; Holloran *et al.* 2010, p. 71). Development is not permitted if either of these criteria (development density or disturbance caps) is exceeded. Incentives to consolidate disturbance further reduce development impacts by minimizing habitat loss and degradation within large landscapes. Where development cannot be moved away from breeding habitats, an NSO buffer of 1 km (0.6 mi) of a lek is required, as well as a seasonal restriction on project development. Activity within 6.4 km (4 mi) of a lek is also restricted from March 15 through June 30. These restrictions reduce impacts to the sage-grouse by avoiding disturbance during breeding season (Wyoming E.O. 2015–4, Attachment B pp. 2–6; Fedy *et al.* 2012, p. 1063; Doherty *et al.* 2010a, entire).

Disturbance (including all anthropogenic and natural disturbances) is tracked via a geospatial database (measuring disturbance at 1 m (3.3 ft). Including all disturbances with such precision ensures that all potential impacts to sage-grouse, regardless of source, are being considered prior to authorizing new development. Additional conservation is gained through the enforcement of noise restrictions at the perimeter of leks, which minimizes disturbance to birds visiting the leks (Wyoming E.O. 2015–4, Attachment B, p. 8; Patricelli *et al.* 2013, p. 241; Blickley and Patricelli 2012, p. 33; Blickley *et al.* 2012, p. 470).

Outside of core-habitat, there are NSO restrictions within 0.4 km (0.25 mi) of leks to minimize impacts to sage-grouse (E.O. 2015–4, Attachment B, p. 6), and activities within 3.2 km (2 mi) of a lek are restricted during the breeding season. These relaxed stipulations encourage development to move outside of Core Areas, while still providing some protections to birds in non-Core Areas. While impacts to birds and their habitats may occur outside of Core Areas, only about 17 percent of the sage-grouse bird density occurs in those areas (Budd, Wyoming Wildlife and Natural Resources Trust, pers. comm. 2015), minimizing impacts to sage-grouse and allowing for the continuation of the economies that support the State.

In 2010, we analyzed the Wyoming Plan and noted that it included

measures that if fully implemented could ameliorate threats to sage-grouse (75 FR 13910, March 23, 2010, pp. 13974–13975). We now have data that shows how implementation has avoided and minimized impacts in core habitats. Since 2012, the majority of the 600 projects proposed in Core Areas and reviewed by the State complied with the criteria of the Wyoming Plan. Projects that added additional surface disturbance within Core Areas were minimized or co-located with existing disturbance. Less than 8 ha (20 ac) of new disturbance has occurred within Core Areas since 2012 (USFWS 2014b). Other applications were denied that would negatively affect sage-grouse, including a wind lease application on State trust lands (USFWS 2014b). The number of oil and gas wells permitted in Core Areas has also declined as industry seeks to avoid conflict with sage-grouse. Between 2006 and 2012, vertically drilled single well permits declined 65 percent, while directionally and horizontally drilled wells, from outside the Core Areas, increased by 66 and 1,337 percent, respectively (USFWS 2014b). This change in the number and nature of oil and gas well permits further demonstrates the efficacy of the Wyoming Plan. Other industries, such as mining, have initiated restoration efforts to remove existing disturbance and improve habitat for sage-grouse. These data demonstrate the efficacy of the Wyoming Plan in removing and reducing impacts to sage-grouse from development activities.

The Federal Plans in Wyoming have incorporated the Wyoming Plan Core Area strategy. Core habitats designated by the State have been identified as PHMA on BLM and USFS lands, while non-core habitats are designated as GHMA. Both the BLM and USFS have adopted the more precise disturbance measurements developed by the State at 5 percent. With the exception of the fluid and non-energy leasable mineral programs, the Federal Plans in Wyoming are the same as with other States. However, these modifications were made to expand the protections already implemented by the State to Federally managed lands.

The fluid mineral designation in the Federal Plans in Wyoming is different than in the other Federal Plans throughout the range, which was necessary to adopt the Wyoming Plan. For fluid minerals in Wyoming, PHMAs are designated Controlled Surface Use, which means these areas are open to leasing, but would require proposals for surface-disturbing activities only be authorized in accordance with the controls or constraints specified in the

Wyoming Plan. For non-energy leasable minerals, PHMAs are open to non-energy leasable minerals, but are subject to measures intended to minimize impact in important (core) areas pursuant to the Wyoming Plan.

A recent analysis of the Wyoming Plan predicted that 83 percent of the landscape within core area boundaries supports increasing or stable populations of sage-grouse (Burkhalter *et al.* 2015, p. 20) due to the conservation of high-quality intact sagebrush habitats. Seventeen percent of the landscape within Core Areas may have declining populations as those areas occur around the edges of Core Areas and, therefore, are subject to disturbances outside these protected areas (Burkhalter *et al.* 2015, p. 20). The factors identified in this report as essential for conservation, such as maintaining connected landscapes in sagebrush cover, and minimizing oil and gas development, are all key components of the Wyoming Plan. The recent completion of the BLM and USFS Federal Plans should reduce disturbance around the edge of Core Areas, thereby increasing the efficacy of the strategy. The Wyoming Plan was renewed in July 2015 ensuring that the protections will continue until at least 2022 (Wyoming E.O. 2015–4, p. 6).

The Wyoming Plan has been in place for 8 years, and has demonstrated its conservation value by protecting areas identified as important to sage-grouse conservation. As described above, development has been removed or minimized in Core Areas, protecting intact habitats from fragmentation and degradation. Carefully controlled development within Core Areas has had minimal to no impact to the sage-grouse as demonstrated by the increasing populations within Core Areas (Burkhalter *et al.* 2015, p. 20).

Protections outside the Core Areas also provide additional conservation to habitats and birds by maintaining connectivity between Core Areas. The adoption of the Wyoming Plan into Federal land plans provides additional assurances that protections of Core Areas will be achieved on all lands, regardless of land ownership.

Montana and Oregon Conservation Efforts

State and Private lands account for 42 percent of the sage-grouse occupied range. Plans developed by States for sage-grouse vary widely in the nature of the protective measures, with some measures being regulatory and some being voluntary. State Plans in three States—Wyoming, Montana, and Oregon—contain regulatory measures

that effectively address threats on State or private lands. Wyoming is addressed separately above because of its integration with the Federal Plans in that State (See *Wyoming* section above).

Since 2010, all States within the range of the species, except for California, have drafted, finalized, or implemented conservation plans for the sage-grouse. These plans take different approaches, but, in general, they identify important conservation objectives for sage-grouse, and provide mechanisms to incentivize conservation. While 10 of the 11 States in the range of the sage-grouse updated plans to conserve the species by incorporating new information, which is a testimony to their concern and commitment to protect the grouse and its habitats, not all of these plans have been fully implemented or regulatory in scope. As discussed above, we will assess the conservation actions mandated by the State plans in Wyoming, Montana, and Oregon because they provide the greatest degree of regulatory certainty in addressing potential threats on State and private lands not under the jurisdiction of Federal Plans. We appreciate the work that each State has completed, but we could not include all planning efforts in other States in our analysis because they did not meet a level of certainty for implementation and effectiveness. Regardless of the nature of State conservation efforts, we reviewed and considered the conservation efforts developed and implemented by the States consistent with the Act (16 U.S.C. 1533(b)(1)(A)). A description of the other applicable State laws is included below in *Regulatory Mechanisms* and *Other Conservation Plans*.

Montana—The Montana Sage-Grouse Habitat Conservation Program (Montana Plan) is similar to the Wyoming Plan in that it is a regulatory mechanism that applies to Core Areas across the State. In 2014, the Governor signed an Executive Order that provides sage-grouse conservation directives for activities on State and private lands where approximately 70 percent of sage-grouse habitat in Montana occurs (Montana E.O. 10–2014, entire). The Governor of Montana issued a second Executive Order putting into effect the Montana Sage Grouse Habitat Conservation Program and giving it full regulatory authority (Montana E.O. 12–2015, entire). This second Executive Order included a full review of State regulatory authority over activities in sage-grouse habitat in Montana. The Montana Plan is regulatory on State lands and on any private lands where State permits or authorizations are required; it requires that State agencies

adhere to the requirements and stipulations of the Program. The Montana Executive Order created the Montana Sage-Grouse Oversight Team (Montana Oversight Team) composed of State Agency Directors to oversee administration of the Montana Plan. Additional staffing of the Montana Plan includes a Program Manager, GIS Manager and technician, biologists, and support for seasonal work. The Montana Plan and supporting documents clearly identify under what regulatory authority the State and private entities are required to act in accordance with the Executive Order.

In the previous section, we describe in detail how the Wyoming Plan addresses the issues of habitat loss and fragmentation and disturbance to sage-grouse. The Montana Plan closely follows the structure of the Wyoming Plan and, similarly, uses information and guidance from the COT Report to identify and reduce impacts associated with threats to sage-grouse in Montana. The Montana Executive Order also identifies scientifically valid performance standards based upon number of males at leks to ensure that the Montana Plan actions are effective; monitoring protocols are also included. The Montana Plan specifies adaptive management strategies in response to this monitoring information. Implementation of the Montana Plan will occur immediately in response to future and additional actions that occur in sage-grouse habitat; full implementation of the Montana Plan is expected by January 2016.

The Montana Plan includes similar requirements as those identified in the Wyoming Plan including the following: Use of a 5 percent disturbance cap in Core Areas; allowance of only one disturbance (well pad, grouped impacts) per section (259 ha (640 ac)) for oil and gas and mining; prohibition of sagebrush eradication or conversion; and lek buffers and disturbance buffers in both Core Areas and general habitats. For a complete discussion of why these methods are effective in supporting viable sage-grouse populations, please see the previous discussion of the Wyoming State and Federal Plan, above.

The Montana State Legislature recently passed, and the Governor signed, the Montana Sage-Grouse Protection Act during the 2015 legislative session. This Act ensures that critical funding and support are available for necessary sage-grouse conservation efforts in the future. This Act funds staff resources to implement the conservation program, and includes a revolving conservation fund with an initial balance of 10 million dollars.

This funding authorization is directly tied to the implementation of the E.O. and provides certainty of implementation. The Governor also signed the Montana Greater Sage-Grouse Stewardship Act, which establishes the Montana Sage-Grouse Oversight Team and provides grant-based funding for voluntary sage-grouse conservation efforts. Unless specifically excluded, all State actions (including those prescribed for sage-grouse conservation) require review under the Montana Environmental Policy Act, which is analogous to the National Environmental Policy Act at the State level. Given this commitment from the State, there is certainty that the Montana Plan will be implemented and effective.

In addition to the Montana Plan, private landowners in Montana have worked with Montana Fish, Wildlife, and Parks to enroll nearly 80,000 ha (200,000 ac) in 30-year sagebrush leases. Montana Fish, Wildlife, and Parks provided 1.2 million dollars for these leases where landowners agreed not to eliminate sagebrush on the enrolled acres (Wightman, Montana Fish, Wildlife, and Parks, 2015, pers. comm.).

Oregon—The Oregon Sage-Grouse Action Plan (Oregon Plan) ensures regulatory protection and enhancement of sage-grouse and their habitat on State and private lands in Oregon. This Plan is backed by two new rules in the Oregon Legislature and an Executive Order. The Oregon Plan includes explicit habitat and population goals with incremental completion dates and prioritizes avoidance with standards for mitigation of impacts if necessary. The Oregon Plan builds on the core area strategies utilized by Wyoming and Montana to address all sage-grouse habitats. The Oregon Plan applies to more than 6 million ha (approximately 15 million ac) of all landownership types and includes regulatory mechanisms, such as disturbance caps and adaptive management triggers, to reduce impacts to sage-grouse in the State.

The Oregon Plan includes similar provisions to those identified in the Wyoming Plan and Montana Plan. Based upon the nature and extent of threats to sage-grouse in Oregon and information in the 2010 Finding and COT Report, the Oregon Plan includes limitations on disturbance in Core Areas through disturbance caps and an avoidance and minimization strategy. Actions permitted through county actions (such as a new subdivision or county road) as well as actions permitted through State agencies (such as a new large-scale energy or utility project) are both subject to the Plan as

outlined in the two Rules (Oregon OAR 635–140–0025, entire; and Oregon OAR 660–023–0115, entire; OR E.O. 2015). For specific discussions of why these stipulations are effective, please see the Wyoming State and Federal Plan discussion. The Oregon Plan identifies fire management measures, such as funding and logistical support for Rural Fire Protection Areas. Wildfire and the fire/invasives cycle can impact large areas of sage-grouse habitat in very short periods of time, making prevention of wildfire important for minimizing effects. This commitment improves the likelihood that wildfires will be effectively controlled to reduce the potential negative effects to sage-grouse habitat. Further, the Oregon Plan includes a State-administered compensatory mitigation program designed to synchronize with BLM mitigation processes. The Oregon Plan has identified an overall population goal of 30,000 birds with interim performance measures and corresponding monitoring protocol to ensure progress towards the larger goal. The Oregon Plan commits to adaptively manage for sage-grouse in response to this monitoring data.

Many of the Oregon Plan measures are similar or complementary to those included in the Federal Plans. This aligned framework of tools, rules, and protocols across local, State, and Federal processes will ensure that coordinated mitigation and voluntary actions conserve the species across all land ownerships in Oregon. It also creates the transparency and credibility necessary for public support of the State's strategy.

The Oregon Plan identifies several State agencies as well as specific staffing and funding requirements necessary for full implementation of the Oregon Plan. In addition to gaining public support and identifying necessary staffing, financial support has been secured through the Oregon Watershed Enhancement Board, which has committed 10 million dollars over the next 10 years. These funds are used to implement aspects of the Oregon Plan that manage impacts from fire and invasive species. In addition, 3.34 million dollars of new funding for sage-grouse conservation was appropriated by the Oregon Legislature for the 2015 through 2017 funding cycle. These commitments ensure that the Oregon

Plan will be successfully implemented for the conservation of the species.

Sage Grouse Initiative

The Sage Grouse Initiative (SGI) works with landowners and other partners to design and deliver voluntary conservation practices, including grazing systems and conservation easements, on private lands to ameliorate impacts to sage-grouse while improving the sustainability of working ranches. Private lands account for 39 percent of sage-grouse occupied range. Habitat under private ownership may be at greater risk of conversion through development than neighboring Federal land. The Sage Grouse Initiative's past, present, and future contributions are considerable because, while private lands are less than half of the sage-grouse occupied range, the potential biological value of those lands for various phases of the species' life history is high, as is their potential conservation value. The NRCS carries out conservation through a variety of authorities and tools. We have identified specific activities that are directly benefiting sage-grouse under SGI (Table 4).

TABLE 4—CONSERVATION COMPLETED BY SGI FOR 2010 TO 2014

[From NRCS 2015a, p. 38]

MZ	Grazing systems		Easements		Conifer removal		Seeding		Fence modification	
	ha	ac	ha	ac	ha	ac	ha	ac	km	mi
I	554,529	1,370,269	26,661	65,881	73	181	3,074	7,597	182	113
II	216,285	534,450	95,186	235,210	1,437	3,551	1,023	2,527	37	23
III	15,199	37,557	4,529	11,191	7,630	18,855	2,240	5,534	16	10
IV	127,448	314,930	39,727	98,167	83,405	206,099	12,035	29,740	153	95
V	35,736	88,306	11,684	28,871	71,061	175,595	439	1,085	129	80
VI	33,619	83,073	1,768	4,369	0	0	274	677	47	29
VII	3,667	9,061	3,316	8,193	389	962	388	960	2	1
Total	986,482	2,437,646	182,870	451,882	163,996	405,243	19,474	48,120	565	351

Grazing Management—The objective of SGI's Prescribed Grazing protocol is to ensure that rangelands are managed sustainably and support functional sagebrush ecosystems (NRCS 2015a, p. 23). Since 2010, SGI has improved rangeland health through rotational grazing systems, re-vegetating with sagebrush and perennial grasses, and controlling invasive species (NRCS 2015a, p. 23). The techniques employed by SGI to improve and/or maintain habitat suitability for sage-grouse are consistent with the recommendations provided in the COT Report (USFWS 2013, pp. 45–46).

Easements—The SGI has enrolled 182,109 ha (450,000 ac) in conservation easements; 80 percent of these occur

inside occupied sage-grouse habitat, and 94 percent provide permanent protection (NRCS 2015a, p. 1). Under these easements, habitat cannot be subdivided or converted to agriculture, thus protecting sage-grouse habitat from development. By maintaining these lands in sagebrush habitat, these easements support existing sage-grouse populations and decrease likelihood of fragmentation.

Restoration—The SGI ameliorates impacts through restoration of disturbed and degraded habitat. The SGI has reclaimed 163,995 ha (405,241 ac) of otherwise suitable habitat by direct removal of conifers encroaching on sagebrush habitat. Removal of early-stage conifers should improve and

expand sage-grouse habitats by precluding ecological type conversion to an otherwise unsuitable habitat (Johnson and Miller 2006, p. 8; Casazza *et al.* 2011, p. 163; Knick *et al.* 2013, p. 1544). Through monitoring data, SGI is working to assess how birds use areas with recent conifer removal. Anecdotal reports suggest that sage-grouse have responded positively to these efforts. Moreover, SGI and others are developing conifer maps in MZs III, VI, V, and VII (NRCS 2015a, p. 19). The SGI will use this new information to target efforts where removal will have the greatest value for sage-grouse (NRCS 2015a, p. 19 and NRCS 2015b, p. 10).

Fence modification is another aspect of SGI restoration. Marking and

removing fences can reduce direct mortality to sage-grouse by reducing fence strikes. NRCS estimates that SGI fence marking prevents 2,600 collisions annually (NRCS 2015a, p. 22).

The SGI uses direct seeding to restore habitat through the addition of native species. Through grazing systems, revegetating former rangeland with sagebrush and perennial grasses and controlling invasive weeds, SGI has enhanced rangeland health inside PACs (NRCS 2015a, p. 2).

Monitoring and Adaptive Management—The NRCS has continued to improve conservation of sagebrush habitat through new information and new scientific methods (NRCS 2015a, entire; NRCS 2015b, entire). They employ habitat suitability models to target conservation easements and address conifer encroachment in the early stages of development to improve the benefit of their treatments. By monitoring and tracking the effectiveness of their efforts and their willingness to incorporate this information into their management, SGI has ensured the long-term implementation of their program will achieve conservation for sage-grouse on private lands.

Since 2010, the NRCS, through the SGI, has invested approximately 425.5 million dollars, with 76 percent of investments occurring within PACs (Table 4). To date, 1,129 ranches have participated in the SGI, across all 11 States in the species' range (NRCS 2015a, p. 1). Through the 2014 Farm Bill, NRCS will continue and accelerate its efforts, ensuring a durable and increasingly targeted conservation effort on private lands in sage-grouse country (NRCS 2015a, p. 29; NRCS 2015b, p. 6). Starting in 2015, NRCS will add 198 million dollars to continue sage-grouse conservation on private lands in the future (NRCS 2015a, p. 29; NRCS 2015b, p. 6).

Where they have been implemented, these conservation efforts have addressed certain potential threats to sage-grouse, such as urban and exurban development, infrastructure, and improper grazing (defined for the purposes of this analysis as grazing at an intensity or in ways that impair ecosystem functions of the sagebrush ecosystem) [See *Grazing and Rangeland Management*, below]. The nature of those potential threats and the impact of SGI's conservation in ameliorating some potential threats are discussed in further detail below (see Summary of Information Pertaining to the Five Factors). Given the history of success of this program, the level of local and national support, NRCS' application of

adaptive management, demonstrated partnerships, and the recent reauthorization and dedicated resources through the 2014 Farm Bill, we expect that SGI will continue to provide valuable on-the-ground conservation to sage-grouse and its habitat into the future.

Candidate Conservation Agreements

Over the past 2 years, we have prioritized Candidate Conservation Agreements with Assurances (CCAAs) to focus conservation on non-Federal lands for the benefit of sage-grouse. Candidate Conservation Agreements with Assurances provide assurances to both landowners and the Service that conservation will continue into the future without resulting in a regulatory burden on the landowners involved. Through these agreements, landowners agree to avoid certain activities that may be harmful to sage-grouse, or to undertake activities on their property that benefit sage-grouse (e.g., restore degraded habitat, create new habitat, augment existing populations, and restore historical populations). In Oregon, more than 575,000 ha (1.4 million ac) of rangeland have been effectively conserved for sage-grouse through enrollment in a CCAA. In Wyoming, 36 CCAAs have been completed, with more than 180,000 ha (445,000 ac) enrolled. In addition to CCAAs, we also employ Candidate Conservation Agreements; these agreements can exist between the Service and private landowners, local governments, States, and Federal agencies.

Candidate Conservation Agreements operate through tailored conservation strategies that specify required activities that will benefit sage-grouse. Although individual agreements vary, the focus is always on improving sage-grouse habitat or populations. Through CCAAs, landowners may restore existing degraded sagebrush to provide habitat for sage-grouse. They may also create new habitat or simply, as with conservation easements, protect existing habitat for the benefit of the species. As an example, landowners enrolled in the Oregon CCAA have agreed to maintain contiguous habitat by avoiding further fragmentation. The objective for this required conservation measure is for no net loss in: (1) Habitat quantity (as measured in acres) and (2) habitat quality (as determined by the ecological state). Additionally, every enrolled landowner must have at least one conservation measure in place to address each threat identified during the baseline assessment of individual properties.

Candidate Conservation Agreements are voluntary agreements. As such, it is possible for landowners to terminate these agreements. However, based on previous experiences with existing CCAAs for a variety of other species (Anderson and Moore, USFWS, 2015, pers. comm.), we have found that landowners generally do not withdraw from these agreements. Of the 34 CCAAs the Service has finalized nationwide for a variety of species, 32 are still in effect and 2 expired based on the term of the agreement, indicating that landowners continue to implement CCAAs following finalization of the agreements (Anderson and Moore, USFWS, 2015, pers. comm.). Landowners commit to beneficial actions that they are willing to implement to receive the assurances of no further regulatory requirements if the species would become listed. In addition to CCAAs, we work with private landowners through the Partners for Fish and Wildlife Program through Private Landowner Agreements to benefit species and their habitats. A past study on the retention of restored wetlands found that the vast majority of landowners continued to implement the practices from their agreements well after the agreement ended (Fairchild 2004, entire). Further, over the last decade, in an 8-State area roughly equivalent to the Rocky Mountain sage-grouse range, the majority of landowners completed their agreements and continued practices after the agreements were completed (Johnson, USFWS, 2015, pers. comm.). Habitat loss and degradation were identified as threats to the species in 2010; through efforts such as these, sage-grouse habitat remains available to the species. Given the ongoing fidelity these efforts to conserve sage-grouse and its habitat, along with our previous experiences with other species, we conclude that there is sufficient certainty that existing CCAAs will continue to be implemented into the future.

Secretarial Order 3336

On January 5, 2015, the Secretary of the Interior signed Secretarial Order 3336, Rangeland Fire Prevention, Management, and Restoration (Secretarial Order), that provides guidance on wildfire management in the sagebrush ecosystem (Department of the Interior (DOI) 2015b, entire). The Secretarial Order places a priority on "protecting, conserving, and restoring the health of the sagebrush ecosystem and, in particular, sage-grouse habitat, while maintaining safe and efficient operations," and allocates fire resources and assets associated with wildfire to reflect that priority. The Secretarial

Order established a Rangeland Fire Task Force (Task Force) to prepare and oversee an Implementation Plan for accomplishing the objectives of the Secretarial Order. The Task Force completed an "Initial Report" outlining actions that can be undertaken during the 2015 western wildfire season and that plan is being implemented (DOI 2015c, entire). The Task Force also prepared a "Final Report" that identifies long-term activities, beyond the 2015 fire season, that can be implemented to further address the effects of wildfire in the Great Basin (DOI 2015d, entire). A full discussion of the Secretarial Order, the Initial and Final Reports, and how they address the effects from wildfire and invasive species is provided below (see *Wildfire and Invasive Plants*).

Summary of New Information Since 2010

Since 2010, there have been several major changes in the regulatory mechanisms that minimize impacts to sage-grouse and their habitats. Foremost among these are the adoption of new Federal Plans specifically tailored to conserving sage-grouse over more than half of its occupied range. These Federal Plans now include substantial provisions for addressing activities that occur in sage-grouse habitats and affect the species, including those threats identified in 2010 as having inadequate regulatory measures. Aside from addressing specific activities, the Federal Plans include provisions for monitoring, adaptive management, mitigation, and limitations on anthropogenic disturbance to reduce impacts authorized in sage-grouse habitats. The Federal Plans are the foundation of land-use management on BLM and USFS managed lands. We are confident that these Federal Plans will be implemented and that the new changes, which are based on the scientific literature, will effectively reduce and minimize impacts to the species and its habitat.

In addition to the Federal Plans, the BLM and USFS have provided new policy guidance and management direction for the management of wildfire and invasive plant in the sagebrush ecosystems. The Secretarial Order establishes new, overarching policy direction for DOI and its wildfire prevention and suppression efforts by prioritizing "protecting, conserving, and restoring the health of the sagebrush ecosystem and, in particular, sage-grouse habitat, while maintaining safe and efficient operations." The Secretarial Order also requires that DOI allocate its wildfire resources and assets in ways that fulfill the priority of

protecting, conserving, and restoring the health of the sagebrush ecosystem. The Secretarial Order aims to reduce the size, severity, and cost of suppressing wildfire in sage-grouse habitats by reducing the spread of invasive plants and prioritizing resources to ensure that suppression efforts are effective.

Further, 10 of the 11 States within the occupied range of the sage-grouse have revised and adopted sage-grouse conservation plans. State sage-grouse conservation plans in Wyoming, Montana, and Oregon contain regulatory mechanisms that minimize impacts to the species and its habitat. Most notably, the Wyoming Plan has been in place since 2008 and has effectively minimized impacts within core habitats, protecting the highest density areas for the species within the State. The Montana and Oregon State Plans use proven conservation measures including disturbance caps, density restrictions, and lek buffers to minimize disturbance to important habitats. In combination, the Federal and three State plans cover 90 percent of the sage-grouse breeding habitat where they provide regulatory mechanisms that reduce potential adverse effects to sage-grouse. These State and Federal Plans, together with the private lands conservation provided by SGI and CCAAs, represent a substantial increase in sage-grouse conservation since 2010. These Plans and private land efforts provide conservation for sage-grouse now and into the future and ensure that the most important habitats will remain distributed across the landscape to support the populations identified as critical to the long-term conservation of the species.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines an "endangered" species as "any species which is in danger of extinction throughout all or a significant portion of its range," and a "threatened" species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (16 U.S.C. 1532(6), (20)). Under section 4(a)(1) of the Act, we may determine a species warrants listing as endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, we discuss below information regarding the status and potential threats to the sage-grouse in relation to the five statutory factors provided in section 4(a)(1) of the Act. Our evaluation of potential threats is based on information provided in the relevant petitions, information available in our files, and other sources considered to be the best scientific and commercial information available, including published and unpublished studies and reports. In considering what factors might constitute threats to the species, 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 to the species and we then attempt to determine if that factor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species 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 is not sufficient to compel a finding that listing is warranted; we require evidence that the threats, either alone or when combined, are significant, in that they act on the species to the point that the species meets the definition of an "endangered species" or "threatened species" under the Act.

Habitat Fragmentation

In the 2010 finding, we determined that the greatest threat to the species was habitat loss and fragmentation (Factor A) due to a variety of causes, including but not limited to, energy development, infrastructure, invasive species, and wildfire (75 FR 13910, March 23, 2010, p. 13986). Sagebrush habitats were becoming increasingly degraded and fragmented due to the impacts of multiple threats, including direct conversion, urbanization, infrastructure such as roads and power

lines built in support of several activities, wildfire and the change in wildfire frequency, incursion of invasive plants, improper grazing, and nonrenewable and renewable energy development. Many of these threats were found to be exacerbated by the effects of climate change, which could influence long-term habitat trends.

As noted in 2010, fundamental characteristics of sagebrush landscapes have changed since Euro-American settlement (Knick and Connelly 2011, p. 7). 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). Conversion to cropland and other land uses has reduced the quantity of area that is dominated by sagebrush land cover. The composition of sagebrush communities has changed with the expansion of junipers and *Pinus* spp. (pinyon) woodlands (Miller and Rose 1999, p. 556) and the invasion of nonnative species such as cheatgrass (West and Young 2000, p. 262). Habitat suitability has also been affected by the presence of anthropogenic structures such as communication towers and power lines (Connelly *et al.* 2000a, p. 974; Beck *et al.* 2006, p. 1070). Lastly, the configuration of sagebrush mosaics across the species' range has changed, resulting in the risk of increased population isolation, exposure to predators in areas of edge habitat, and invasive plants (Saunders *et al.* 1991, pp. 22–24; Gelbard and Belnap 2003, p. 424; Knick and Connelly 2011, pp. 7–14).

The biology of sagebrush and the ecology of the sagebrush ecosystem makes restoration of disturbed areas very difficult and processes to restore sagebrush habitat are relatively unproven (Knick *et al.* 2003, p. 620). Active restoration activities are often limited by financial and logistical resources (Knick *et al.* 2003, p. 620; Miller *et al.* 2011, p. 147; Pyke 2011, p. 544) and may require decades or centuries to be effective (Knick *et al.* 2003, p. 620). Meaningful restoration for sage-grouse requires action on a landscape, watershed, or eco-regional scale rather than individual, unconnected efforts (Knick *et al.* 2003, p. 623; Wisdom *et al.* 2011, p. 469). Recently, investigations have focused on ascertaining where and how sagebrush habitat restoration is likely to be more effective (Pyke 2011, pp. 531–548; Miller *et al.* 2014, pp. 468–481; Chambers *et al.* 2014b, pp. 440–454). Because loss and fragmentation of habitats due to invasives and wildfire is one of the biggest impacts to sage-

grouse, particularly in the Great Basin, it is important that these investigations continue and that management actions continue to focus on effective wildfire suppression and habitat restoration.

Because of the challenges with sagebrush restoration, management efforts in sagebrush ecosystems are usually focused on habitat maintenance (Miller *et al.* 2011, p. 183; Wisdom *et al.* 2011, pp. 470, 472). This goal has primarily been achieved through the management of activities that can result in habitat loss and fragmentations such as non-renewable energy development, agricultural conversion, wildfire, and invasive plants, consistent with the recommendations in the COT Report (USFWS 2013, pp. 40–52). Each of the activities that can cause habitat fragmentation will be discussed further below, as well as any conservation efforts that have been implemented to address those impacts.

Nonrenewable Energy Development

In 2010, we evaluated the effect of nonrenewable energy development on sage-grouse and concluded that the development and related infrastructure were substantial contributors to habitat loss and fragmentation in the past, and that it would continue into the future, particularly in the Rocky Mountain portion of the species' range. We also found that regulations addressing nonrenewable energy development were inadequate at that time to address this threat. It was the lack of regulatory mechanisms that led us to conclude this nonrenewable energy development would continue at rates similar to or greater than historical rates of development. The 2010 finding concluded that habitat fragmentation, caused in part by nonrenewable energy development, and inadequate regulatory mechanisms were significant threats to the species, then and into the foreseeable future, such that listing was warranted under the Act (75 FR 13910, March 23, 2010, pp. 13986–13988).

Nonrenewable energy development includes the exploration, construction, and drilling of wells and installation of supporting infrastructure needed to extract and transport oil, natural gas, coal, coal-bed natural gas, coal-bed methane, and other types of gas. Nonrenewable energy development begins with exploratory surveys and the construction of access roads and well pads, followed by drilling, extracting, and transporting the energy reserves along roads and pipelines. Additional infrastructure needed for nonrenewable energy development often includes compressor stations, pumping stations, electrical generators, and power lines

(Connelly *et al.* 2004, p. 7–39; BLM 2007, pp. 2–110).

Nonrenewable energy development has occurred in sage-grouse habitats since the late 1800s (Connelly *et al.* 2004, p. 7–28), with wells historically concentrated in MZs I, II, VII, and the eastern portion of MZ III (IHS Incorporated 2014, entire). Specifically, nonrenewable energy development is concentrated above four geologic basins across the sage-grouse range: The Powder River Basin (MZ I); the Williston Basin (MZ I); the Southwestern Wyoming Basin (MZ II); and the Uinta-Piceance Basin (MZs II, III, and VII). These four basins overlap with the highest density of sage-grouse, and the largest number of leks in the Rocky Mountain portion of the occupied range (Doherty *et al.* 2015, entire). Approximately 10 percent of the species' overall occupied range has been directly or indirectly affected by nonrenewable energy development, with approximately 20 percent affected in MZ I, 20 percent affected in MZ II, and 29 percent affected in MZ VII (Knick *et al.* 2011, p. 240). The existing development and infrastructure has already affected the species distribution (Naugle *et al.* 2011, pp. 489–491). Nonrenewable energy development is expected to continue in the occupied range of the sage-grouse based on the estimates of available energy reserves and projected trends in development rates (Copeland *et al.* 2009, p. 5; Knick and Hanser 2011, p. 394; Wisdom *et al.* 2011, p. 467).

Nonrenewable energy development can remove and fragment sagebrush habitats (Factor A). Well pads vary in size from 0.10 ha (0.25 ac) for coal-bed natural gas wells to greater than 7 ha (17.3 ac) for deep gas wells and multi-well pads (Connelly *et al.* 2004, p. 7–39; BLM 2007, pp. 2–123). Pads for compressor stations typically occupy 5 to 7 ha (12.4 to 17.3 ac) (Connelly *et al.* 2004, p. 7–39). However, where geology permits the use of new horizontal and directional drilling technologies, multiple wells can be placed on one pad, thereby reducing the amount of surface disturbance associated with wells, roads, power lines, and pipelines (Applegate and Owens 2014, p. 288).

The reduction and fragmentation of sagebrush habitats can decrease sage-grouse abundance and reduce the distribution of sage-grouse across the landscape (Knick *et al.*, 2011, pp. 247–250; Leu and Hanser 2011, p. 270). Male sage-grouse may avoid leks if there are five or more wells within 3.0 km (1.9 mi), and sage-grouse are less likely to occupy habitats with wells spaced at 32 ha (80 ac) (Doherty *et al.* 2008, p. 193).

Well densities on Federal lands have typically ranged from 1 well per 16 ha to 32 ha (40 ac to 80 ac), although densities as high as 1 well per 4 ha (10 ac) do occur (BLM 2006, pp. 2–5; Naugle *et al.* 2011, p. 497). Impacts from nonrenewable energy extend beyond the physical footprints of wells and may include indirect effects such as the physical and behavioral changes, increased mortality, and reduced reproductive success (Lyon and Anderson 2003, p. 459; Walker *et al.* 2007a, p. 2651; Holloran *et al.* 2010, p. 70; Knick *et al.* 2011, p. 240).

Sage-grouse avoid habitats near non-renewable energy developments, including important wintering habitats and leks (Dzialak *et al.* 2013, p. 16; Smith *et al.* 2014, p. 15). Sage-grouse have lower nest initiation and nest success rates near nonrenewable energy development (Aldridge and Boyce 2007, p. 517; Webb *et al.* 2012, p. 9), and reduced survival rates (Holloran *et al.* 2010, p. 70; Kirol 2012, p. 15). Due to the strong habitat fidelity exhibited by adult sage-grouse, declining population trends may take up to 10 years to detect following the onset of nonrenewable energy development. (Doherty *et al.* 2010a, p. 5; Harju *et al.* 2010, pp. 441–445; Taylor *et al.* 2012a, p. 8; Gregory and Beck 2014, p. e97132). This delay poses challenges to detecting population-level impacts resulting from development, and may prevent timely implementation of measures to eliminate, reduce, or mitigate those impacts. As a single conservation tool, mitigation measures (such as habitat restoration and seasonal or timing restrictions) to reduce impacts may not be sufficient to prevent sage-grouse declines due to nonrenewable energy development (Walker *et al.* 2007a, p. 2651; Doherty *et al.* 2008, p. 192; Harju *et al.* 2010, p. 445), as the associated infrastructure persists on the landscape for several generations of sage-grouse. However, as part of a larger tool set that includes avoidance and minimization, mitigation can serve as a helpful conservation measure (USFWS 2014c).

Nonrenewable energy resources are the largest source of energy worldwide, and demand for these resources could increase by up to 1.3 percent annually in the United States and 50 percent worldwide by the year 2030 (National

Petroleum Council 2007, p. 46; Naugle *et al.* 2011, p. 490). Nonrenewable energy resources will likely be in demand and used in the United States through the year 2030, although energy forms and extraction techniques may change in the future (EIA 2009, entire). Market conditions and extraction technologies influence the rates of nonrenewable energy development in North America (Applegate and Owens 2014, p. 287); the Energy Policy and Conservation Act (Pub. L. 109–58) and its amendments mandate that the United States increase its domestic energy development. Therefore, nonrenewable energy development is likely to continue throughout the sage-grouse range into the future, although its form and extent across the landscape may change.

In 2010, we assessed impacts to sage-grouse and their habitat based on the portion of occupied range where a nonrenewable energy project was occurring and where there was increased potential for future development (75 FR March 1310, March 23, 2010, pp. 13942–13948). This approach was based on the best available GIS data at that time but may have overestimated some effects, because we had less precise information regarding areas of high oil and gas development potential and we measured impacts against all lands within the occupied range.

For this status review, we used peer-reviewed and published methodologies (Copeland *et al.* 2009, entire) to model the probability of future oil and gas development impacting sage-grouse. The model focused on assessing the risk of nonrenewable energy in MZs I and II, the two areas with the highest potential for future nonrenewable energy development (Figure 2) (Juliussøn and Doherty 2015). Although nonrenewable energy development potential exists and will continue in the Uinta-Piceance Basin (MZ VII), we did not apply the model to MZ VII because the relative proportion of potential development was low, even under the highest development scenario. The model used geological information about potentially available oil and gas resources to map areas of likely future development (Juliussøn and Doherty 2015). We also used Oil & Gas Resource Assessments

developed by the USGS to incorporate future maximum potential development scenarios into the analysis (Juliussøn and Doherty 2015). The analysis quantified potential effects to sage-grouse by calculating the percent of the Population Index and breeding habitat distribution potentially exposed to future nonrenewable energy development based on the availability of oil and gas resources. The potential effects from nonrenewable energy development were assessed with and without regulatory mechanisms contained in the Federal Plans, the Wyoming Plan, and the Montana Plan (see Conservation Efforts, below). The estimate of potential non-renewable energy effects without conservation planning efforts is roughly equivalent to what was evaluated in 2010.

Our analysis indicates that the Federal Plans, the Wyoming Plan, and the Montana Plan are reducing the exposure of the sage-grouse to nonrenewable energy, as measured by the portions of the Population Index and breeding habitat, in MZs I and II, the two MZs at greatest risk of future nonrenewable energy development (Table 5). Without the regulatory mechanisms in MZ I, 28 percent of the Population Index and 21 percent of the breeding habitat could be affected by nonrenewable energy development. Without regulatory mechanisms in MZ II, 27 percent of the Population Index and 25 percent of the breeding habitat could be affected (Table 5). However, with the regulatory mechanisms provided by the State and Federal plans, the risk of nonrenewable energy development decreases. With regulatory mechanisms, 17 percent of the Population Index and 14 percent of the breeding habitat could be exposed to nonrenewable energy development in MZ I, and 8 percent of the Population Index and 9 percent of the breeding habitat could be exposed to nonrenewable energy development in MZ II. Our analysis shows that the State and Federal regulatory mechanisms reduce the risk of nonrenewable energy exposure to the Population Index and breeding habitat by more than 35 percent in MZ I and more than 60 percent in MZ II.

TABLE 5—POTENTIAL EXPOSURE TO SAGE-GROUSE POPULATIONS AND BREEDING HABITAT FROM NONRENEWABLE ENERGY DEVELOPMENT IN MZS I AND II, WITH AND WITHOUT THE REGULATORY MECHANISMS, AT THE HIGHEST DEVELOPMENT SCENARIO

Management zone	Without regulatory mechanisms		With regulatory mechanisms	
	% of the population index exposed	% of the breeding habitat exposed	% of the population index exposed	% of the breeding habitat exposed
I	28	21	17	14
II	27	25	8	9

To summarize, our analysis quantifies that without regulation a high proportion of the Population Index and breeding habitat in MZs I and II could be exposed to and potentially negatively affected by nonrenewable energy development. However, with the regulatory mechanisms enacted since 2010, the potential risk from nonrenewable energy development is substantially reduced in MZs I and II (Table 5). Future impacts to sage-grouse from new development could vary based on other factors, such as economic markets, technologies, densities, proximity to existing development, and the location of new development; however, our results show that the Federal and State regulatory mechanisms in MZs I and II reduce habitat loss and fragmentation due to nonrenewable energy development. The next section will discuss these conservation efforts, including those regulatory mechanisms designed to address the effects of nonrenewable energy development and how they ameliorate this potential threat.

Conservation Efforts

Since 2010, State and Federal agencies have worked collaboratively to develop regulatory mechanisms, that is, legally binding and enforceable sage-grouse conservation measures, as well as other nonregulatory conservation efforts, to reduce or eliminate the potential threat of new nonrenewable energy development to sage-grouse and its habitat. Those efforts are discussed in detail below.

State Plans—Three States where nonrenewable energy development has historically been concentrated have implemented regulatory mechanisms to address this potential threat. As described below, Wyoming and Montana Plans provide regulatory mechanisms to address habitat loss, habitat fragmentation, and disturbance associated with nonrenewable-energy development on applicable lands in their States. In addition, the Utah Executive Order contains a regulatory mechanism for potential nonrenewable

energy development that is discussed below.

The Wyoming Plan provides regulatory mechanisms to reduce impacts associated with energy development on all lands within Core Areas. The Wyoming Plan features development stipulations to guide and regulate development within the Core Population Areas to avoid as much as possible, but, if avoidance is not possible, to minimize and mitigate, impacts to sage-grouse and its habitat (See *Regulatory Mechanisms* section below; Wyoming E.O. 2015–4, entire). Specific measures include controlled surface use, density of development restrictions, seasonal and noise restrictions, and lek buffers. Since implementation of the plan began in 2008, the number of new nonrenewable energy wells in sage-grouse habitats declined by 80 percent and permits for potential new development of single wells has declined by 65 percent (USFWS 2014b). At the same time, applications for directional and horizontal drilling permits, which congregate disturbance from multiple wells into one area, increased by 66 and 65 percent respectively, representing a decrease in sage-grouse habitat lost to nonrenewable energy development (USFWS 2014b). The BLM analyzed existing lease information and found that only 14 percent of PHMA in Wyoming is already leased (Carmen, BLM, 2015, pers. com.). The Wyoming Plan recognizes valid existing rights. “Activities existing or permitted in Core Populations Areas prior to August 1, 2008, will not be required to be managed under Core Population Area Stipulations” (Wyoming E.O. 2015–4, p. 4). Our risk analysis described above confirms that the Wyoming Plan, together with the Federal Plans, reduces the potential exposure of nonrenewable energy development to the Population Index by more than 35 percent in MZ I and 60 percent in MZ II (Table 5) where nonrenewable energy development has historically been concentrated. Results were similar for breeding habitat. Risk of exposure, however, is a measure of areas where regulatory mechanisms

would allow development and does not equate to a forecast of where actual impacts will occur; actual energy development and potential impacts are likely to be much lower than the risk analysis. While some development will occur in the future, the Wyoming Plan directs projects to areas that will avoid impacts, includes stipulations to minimize indirect effects, and if necessary, requires mitigation to benefit the species.

The Montana Plan also provides regulatory mechanisms very similar to those described above for Wyoming that reduce impacts from nonrenewable-energy development. Montana’s State plan includes controlled surface use, restrictions on density of development, seasonal and noise restrictions, and lek buffers. Similar to the Wyoming Plan, it is designed to reduce impacts associated with energy development in Core Areas on State lands and private lands where a State authorization is required (Montana E.O. 10–2014, entire; see *Conservation Efforts* section above). The Montana Plan includes a controlled surface use, density of development restrictions, seasonal and noise restrictions, and lek buffers.

The Utah Executive Order requires that the Utah Division of Oil Gas and Mining coordinate with the Utah Division of Wildlife Resources prior to issuing energy development permits. Further, the Plan directs the Utah Division of Oil, Gas, and Mining to implement recommendations provided during that coordination that require avoidance and minimization measures on State and private lands consistent with the conservation plan. These measures are subject to the statutory requirements to protect rights on private property and avoid waste of the mineral resource.

To summarize, since the 2010 finding, States have undertaken considerable effort to reduce the impact of nonrenewable energy development on sage-grouse and efforts are consistent with the recommendations in the COT Report (USFWS 2013, pp. 43–44). State Plans in Wyoming and Montana provide regulatory mechanisms that direct

development out of Core Areas and minimize indirect effects, effectively reducing the risk of habitat loss and fragmentation in MZs I and II. In addition, the Utah Executive Order contains a regulatory mechanism that requires consultation with the State Division of Wildlife Resources and implementation of its recommendations to avoid and minimize sage-grouse impacts. The State Plans work together with the Federal Plans, as discussed below, to reduce nonrenewable energy effects to sage-grouse habitat across the range, and particularly in MZs I and II, where the potential for development is the greatest.

Federal Plans—Since 2010, BLM and USFS have completed plan amendments or revisions conserving sage-grouse on more than half its occupied range. Approximately 80 percent of the BLM and USFS lands with high to medium potential for nonrenewable energy development are located outside federally managed PHMAs (Quamen, BLM, 2015, pers. comm.). The Federal Plans in Wyoming adopt the Wyoming Plan, which, as described in the *Regulatory Mechanisms* section above, reduces impacts to sage-grouse from nonrenewable energy development. The Federal Plans include NSO restrictions in 14 million ha (35 million ac) of PHMA, with either no or very limited waivers or modifications. Exceptions to this restriction could occur only if it is determined that the project would not affect sage-grouse or would be beneficial compared to other options. The Federal Plans prioritize the future leasing and development of nonrenewable-energy resources outside of sage-grouse habitats. The plans require disturbance caps, surface occupancy restrictions, seasonal restrictions, and lek buffers to effectively reduce habitat loss, habitat fragmentation, and disturbance to sage-grouse from nonrenewable energy development. Calculation of the percentage of disturbed surface under the disturbance caps incorporates both existing and new authorized disturbances to limit habitat loss and fragmentation from new nonrenewable energy development (See *Sagebrush Landscape Conservation Planning* above).

The Federal Plans recognize valid existing subsurface rights to nonrenewable energy resources, but still reduce impacts to sage-grouse by requiring the agencies to work with lessees, operators, and project proponents to follow an avoidance, minimization, and mitigation approach subject to applicable laws (30 U.S.C. 226(p) and 43 CFR 3162.3). The BLM estimates that approximately 10 percent

of all habitat is currently leased rangewide (Carmen, BLM, 2015, pers. comm.). According to BLM's analysis, varying proportions of PHMA are leased across the range of the species: 20 percent in North Dakota; 17 percent in Colorado; 14 percent in Wyoming; 4 percent in Utah; and 2 percent in Montana (Carmen, BLM, 2015, pers. comm.). The Federal Plans provide coordinated monitoring strategies of disturbance caps. In response to monitoring, development allowed under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any identified triggers for population or habitat declines. While the development of some valid existing rights may continue, these provisions provide a backstop for other disturbance if adaptive management triggers are exceeded.

In summary, the Federal and three State Plans include closure or NSO restrictions for all PHMAs (except in Wyoming), and limit exceptions to instances where the activity will have no direct, indirect, or cumulative effect on sage-grouse or sage-grouse habitats, or is an alternative action for activities on a nearby parcel and would provide a clear conservation gain to sage-grouse. In GHMAs, Federal Plans dictate that project proponents avoid, minimize, and mitigate impacts from nonrenewable energy development (see *Sagebrush Landscape Conservation Planning* above). The Federal Plans are also consistent with the recommendations in the COT Report (USFWS 2013, pp. 43–44). Together, these measures reduce effects from nonrenewable energy development on approximately 90 percent of the breeding habitat across the range.

Nonrenewable Energy Summary

In the 2010 Finding, we determined that nonrenewable development was a threat to sage-grouse due to the habitat loss and fragmentation it caused. Current information indicates that the global demand for nonrenewable energy resources will continue and will likely increase in sage-grouse habitats through the year 2030. Nonrenewable energy development can negatively affect sage-grouse individuals and populations by reducing and fragmenting sagebrush habitats and by disturbing individual sage-grouse through increased noise and behavioral avoidance of infrastructure and human activity. Nonrenewable energy development could also act cumulatively with other potential threats to increase habitat loss and fragmentation caused by invasive plants, and may increase predation or

disease. Our analysis indicates that regulatory mechanisms reduce the risk of nonrenewable energy exposure to the Population Index and breeding habitat by more than 35 percent in MZ I and more than 60 percent in MZ II, the areas with the greatest potential for nonrenewable energy development. State and Federal Plans emphasize protection of the most important habitats from habitat loss, habitat fragmentation, and disturbance, ensuring that large, contiguous expanses of habitat will remain to support sage-grouse populations. Rangewide, the Federal Plans, Wyoming Plan, and Montana Plan reduce impacts from nonrenewable energy development on approximately 90 percent of the modeled breeding habitat (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness).

Infrastructure

In 2010, we evaluated the effect of infrastructure (including roads, railroads, power lines, communication towers, and fences) on sage-grouse and concluded that it was a substantial contributor to habitat fragmentation throughout the species' range and that fragmentation from this source would increase in the future. We also found that infrastructure causes direct mortality from collisions and provides perches for predators. We further found that the regulations governing the location and installation of infrastructure were inadequate to address these threats. The 2010 finding concluded that habitat fragmentation, caused in part by infrastructure, and inadequate regulatory mechanisms to address the negative effects of infrastructure were significant threats to the species and likely to continue or increase into the future such that listing was warranted under the Act (75 FR 13910, March 23, 2010, pp. 13986–13988).

The increasing expansion of human settlement into the western United States has led to an increase in demand for natural resources and the necessary infrastructure to support human development. Development of roads, railroads, power lines, communication towers, and fences can result in habitat loss and fragmentation, and can cause sage-grouse habitat avoidance. These types of infrastructure can also provide sources for the introduction and propagation of invasive plants, increase fire risk, and increase concentrations of predators.

The physical footprint of existing infrastructure has directly impacted

approximately 218,535 ha (540,013 ac) of breeding habitat rangewide (Factor A) (Table 6). In addition, infrastructure can influence a larger ecological footprint by negatively affecting sage-grouse use of otherwise suitable habitats through indirect effects from noise disturbance, increased perches for predators, and pathways for invasive species (Manier *et*

al. 2013, p. 31; Blickley and Patricelli 2012, p. 26). For infrastructure that has been in place for a number of years, these impacts have likely already been realized. The greatest impact from existing infrastructure has occurred in the Columbia Basin (MZ VI) where approximately 2.9 percent of sage-grouse breeding habitat has been

affected. Current infrastructure associated with power lines accounts for the greatest direct disturbance (117,004 ha; 289,125 ac) across the range. Fences occur across the landscape; however, the amount of fencing is unknown (75 FR 13910, March 23, 2010, p. 13929).

TABLE 6—SAGE-GROUSE BREEDING HABITAT DIRECTLY IMPACTED BY EXISTING INFRASTRUCTURE

		Management zone							Total
		I	II	III	IV	V	VI	VII	
Roads ¹	ha	18,344	28,798	17,604	21,210	7,289	4,871	601	98,717
	ac	45,329	71,162	43,501	52,411	18,011	12,036	1,485	243,935
	%	(0.4%)	(0.6%)	(0.5%)	(0.4%)	(0.5%)	(1.1%)	(0.9%)	(0.5%)
Railroads	ha	131	278	115	149	.....	8	.....	681
	ac	324	686	284	369	.....	20	.....	1,683
	%	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)
Power lines ²	ha	17,171	37,656	18,455	28,104	7,670	7,950	.....	117,005
	ac	42,431	93,049	45,603	69,447	18,952	19,644	.....	289,125
	%	(0.41%)	(0.78%)	(0.54%)	(0.60%)	(0.55%)	(1.78%)	(<0.1%)	(0.6%)
Vertical Towers ³	ha	429	756	404	442	26	68	8	2,133
	ac	1,061	1,867	998	1,091	64	168	21	5,270
	%	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)
Rangewide Totals ...	ha	36,075	67,487	36,578	49,905	14,984	12,897	610	218,536
	ac	89,144	166,764	90,386	123,318	37,026	31,868	1,507	540,013
	%	(0.9%)	(1.4%)	(1.1%)	(1.1%)	(1.1%)	(2.9%)	(0.9%)	(1.2%)

¹ Includes interstates, State and Federal highways, and secondary roads.

² Includes existing, large (>115 kV) transmission lines. Does not include distribution lines.

³ Includes meteorological towers, communication towers, and wind turbines.

The primary impact of infrastructure is habitat loss and fragmentation (Factor A). Other impacts associated with infrastructure are direct mortality from strikes (Beck *et al.* 2006, p. 1075), spread of invasives (Connelly *et al.* 2004, p. 7–25), wildfire ignition (Havlina *et al.* 2015, p. 2), and increased predator occurrence (Manier *et al.* 2013, p. 31; Howe *et al.* 2014, p. 43). Additionally, sage-grouse may avoid infrastructure because of noise or visual disturbance (Blickley and Patricelli 2012, p. 26). However, fences may be beneficial if used to protect areas used by sage-grouse (USFWS 2013, p. 52), such as fencing livestock and free-roaming equids out of mesic areas used as late brood-rearing habitat. The best available information does not forecast where or how much additional infrastructure could be installed across the species' range. However, as discussed in the next section, regulatory mechanisms provided by the Federal and State Plans will exclude or minimize new infrastructure in approximately 90 percent of sage-grouse breeding habitats.

Conservation Efforts

Since 2010, a number of landscape-scale efforts have been undertaken to reduce impacts from existing and future infrastructure to sage-grouse across the

range that are consistent with the recommendations in the COT Report (USFWS 2013, pp. 51–52). Those efforts include Federal Plan amendments, State Plans, SGI projects, and CCAs.

Federal Plans—The Federal Plans limit new infrastructure primarily through land use allocations, lek buffers, and disturbance caps (BLM and USFS 2015, entire). In PHMA, these measures are designed to avoid or minimize infrastructure development, with limited exceptions for new ROWs. Any exceptions must include the explicit rationale that biological impacts to sage-grouse are being avoided. Existing designated corridors for future major transmission lines and pipelines remain open. Any impacts from new infrastructure require mitigation and are counted toward the 3 percent disturbance cap, except in Wyoming and Montana where a 5 percent cap exists. The Federal Plans also include seasonal timing restrictions, noise restrictions, buffer distances from leks, and required design features to minimize infrastructure impacts on sage-grouse. Further, in response to monitoring, development allowable under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any triggers for population or habitat declines. These provisions

provide a backstop to prevent additional disturbance. As a result of these measures, approximately 14 million ha (35 million ac) of PHMA are protected from ROWs. Based on past planning processes, we expect the measures to be implemented for at least the next 20 to 30 years. For additional details about the implementation and effectiveness of Federal Plans, see *Federal Plans* section, above.

State Plans—State Plans in Wyoming, Montana, and Oregon contain regulatory measures to minimize impacts from infrastructure on State lands and, in some instances, on private lands. The Wyoming Plan imposes the following restrictions on all lands in Wyoming: Structure-density limits, timing stipulations, buffers, habitat-disturbance caps, and project-specific reviews for any project subject to State permitting requirements permitted after August 1, 2008, on all lands in Wyoming (Wyoming E.O. 2015–4, entire). Oregon's Plan regulations require avoidance, minimization, and compensatory mitigation actions for development actions in sage-grouse habitat on State and private land and, in conjunction with BLM's Federal Plan, cap the amount of disturbance on sage-grouse core habitat to 3 percent (Oregon OAR 635–140–0025, entire; and Oregon OAR 660–023–0115, entire), while the

Wyoming and Montana Plans cap the amount of disturbance on sage-grouse core habitat to 5 percent (Wyoming E.O. 2015–4, p. 6; Montana E.O. 10–2014, p. 14). For additional details about the implementation and effectiveness of State plans, see the *Wyoming State and Federal Plans* and *Montana and Oregon Conservation Efforts* sections, above.

Sage Grouse Initiative—Marking fences with permanent flagging improves their visibility and reduces fence collisions and was recommended by the COT Report (USFWS 2013, p. 52). The Sage Grouse Initiative has worked with ranchers to implement voluntary conservation projects in sage-grouse habitat, including the marking of fences. To date, NRCS has marked or removed 563 km (350 mi) of high-risk fence to reduce collisions (NRCS 2015a, p. 6). Conservative estimates indicate that fence-marking prevents 2,600 collisions annually (NRCS 2015a, p. 22). Another study found that marking fences reduced collisions by 83 percent over unmarked fences in Idaho during the breeding season (Stevens *et al.* 2012, p. 1). Fence-marking is effective at reducing collisions, but it is unlikely to eradicate collisions completely (Stevens *et al.* 2012, p. 1), and further information is needed to make population-level inferences regarding the impact of reduced collisions (Stevens *et al.* 2013, p. 413).

Candidate Conservation

Agreements—Non-Federal lands currently enrolled in CCAAs have restrictions on building infrastructure within sage-grouse habitat, require consolidation of existing infrastructure when feasible, and require relocating or marking existing fences. Rangeland, approximately 745,000 ha (1.8 million ac) of private lands have landowner commitments in the programmatic CCAAs in Oregon and Wyoming. Enrollment of these areas in the CCAAs ensures that no infrastructure will be constructed on those properties in a way that would adversely impact sage-grouse and encourages the modification or management of existing infrastructure to reduce potential adverse effects.

Infrastructure Summary

The potential threat of new infrastructure has changed substantially since the last status review. In 2010, we found habitat fragmentation, due in part to infrastructure, to be a threat to the species, and regulatory mechanisms were not sufficient to address that threat into the future. Since then, regulatory mechanisms provided by Federal Plans reduce potential future infrastructure on more than half the species' range by eliminating or capping new

development in important sagebrush habitat and by implementing project design features to minimize impacts (e.g., buffers, noise restrictions, etc.). State Plans in Wyoming, Montana, and Oregon provide similar protections on State and private lands. These protections are most important in Wyoming, where historically infrastructure impacts have been the highest. Further, considerable effort has been undertaken by SGI and private landowners to further reduce impacts from infrastructure, and in particular, existing structures such as fencing. Where existing infrastructure occurs, some localized impacts are likely to continue; however, the Federal and State Plans include measures to avoid placing new infrastructure in the most important habitats for the species, thereby reducing the future risk of infrastructure development in those areas. Together, the Federal Plans and Wyoming, Montana, and Oregon State Plans reduce infrastructure impacts to the areas identified as PHMAs and GHMAs, which encompass approximately 90 percent of the modeled breeding habitat across the species' range (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness).

Agricultural Conversion

In the 2010 finding, we concluded that agricultural conversion of sage-grouse habitat was one of the primary causes of habitat loss and fragmentation (75 FR 13910, March 23, pp. 13924–13926). Agricultural conversion describes the removal of sagebrush rangelands to create tilled agricultural crops or re-seeded exotic grass pastures (Schroeder and Vander Haegen 2011, p. 519; Wisdom *et al.* 2011, p. 462; USFWS 2013, p. 48). By converting sagebrush habitats to cultivated croplands and pastures, agricultural conversion can reduce and fragment sage-grouse habitats (Factor A) (Connelly *et al.* 2004, p. 7–203; Davies *et al.* 2011, p. 2575; Wisdom *et al.* 2011, p. 462; Knick *et al.* 2013, p. 1547). Since 2010, new information about potential future risk of agricultural conversion has changed our conclusion about this impact, as discussed below.

In the past, approximately 11 percent of the sage-grouse's historical range was converted to agriculture, with 32 percent of the entire Columbia Basin (MZ VI) and 19 percent of the entire Great Plains (MZ I) converted to agriculture (Knick *et al.* 2011, pp. 208–209). Sagebrush habitats with deep, fertile soils and abundant precipitation

were more likely to be converted to agriculture (Connelly *et al.* 2004, p. 1–1; Davies *et al.* 2011, p. 2575). The loss of these productive sagebrush habitats to agriculture displaced some sage-grouse into less productive sagebrush habitats (Manier *et al.* 2013, p. 1). In the rest of the historical range, varied topography, soil types, and drier climates limited the conversion of sage-grouse habitats to agriculture (Knick *et al.* 2011, p. 208). As a result, only 10 percent of the Snake River Plain (MZ IV) and less than 5 percent of the total area of each remaining MZ were converted to agriculture (Connelly *et al.* 2004, p. 5–55; Knick *et al.* 2011, p. 209). Our previous 2010 Finding summarized specific historical losses of sage-grouse habitats from agricultural conversion (75 FR 13910, March 23, pp. 13924–13925).

By reducing and fragmenting sage-grouse habitats, agricultural conversion may reduce sage-grouse populations (Smith *et al.* 2005, p. 314; Walker *et al.* 2007a, p. 2650; Tack 2009, p. iii; Johnson *et al.* 2011, p. 407; Knick *et al.* 2011, p. 208). Although sage-grouse will forage on some crops, such as alfalfa (Schroeder *et al.* 1999, p. 4), they typically will not nest or rear broods in cultivated croplands (Holloran *et al.* 2005, p. 648; Aldridge and Boyce 2007, pp. 508, 523). Agricultural conversion can also reduce the connectivity of habitats and limit the movement of sage-grouse between populations and seasonal habitats (Schroeder and Vander Haegen 2006, pp. 7–8; Knick *et al.* 2011, p. 211). Agricultural conversion may also expose sage-grouse to indirect effects, such as increased predation, exposure to pesticides, and the drying and loss of riparian habitats when water is diverted for irrigation (Knick *et al.* 2011, pp. 208–209). Based on the foraging distances of human-associated predators hunting near croplands and urban areas, agricultural conversion could indirectly influence approximately 49 percent of sagebrush habitats rangelandwide (Connelly *et al.* 2004, pp. 1–1 and 7–23; Manier *et al.* 2013, p. 30).

Although agricultural croplands and pasturelands do not provide suitable habitat, sage-grouse may feed on irrigated croplands, particularly during the late brood-rearing period when other native plant foods have matured and dried (Connelly *et al.* 2004, pp. 4–1 and 4–10; Knick *et al.* 2011, p. 211). The type of crop and proximity to adjacent sagebrush habitats influences whether sage-grouse will feed on the irrigated croplands (Swensen *et al.* 1987, p. 128; Blus *et al.* 1989, p. 1141; Connelly *et al.* 2004, p. 4–18). Sage-grouse generally do

not feed on dry, unirrigated fields that have fewer forbs and insects than irrigated fields. Additionally, increased predation, exposure to pesticides, WNV, and collisions with fences may outweigh any benefits to sage-grouse provided by cultivated cropland and pastures (Blus *et al.* 1989, pp. 1141–1142; Braun 2006, p. 11; Walker 2008, p. 184, Holloran *et al.* 2005, p. 648, Aldridge and Boyce 2007, p. 508; Coates *et al.*, in press).

Rates of agricultural conversion likely slowed and will continue to slow because the most productive sagebrush habitats have already been converted to croplands or pasturelands (Baker *et al.* 1976, p. 167). Since 1982, acres of new cropland within occupied sage-grouse range have decreased in every State except South Dakota (NRCS 2013, pp. 63–79), likely due to the decreasing suitability of the remaining habitats for agriculture. However, economic incentives for biofuels and technological advances in irrigation and cultivation could potentially increase conversion rates in the future (Knick *et al.* 2011, p. 208). In 2010, we determined that agricultural conversion would continue to affect sage-grouse in the future based on historical loss and fragmentation of sage-grouse habitat from agricultural conversion.

To more precisely evaluate the potential risk to sage-grouse from future agricultural conversion, we compared a new cropland suitability model (Lipse *et al.* 2015, entire) with the Population Index (Doherty *et al.* 2015, entire). The cropland suitability model uses soil and climate data to predict the probability that an area could be converted to cropland (Lipse *et al.* 2015, entire). The Population Index model identifies important sage-grouse population centers (Doherty *et al.* 2015, entire). By comparing these two models, we quantified the percent of the sage-grouse Population Index that overlaps with sagebrush habitats in the MZ I that have a high potential to be converted to agriculture in the future. Because the cropland suitability model was only finalized for MZ I for reasons explained below, the results of this exercise specifically apply only to MZ I, but can be used to assess potential probabilities of conversion to agriculture rangewide.

The cropland suitability model was developed only for the Great Plains (MZ I), and not for the Columbia Basin (MZ VI) or the Snake River Plain (MZ IV), where agricultural conversion also occurred, due to the limited availability of land cover data, the small size of the Columbia Basin (MZ VI), and differences in the way sage-grouse use agricultural fields between these three

MZs. Additionally, more of the Columbia Basin (MZ VI) has already been converted to cropland (Knick *et al.* 2011, pp. 208–209) and the Great Plains (MZ I) has the highest percentage (69 percent) of private lands (TABLE 2, above), so the potential risk of agricultural conversion is greatest in the Great Plains (MZ I). As a result, the cropland suitability model focused only on the MZ with the greatest potential to be converted in the future, so our overlay analysis with the sage-grouse breeding distribution model could only be calculated in the Great Plains (MZ I). However, by limiting the analysis to the MZ I, the MZ with the greater potential to be converted, the result represents a worst-case scenario that is informative for the rest of the range where future conversion is less likely to occur. Additionally, it would be speculative to analyze future technological agricultural advancements or economic incentives that could potentially increase agricultural conversion on lower quality soils.

Our comparison of the cropland risk model and the Population Index model showed that the majority of the sage-grouse Population Index overlaps with sagebrush habitats in MZ I that have a low probability of being converted to agriculture (Lipse *et al.* 2015, entire; USFWS 2015a). Specifically, 87 percent of the sage-grouse Population Index in the MZ I occur in sagebrush habitats unlikely to be converted into agriculture due to their soils, climate, and other factors that were incorporated into the cropland suitability model. This analysis confirms that the sage-grouse habitats in MZ I have already been converted to agriculture and the remaining habitats important to sage-grouse are less suitable for agriculture and less likely to be converted in the future.

Although some sage-grouse in MZ I could be exposed to agricultural conversion in the future, 87 percent of the Population Index are not likely at risk from agricultural conversion. Although this result contradicts other sources of information that postulated a greater risk to sage-grouse from future agricultural conversion (RISCT 2012, p. 7; USFWS 2013, pp. 16–29), this analysis quantitatively determined that the risk of exposure to future agricultural conversion is low in MZ I. Because the risk of conversion is greatest in MZ I, a portion of MZ IV in the Snake River Plain in Idaho and the Columbia Basin in Washington (MZ VI) would likely have lower percent overlap between sage-grouse breeding populations and areas likely to be converted to agriculture. With improved

land cover datasets, the cropland suitability model could be expanded to the other MZs to test this assumption. However, the overlay analysis indicates that the potential for agricultural conversion is low in the Great Plains (MZ I), and there is no information to indicate that the risk to sage-grouse would be greater in any other MZ.

Conservation Efforts

Since 2010, a number of conservation efforts have been implemented to reduce the risk of new habitat loss due to agricultural conversion or to address effects from historical agricultural conversion. These include the NRCS efforts with private land owners and other State and Federal Plans or programs. As discussed below, these conservation efforts are relevant to the potential threat of agricultural conversion.

Sage Grouse Initiative—In 2010, NRCS launched the SGI to reduce potential threats facing sage-grouse on private lands (see Sage Grouse Initiative, above, for a detailed discussion of this program). Conservation measures used by the NRCS to reduce impacts to sage-grouse from agricultural conversion include conservation easements, the Farm Bill's Sodsaver provision, and the Conservation Reserve Program (CRP).

Conservation easements are voluntary agreements between landowners and land trusts, the NRCS, or other organizations and agencies that maintain the easement in private ownership to benefit natural resources, often in perpetuity. The conservation easements carry binding and enforceable restrictions on development and other activities, and landowners may be reimbursed. Conservation easements may permanently protect sagebrush habitat from ex-urban development or agricultural conversion. The NRCS estimates that, since 2010, approximately 183,013 ha (451,884 ac) have been protected by conservation easements across the overall range of the sage-grouse (NRCS 2015a, p. 6). Conservation easements effectively block the loss and fragmentation of sage-grouse habitats by prohibiting ex-urban development and agricultural conversion on the easement lands and were recommended in the COT Report (USFWS 2013, pp. 48, 50). Approximately 79 percent of the conservation easements are located inside PACs, and 94 percent of the easements provide permanent protection against future agricultural conversion and ex-urban development (NRCS 2015a, p. 8). Although SGI easements address a variety of potential impacts to sage-grouse, including

agricultural conversion, many of the easements that are already in place are not currently located in sagebrush habitats that are at risk of agricultural conversion, according to the new cropland suitability and breeding distribution models (Lipse *et al.* 2015, entire; USFWS 2015a). However, Montana's recently finalized Greater Sage-Grouse Stewardship Act funds additional sage-grouse conservation that could be used to secure new conservation easements in Montana (NRCS 2015a, p. 3), and with the new models, new easements could be better targeted to conserve sage-grouse habitats that may be vulnerable to future agricultural conversion in Montana. Expanding the cropland suitability model into the Snake River Plain (MZ IV) and the Columbia Basin (MZ VI) would also help target conservation easements to prevent future agricultural conversion in those MZs.

The 2014 Farm Bill's Sodsaver provision also reduces habitat loss and fragmentation from agricultural conversion in Montana, North Dakota, and South Dakota (MZ I) (NRCS 2015a, p. 3). The Sodsaver provision discourages agricultural producers from converting native vegetation to annually tilled crops by reducing their insurance subsidies and disaster assistance if they convert native habitats into croplands (NRCS 2015a, p. 4). The NRCS reports that the Sodsaver policy, in conjunction with proposed policies on State lands and continued investments in conservation easements, reduces sage-grouse population declines that would have occurred without these conservation measures (NRCS 2015a, p. 1).

The voluntary Conservation Reserve Program (CRP) allows private landowners to receive annual payments from USDA's Farm Service Administration in exchange for establishing permanent vegetation on idle or erodible lands that were previously used for growing crops. Enrolled lands are set aside for 10 to 15 years and cannot be grazed or used for other agricultural uses except under emergency drought conditions. The enrollment of CRP lands can be detrimental to sage-grouse when sagebrush rangelands are converted to marginal croplands, and then converted into grasslands, not sagebrush habitats (USFWS 2013, p. 48). However, some CRP lands can provide nesting, brood-rearing, and wintering habitat for sage-grouse (Schroeder and Vander Haegen 2006, p. 32; Schroeder and Vander Haegen 2011, pp. 524–528). When agricultural fields are returned to sage-grouse habitats, enrollment in the CRP

generally benefits sage-grouse, especially in the Columbia Basin (MZ VI) and Great Plains (MZ I) where agricultural conversion historically occurred (Knick *et al.* 2011, p. 208). However, enrollment in CRP fluctuates with Federal funding and crop prices, and the long-term effectiveness of the CRP to improve sage-grouse habitats is uncertain. However, in Washington, lands have frequently remained enrolled long enough for sagebrush to reestablish and sage-grouse to return to nest (Schroeder and Vander Haegen 2011, p. 524).

Candidate Conservation Agreements—The CCAAs for sage-grouse in Oregon and Wyoming include appropriate restrictions on agricultural conversion, habitat fragmentation, and removing sagebrush that benefit sage-grouse rangewide. Approximately 745,000 ha (1.8 million ac) of private lands have landowner commitments in the programmatic CCAAs in Oregon and Wyoming. Enrollment in these CCAAs ensures that these lands are managed consistent with sage-grouse habitat objectives.

State Plans—The Wyoming and Montana Plans have regulatory mechanisms that reduce agricultural conversion in these States on applicable lands. The Wyoming Plan covers all land ownership types and contains a 5 percent disturbance cap in Core Areas that includes disturbance from agricultural conversion (Wyoming E.O. 2015–4, Attachment A, p. 6). The Montana Plan allows the State to prohibit agricultural conversion and the eradication of sagebrush on State Trust Lands in core habitat, general habitat, and connectivity areas (Montana 10–2014, pp. 7–14). By regulating where and how much agricultural conversion can occur within sage-grouse habitats, whether by regulating the amount of disturbance or prohibiting habitat loss on State Trust Lands, both the Wyoming Plan and Montana Plan provide effective regulatory mechanisms to limit future agricultural conversion in their State (see *Regulatory Mechanisms*, below).

Federal Plans—The Federal Plans were not designed to address agricultural conversion, because Federal lands are not used or converted for agricultural production (BLM and USFS 2015, entire). However, transfer of Federal lands to private ownership is possible and, once privately owned, could be converted to agriculture. The Federal Plans require that any PHMA and GHMA be retained in Federal ownership, thus preventing agricultural conversion (BLM and USFS 2015, entire). Exceptions to this requirement

could occur if the land transaction would benefit sage-grouse or not cause any adverse effects. By prohibiting their transfer to private ownership, the Federal Plans reduce the risk of agricultural conversion on more than half the occupied range of the species.

Agricultural Conversion Summary

In 2010, we identified agricultural conversion as one of three factors contributing to the loss and fragmentation of sage-grouse habitats, based on past rates of agricultural conversion that would likely continue. Historically, agricultural conversion reduced and fragmented sage-grouse habitats, resulting in population declines and the loss of connectivity in some areas (Knick *et al.* 2011, p. 208). Agricultural conversion may also expose sage-grouse to pesticides, increased predation, and invasive plants. However, the sage-grouse habitats most conducive to agriculture have already been converted to crop and pasturelands, and the remaining habitats are generally not suitable for agriculture and will likely not be converted. The new cropland suitability model compared with the breeding distribution model confirms that the sage-grouse habitats in the Great Plains (MZ I) most likely to be converted to agriculture have already been converted and that the remaining habitats have a low probability of conversion because of soil types and climatic limitations. Approximately 87 percent of the important sage-grouse populations in MZ I occur in habitats that have low probabilities of conversion to agriculture. The potential for agricultural conversion is also low in the Columbia Basin (MZ VI) and the Snake River Plain (MZ IV), where more sagebrush habitats have already been converted. Additionally, acres of new cropland decreased in every State except South Dakota over the last 30 years. Further, NRCS SGI conservation easements, the 2014 Farm Bill's Sodsaver provision, USDA's CRP, the Wyoming and Montana Plans, and BLM and USGS land-transfer prohibitions implemented since 2010 help reduce habitat loss and fragmentation from agricultural conversion, consistent with recommendations in the COT Report (USFWS 2013, p. 48–49).

Wildfire and Invasive Plants

In 2010, we evaluated the effect of wildfire on sage-grouse and concluded that wildfire was a substantial contributor to habitat loss and fragmentation, particularly in the Great Basin portion of the range (MZs III, IV, V, and VI). The number and size of fires

has increased compared to historical fire regimes (Miller *et al.* 2011, pp. 169, 176). A spatial analysis of areas burned reveals that approximately 18 percent of sagebrush habitat across the occupied range of sage-grouse burned between 1980 and 2007, including 27 percent of the habitat in the Great Basin portion of the range. Further, increased fire frequency is being driven by the expansion of nonnative invasive annual grasses, primarily cheatgrass. In 2010, we analyzed invasive annual grasses separately and concluded that it was a serious rangewide threat (75 FR 13910, March 23, 2010, pp. 13937). The 2010 finding concluded that habitat fragmentation, caused in part by fire, was a threat to the species such that listing was warranted under the Act (75 FR 13910, March 23, 2010, pp. 13986–13988).

Since 2010, the rangeland fire management community has made strides in addressing wildfire and its effects on habitat fragmentation in sage-grouse range, as well as the interactions between wildfire and invasive plants. Specifically, a suite of efforts such as the revised/amended Federal Plans and the associated FIAT assessments; Secretarial Order 3336; and other, related efforts represent a marked shift by the fire management community toward a more holistic approach to identifying, prioritizing, and managing impacts from wildfire in sage-grouse habitat (with fire fighter and human health and safety remaining as the highest priority in wildfire management). This marked shift is particularly important given the degree to which invasives and wildfire have the potential to reduce available habitat. Given the increased management emphasis, we still expect to lose some habitat to fire, but we now expect those losses to be less than would have otherwise occurred.

This new approach includes numerous updates to wildfire management strategies and planning tools. For example, the FIAT and Secretarial Order established local guidance and set forth enhanced policies and strategies for preventing and suppressing wildfire and for restoring sagebrush landscapes impacted by fire across the Great Basin region. Fuel treatments in sage-grouse habitats are now prioritized over treatments in other areas (Murphy *et al.* 2013, p. 4). Additionally, managers have developed protocols to ensure that plans are current and include guidance for fire management in relation to sage-grouse and sage-grouse habitats. These changes have affected what areas are prioritized for firefighting resources during periods of fire activity (Murphy *et al.* 2013, p. 4). While we do not currently know the extent to which these regulatory and non-regulatory mechanisms will alleviate the wildfire impact to sage-grouse, we are confident that that this strategic and coordinated effort by wildfire managers to protect sage-grouse habitat will reduce the impacts from wildfire. 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.

Altered Fire Cycle

Historically, wildfire was the principal natural disturbance in the sagebrush ecosystem (Factor A). Sagebrush likely consisted of extensive sagebrush habitat dotted by small areas of grassland. This ecosystem was maintained by long interludes of primarily numerous small fires, punctuated by large fire events that consumed larger expanses (Baker 2011, pp. 196–197; Bukowski and Baker 2013, pp. 559–561). Historical mean fire-

return intervals (the average number of years between two successive fires) have been estimated to be 100 to 350 years in low-lying, xeric, Wyoming big sagebrush communities, and 50 to more than 200 years in more mesic areas and mountain big sagebrush communities (Baker 2006, p. 181; Mensing *et al.* 2006, p. 75; Baker 2011, pp. 194–195; Miller *et al.* 2011, p. 166; Bukowski and Baker 2013, entire). Fire by itself, managed within a historical range of variation, may not necessarily be a threat to sage-grouse. However, altered fire intensity, size, and frequency, due in part to the presence of invasive annual grasses, has resulted in fire posing an increasing threat to sage-grouse, especially in the Great Basin.

Since the mid- to late 1800s, human activities have changed the vegetation composition and structure of the sagebrush ecosystem that has subsequently altered the fire regime (Chambers *et al.* 2014a, p. 3). Changes in wildfire frequency have adversely affected larger parts of sage-grouse range, particularly in the Great Basin (Figure 6). From 1980 to 2007, the number of fires and the total area burned increased in most MZs (Miller *et al.* 2011, pp. 169, 176). We conducted a geospatial analysis of burned areas that shows that between 2000 and 2008, within the Great Basin, more than 2.7 million ha (6.7 million ac) burned within the occupied range of sage-grouse, with more than 2 million ha (5 million ac) occurring in MZ IV alone (Table 7). Between 2009 and 2014, an additional 1.8 million ha (4.6 million ac) burned within the occupied range of sage-grouse, with most of the impact occurring in MZs IV and V in the Great Basin (Table 7). Between 2000 and 2014, the Great Basin experienced an average burn rate of approximately 0.85 percent per year (Table 7).

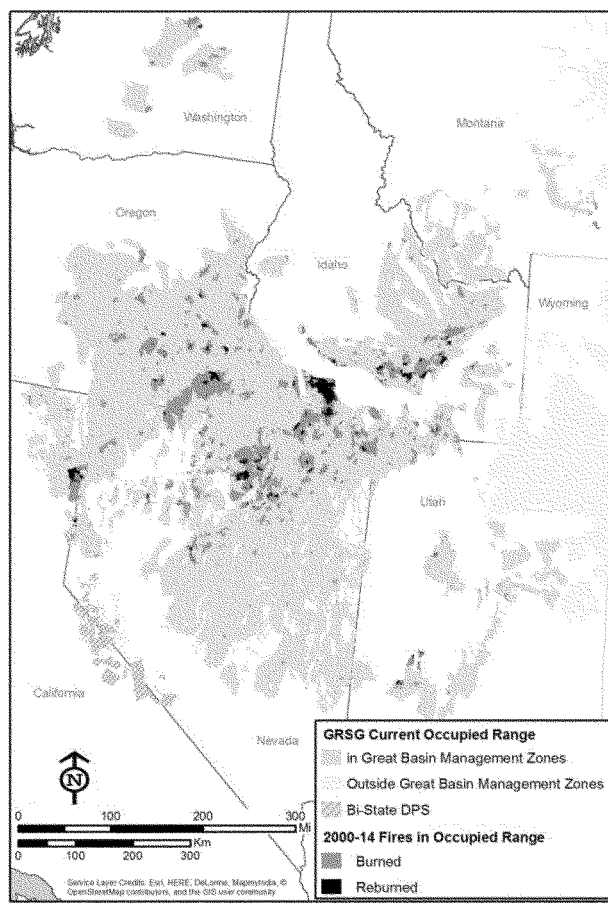


Figure 6. Fires from 2000 to 2014 in the Great Basin (including the Columbia Basin) in sage-grouse occupied range. Overlap captures fires from 2009 to 2014 that reburned any fires from 2000 to 2008.

TABLE 7—AREA OF SAGE-GROUSE OCCUPIED RANGE BURNED FROM 2000 TO 2014 IN THE GREAT BASIN
[Including the Columbia Basin]

Management zone		2000–2008 area burned	2009–2014 area burned	2000–2014 area burned	Annual burn rate ¹ (percent)
III	ha	410,730	148,993	559,723	0.32
	ac	1,014,937	368,171	1,383,108	
IV	ha	2,029,750	1,073,048	3,102,789	1.32
	ac	5,015,622	2,651,560	7,667,182	
V	ha	262,033	580,745	842,788	0.72
	ac	647,499	1,435,053	2,082,552	
VI	ha	27,649	61,963	89,612	0.54
	ac	68,434	153,116	221,550	
Totals	ha	2,730,162	1,864,749	4,594,912	0.85
	ac	6,746,492	4,607,900	11,354,392	

¹ Annual burn rates were calculated using average number of acres burned per year (2000–2014) divided by total occupied range for each area assessed.

We anticipate that these average burn rates will continue in the future and could increase due to cheatgrass expansion, climate change, and drought (see Wildfire and Invasive Plant Impacts, below). These burn rates are based on wildfire-impacted acres each year and do not account for areas

previously burned that re-burn each year; as a result, this rate likely overestimates the amount of habitat that could be impacted each year, as re-burn areas may no longer provide habitat. This burn rate is similar to the current and future burn rates analyzed in the 2010 finding.

Fire occurring within the range of sage-grouse can cause direct loss of habitat, resulting in negative impacts to breeding, feeding, and sheltering opportunities for the species (Call and Maser 1985, p. 17). In addition to the direct habitat loss, fire can also create a functional barrier to sage-grouse

movements and dispersal that compounds the influence wildfire can have on populations and population dynamics (Fischer *et al.* 1997, p. 89). In some cases, fire can isolate sage-grouse populations, thereby increasing their risk of extirpation (Knick and Hanser 2011, p. 395; Wisdom *et al.* 2011, p. 469).

Wildfire is associated with sage-grouse declines across the West (Beck *et al.* 2009, p. 400; Johnson *et al.* 2011, p. 424; Knick and Hanser 2011, p. 395). The extent and abundance of sagebrush habitats, the proximity to burned habitat, and the degree of connectivity among sage-grouse populations affects persistence (Johnson *et al.* 2011, p. 424; Knick and Hanser 2011, pp. 403–404; Wisdom *et al.* 2011, p. 461). Fire has been found to cause negative population trends and lek extirpation (Knick and Hanser 2011, p. 395; Johnson *et al.* 2011, p. 422).

Invasive Plants and the Wildfire Cycle

In 2010, we analyzed the effects of wildfire and invasive plants separately (75 FR 13910, March 23, 2010, pp. 13931–13937). Since that time, we have come to better understand the positive feedback loop between cheatgrass and wildfire, and believe that fire and invasive plants must be assessed, and managed, together to fully address potential impacts on sage-grouse and its habitat. Evidence of a significant relationship exists between an increase in wildfire occurrence caused by cheatgrass invasion in the Snake River Plain (MZ IV) and Northern Great Basin (MZ V) since the 1960s (Miller *et al.* 2011, p. 167) and in northern Nevada and eastern Oregon since 1980 (MZs IV and V). The extensive distribution and highly invasive nature of these invasive annual grasses poses increased wildfire risk and permanent loss of sagebrush habitat, because areas disturbed by fire are highly susceptible to further invasion and ultimately habitat conversion to an altered community state (Miller *et al.* 2011, p. 182). Progressive losses of resilience and resistance can result in the crossing of abiotic and biotic thresholds (Beisner *et al.* 2003, pp. 376–382) and may lead to a catastrophic shift in community structure (Scheffer *et al.* 2009, pp. 53–59; Reisner *et al.* 2013, p. 1047).

Functional habitat loss is occurring because of long-term loss of sagebrush cover and conversion to nonnative annual grasses (primarily cheatgrass), mainly due to an increase in wildfire occurrence, intensity, and severity (Miller *et al.* 2011, p. 183). The positive feedback process between cheatgrass and wildfires facilitates future fires, sagebrush loss, and cheatgrass dominance, resulting in entire landscapes being converted to nonnative annual grasslands (Miller *et al.* 2011, p. 183). Invasive plants reduce and, in cases where monocultures occur, eliminate vegetation that sage-grouse use for food and cover and fragment existing sage-grouse habitat (Miller *et al.* 2011, pp. 160–164). Invasives do not provide quality sage-grouse habitat and, where invasive plants are present, sage-grouse are potentially impacted both seasonally (*e.g.*, loss of forbs and associated insects) and long term (*e.g.*, functional habitat loss) (Manier *et al.* 2013, p. 88).

Interactions among disturbances and stressors may have cumulative effects (Chambers *et al.* 2014c, pp. 365–368). Invasive annual grasses and noxious perennials continue to expand their range, facilitated by ground disturbances, caused by more frequent and more severe wildfires, improper grazing of native perennial plants by domestic livestock and free-roaming equids, infrastructure, and other anthropogenic activity (Rice and Mack 1991, 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.*, cheatgrass) are replaced by new invasive plants (Crawford *et al.* 2004, p. 9; Miller *et al.* 2011, p. 160). Long-term changes in climate that facilitate invasion and establishment by invasive annual grasses further exacerbate the fire regime and accelerate the loss of sagebrush habitats (D'Antonio and Vitousek 1992, pp. 63–87). The effects of disturbance will likely be amplified by greater susceptibility of habitats to burn as well as decreased likelihood for recovery of sagebrush ecosystems (Miller *et al.* 2011, p. 183).

The arrival of European settlers in the mid-1800s initiated a series of changes in vegetation composition that impacted sagebrush ecosystems (Chambers *et al.* 2014a, p. 3). For example, improper grazing practices decreased native perennial grasses and forbs (Chambers *et al.* 2014a, p. 3; Miller and Eddleman 2001, p. 17; Miller *et al.* 2011, p. 181), which facilitated the invasion of nonnative annual grasses, particularly cheatgrass and *Taeniatherum caput-medusae* (medusahead). This increase in fuel load and the lower fuel moisture content of the invasive annual grasses has resulted in more frequent, higher intensity fires (Brooks *et al.* 2004, pp. 679–680). Moreover, invasive annual grasses expand rapidly after fire disturbances becoming a readily burnable fuel source, and ultimately lead to a recurrent fire cycle that prevents sagebrush reestablishment (Zouhar *et al.* 2008, p. 41; Eiswerth *et al.* 2009, p. 1324; Miller *et al.* 2011, pp. 163–170).

Currently, invasive annual grasses are known to occur across the sage-grouse occupied range, with the greatest infestations occurring in the Great Basin (Figure 7). In the Great Basin, cheatgrass dominates over 6.9 million ha (17 million ac) and occupies an additional 25 million ha (62 million ac) as a component of the plant community (Diamond *et al.* 2012, p. 259). Approximately 58 percent of sagebrush habitat in the Great Basin is believed to be at moderate to high risk of cheatgrass invasion during the next 30 years (Suring *et al.* 2005, p. 138). Although nonnative annual grasses are more pervasive in the Great Basin than the Rocky Mountain States (Figure 7) (Connelly *et al.* 2004, p. 5–9; Miller *et al.* 2011, p. 160), in recent years, cheatgrass (and other nonnative annual grasses) has increased its spread across the eastern portion of the species' range (Mealor *et al.* 2012, p. 427). Without effective management, the invasion of cheatgrass into the eastern portion of the species' range is likely to continue (Mealor *et al.* 2012, p. 427), and even now, with more effective management being employed, we expect that sage-grouse habitat will continue to be lost to some degree in the future.

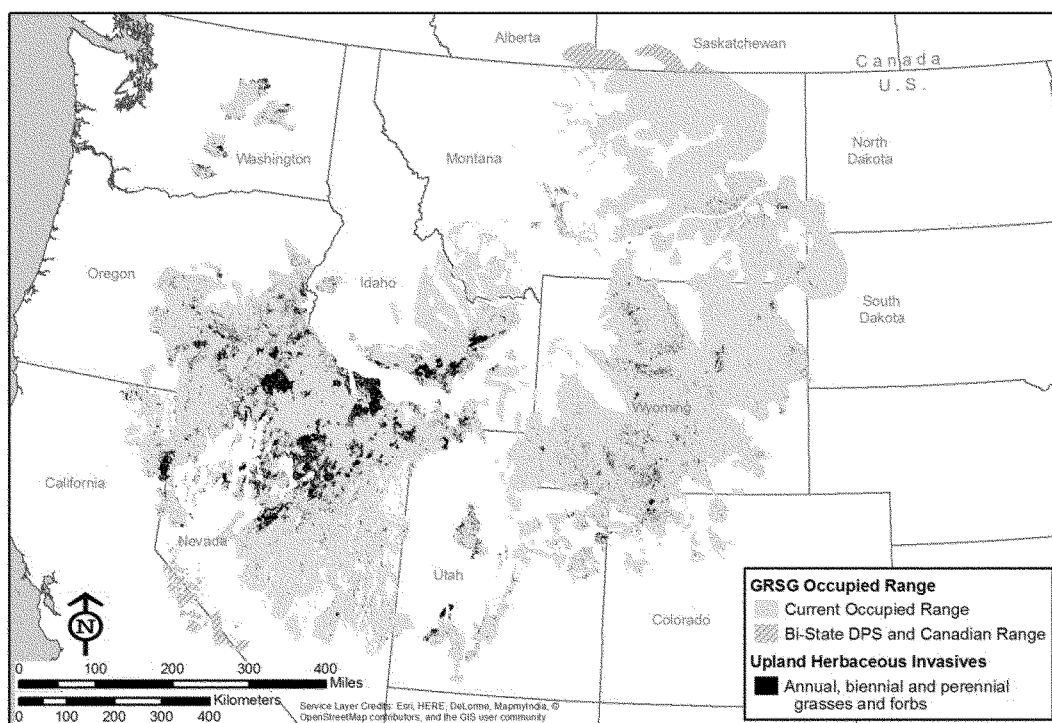


Figure 7. Approximate distribution of upland, herbaceous invasive plants

across the occupied range of sage-grouse.

Nonnative annual grasses, such as cheatgrass and medusahead, have substantially altered regional fire regimes (Balch *et al.* 2013, p. 179). Cheatgrass-dominated rangelands affect sagebrush ecosystems by shortening fire-return intervals and perpetuating their own persistence and intensifying the role of wildfire (Whisenant 1990, p. 4). Sites dominated by cheatgrass may be four times more likely to burn than native sagebrush (Balch *et al.* 2013, p. 178). Invasive annual grasses increase the amount of fine fuels, resulting in wildfires that burn hotter and more evenly than historical times (Miller *et al.* 2011, p. 167). Hotter and more expansive wildfires frequently burn larger contiguous areas of sagebrush and leave fewer pockets of unburnt sagebrush that would be available to recolonize the burned areas. The positive feedback process between cheatgrass and wildfire converts high-diversity native communities into low-diversity communities dominated by invasive plants that are unsuitable for sage-grouse and at increased risk of wildfire reoccurrence (Chambers *et al.* 2014a, pp. 3–8).

Wildfire and Invasive Plant Impacts

While it is known that sage-grouse respond negatively to wildfire (Johnson

et al. 2011, pp. 424–425; Knick and Hanser 2011, pp. 395–403), it is challenging to predict the location and extent of future wildfires. However, a recent study provides insight to the wildfire and invasive plant cycle and serves as a useful tool in predicting future impacts (Chambers *et al.* 2014a, entire). This study used soil temperature and moisture regimes as an indicator of landscapes' resilience to disturbance and resistance to invasive annual grasses. This work classified different ecological soil and moisture regimes (Chambers *et al.* 2014a, p. 16) into three categories of resiliency and resistance to wildfire and invasive species disturbance (which is known as the R&R matrix). For example, areas with low R&R values tend to be prone to invasion by cheatgrass (and, therefore, are at higher risk of large catastrophic wildfires) because these ecosystems have relatively lower resilience to disturbance and higher climate suitability for invasive annual grasses; therefore, low R&R areas are less likely to provide ecological benefits within the sagebrush ecosystem in the future. We assessed the risk of future wildfire and invasive plant invasion by examining the amount of breeding habitat occurring within the three R&R matrix

classes. Habitat identified as low resistance was considered most likely to be adversely affected by wildfire and invasives. Because nonnative annual grasses are more prevalent in the Great Basin than the Rocky Mountain States (Connelly *et al.* 2004, p. 5–9; Miller *et al.* 2011, p. 160), we limited our analysis to the Great Basin MZs III, IV, and V.

In our analysis, sage-grouse in MZ III appear to be at greatest risk from wildfire and nonnative annual grass invasion, with 54 percent of sage-grouse breeding habitat occurring in areas classified as having low resistance. The majority of sage-grouse breeding habitat in MZs IV and V occur in areas having either high or moderate resistance and resiliency to fire and invasives (Table 8).

TABLE 8—PERCENT OF SAGE-GROUSE BREEDING HABITAT WITHIN EACH GREAT BASIN MANAGEMENT ZONE THAT OCCURS WITHIN THE THREE CLASSES OF RESILIENCY AND RESISTANCE TO INVASIVE PLANTS AND WILDFIRE

	MZ III (%)	MZ IV (%)	MZ V (%)
Wetland/Riparian	2	2	1

TABLE 8—PERCENT OF SAGE-GROUSE BREEDING HABITAT WITHIN EACH GREAT BASIN MANAGEMENT ZONE THAT OCCURS WITHIN THE THREE CLASSES OF RESILIENCY AND RESISTANCE TO INVASIVE PLANTS AND WILDFIRE—Continued

	MZ III (%)	MZ IV (%)	MZ V (%)
High Resistance	16	35	8
Moderate Resistance	28	36	59
Low Resistance	54	27	33

While useful for estimating future wildfire and invasive plant risk, sagebrush resistance and resilience does not necessarily equate to sage-grouse resilience and resistance. Depending on the location and extent of wildfires, the amount of undisturbed habitat may be diminished such that it cannot sustain local populations. In addition, depending upon where wildfires occur, impacts to sage-grouse could be greater due to lost connectivity between populations. However, without the ability to predict the location, size, and severity of a wildfire, it is difficult to predict with certainty the location and degree of habitat fragmentation that may occur in the future or the associated population impacts.

A recent study examined the potential impact of wildfire and invasive plants on future sage-grouse population trends in the Great Basin (Coates *et al.* 2015, entire). This study examined 30 years of wildfire and population trend data to estimate Great Basin population trends over the next 30 years, with and without additional management to reduce wildfire impacts (Coates *et al.* 2015, pp. 6–18). Without additional management, wildfire and invasive plants are forecast

to cause sage-grouse abundance in the Great Basin to decline by 43 percent by 2044 (Coates *et al.* 2015, pp. 18–31). Improved management of wildfire suppression and invasive plant infestation could reduce the rate of decline depending upon the success rate of the management approach (Coates *et al.* 2015, p. 34). This study did not consider the impact of post-wildfire restoration projects, which could further reduce the rate of population decline (Coates *et al.* 2015, p. 34). The projected future impact of fire on abundance trends likely also depends upon climatic conditions (Coates *et al.* 2015, p. 34), which, as discussed in *Climate Change and Drought* (see below), is difficult to forecast with certainty 30 years into the future.

Without changes in wildfire and invasive plant management, we anticipate that wildfire would continue to affect the Great Basin at the current rate of about 0.85 percent per year (see Altered Fire Cycle, above). This rate could potentially increase due to the intensifying synergistic interactions among fire, human activity, invasive plants, and climate change (Neilson *et al.* 2005, p. 157; Miller *et al.* 2011, pp. 179–184). Increased human presence and associated infrastructure, such as roads and power lines, could increase the risk of human-caused wildfires. Any future decreases in wildfire and invasive plant risk is dependent upon the successful implementation of wildfire and invasive conservation efforts, as discussed below.

Conservation Efforts

As mentioned above, since 2010, wildfire managers have taken significant steps to better understand and address the impacts of wildfire on sage-grouse habitat. As part of that effort, local,

State, and Federal land managers have undertaken considerable efforts to address the impacts of wildfire and invasive plants. Federal, State, and local partners have implemented a number of projects and programs to prevent and suppress the spread of wildfire and invasive plants, and where impacts have already occurred, to restore, consistent with recommendations in the COT Report (USFWS 2013, pp. 40–43). As discussed further below, the Federal Plans, FIAT assessments, and Secretarial Order provide guidance, coordination, and commitments for Federal and State agencies and private landowners to address the wildfire and invasive plants cycle and reduce impacts to sage-grouse.

The BLM has a long history of implementing vegetation management treatments and has made considerable investments in fuels and restoration treatments within the sagebrush ecosystem since 2010. Analyses of more than 4,000 completed BLM projects suggest these treatments provide direct and indirect benefits to sage-grouse populations and have been effective at ameliorating the impacts of wildfire and invasives to sage-grouse (Table 9). The strong emphasis on sage-grouse since 2010 is reflected through focusing additional and existing resources to protect, conserve, and restore sage-grouse habitat. This emphasis has shifted priorities in many of the BLM's programs that treat vegetation, including fuels management and post-fire recovery. The BLM has incorporated emerging science, monitoring results, and adaptive management to influence and modify vegetation management work to achieve the most ecosystem and landscape benefit.

TABLE 9—BUREAU OF LAND MANAGEMENT PROJECTS IMPLEMENTED SINCE 2009 TO AMELIORATE THE IMPACTS OF WILDFIRE AND INVASIVES TO SAGE-GROUSE

[Adapted from DOI 2015e, pp. 3–5]

Treatment	Completed			In-progress			Planned		
	Number of projects	ha	ac	Number of projects	ha	ac	Number of projects	ha	ac
Habitat Restoration	1,395	322,167	796,091	102	33,060	81,692	40	5,805	14,345
Conifer Removal	693	179,756	444,186	119	48,099	118,854	134	154,661	382,175
Wildfire Pre-suppression	608	34,062	84,169	45	13,357	33,005	55	8,415	20,793
Habitat Restoration Following Wildfire	554	620,955	1,534,412	25	40,635	100,410	7	16,442	40,628
Totals	3,250	1,156,940	2,858,858	291	135,149	333,961	236	185,322	457,941

The Federal Plans require that livestock grazing and feral horses be managed at levels necessary to achieve

Land Health Standards (LHS) (see *Grazing and Rangeland Management* and *Free-roaming Equids*, below). These

standards include minimizing the presence of cheatgrass and other invasive annual grasses within sage-

grouse habitat. These Federal Plan requirements will reduce the infestation of cheatgrass over the long term, reducing wildfire intensity, size, and frequency, and restoring a more natural role of wildfire in the sagebrush ecosystem.

Within the Great Basin, the efforts by BLM, USFS, and DOI to address the impacts of wildfire and invasive plants on a landscape scale are particularly noteworthy. The BLM and USFS are implementing FIAT as part of their Federal Plans to prioritize actions directed at reducing the impacts of invasive annual grasses, wildfires, and conifer encroachment (BLM 2014, entire). Additionally, DOI has committed to the implementation of Secretarial Order 3336, Rangeland Fire Prevention, Management, and Restoration (Secretarial Order), which will result in a multiagency wildfire management paradigm shift that highlights the protection of sagebrush habitat. The BLM and USFS continue to implement measures to reduce the potential threat of wildfire to sage-grouse habitat through greater emphasis on preventing and suppressing wildfire, and restoring sagebrush landscapes threatened by wildfire and invasive species by means of improved Federal-State-local collaboration and coordination. Those efforts, as well as work by local and State wildfire managers, are discussed in further detail below.

Fire and Invasives Assessment Tool—The FIAT is a collaborative multiagency effort by Federal, State, and local wildlife, forestry, and firefighting organizations that identified potential project areas and management strategies in highly valued sage-grouse habitats. As committed to in the Federal Plans,

implementation of the FIAT assessments will reduce the potential impacts to sage-grouse resulting from invasive annual grasses, wildfires, and conifer expansion by prioritizing and focusing wildfire and invasive plant management efforts on the most important sage-grouse habitat while still prioritizing fire fighter and human safety. Focal habitats were identified within PACs based on patterns of ecological resistance and resilience, landscape sagebrush cover, burn probability, and conifer expansion, resulting in the following priority landscapes: Central Oregon, Northern Great Basin, Snake/Salmon/Beaverhead, Southern Great Basin, and Western Great Basin/Warm Springs Valley. For each priority landscape, regional findings were stepped down to describe local conditions by Project Planning Area and associated treatment needs and management priorities (BLM 2014, p. 9). Assessment of treatment needs and priorities were based on recent scientific research on resistance and resilience of Great Basin ecosystems (Chambers *et al.* 2014a, entire, which was described above) and NRCS soil surveys that include geospatial information on soil temperature and moisture regimes (BLM 2014, p. 3; and Campbell 2014, entire).

Potential management actions to resolve resource issues were divided into proactive approaches (e.g., fuels management and habitat recovery/restoration) and reactive approaches (e.g., fire operations and post-fire rehabilitation) (BLM 2014, p. 3). Proactive management strategies are intended to favorably modify wildfire behavior and restore or improve desirable habitat to provide greater

resistance to invasive annual grasses and/or resilience after disturbances such as wildfires. Reactive management strategies are intended to reduce the loss of sage-grouse habitat from wildfires or stabilize soils and reduce impacts of invasive annual grasses in sage-grouse habitat after wildfires. Proactive management strategies, if implemented and effective, will result in long-term sage-grouse habitat improvement and stability, while effective reactive management strategies are essential to reduce current impacts of wildfires on sage-grouse habitat, thus maintaining habitat stability, and allowing for long-term improvements (BLM 2014, pp. 2–3).

Cumulatively, the FIAT assessments of the five priority areas identify more than 16,000 km (10,000 mi) of potential linear fuel treatments, approximately 2.99 million ha (7.4 million ac) of potential conifer treatments, more than 2 million ha (5 million ac) of potential invasive plant treatments, and more than 7.7 million ha (19 million ac) of post-fire rehabilitation (*i.e.*, should a fire occur, the post-fire rehabilitation identifies which areas BLM would prioritize for management) within the Great Basin region (Table 10). The FIAT assessments also identify site-appropriate management strategies for fire operations and post-fire decisions. These assessments provide direction about the extent, location, and rationale for management opportunities to address potential threats to sage-grouse. This comprehensive and forward-looking approach to both prevention and post-fire treatments in the Great Basin represents a distinct change in approach and emphasis since we made our 2010 finding.

TABLE 10—FIAT ASSESSMENT PROJECTS FOR FIVE PRIORITY LANDSCAPES IN THE GREAT BASIN REGION

[Adapted from BLM 2015a, entire]

Potential treatment type		FIAT Assessment area					Totals
		MZ III	MZ IV		MZ V		
			Southern Great Basin	Northern Great Basin	Snake/ Salmon/ Beaverhead	Central Oregon		Western Great Basin/Warm Springs Valley
Habitat Restoration	ha	1,203,333	1,951,113	603,792	436,589	840,277	5,035,104
	ac	2,973,499	4,821,300	1,492,000	1,078,835	2,076,367	12,442,001
Fuels Treatments	ha	7,322	185,508	35,329	231	n/a	228,390
	ac	18,092	458,400	87,300	571	n/a	564,363
Linear Fuels Treatments	km	2,398	8,530	644	156	5,309	17,036
	mi	1,490	5,300	400	97	3,299	10,586
Fire Operations ¹	ha	3,689,627	4,829,644	2,121,162	361,645	3,268,267	13,270,346
	ac	9,117,260	11,934,300	5,241,500	893,643	5,605,006	32,791,709
Post-Fire Rehabilitation (ESR) ² .	ha	7,133	3,960,905	1,502,963	203,865	2,069,505	7,744,370
	ac	17,625	9,787,600	3,713,900	503,760	5,113,853	19,136,738
Conifer Treatments	ha	954,090	1,254,729	205,621	224,530	354,151	2,993,121
	ac	2,357,606	3,100,500	508,100	554,824	875,126	7,396,156

TABLE 10—FIAT ASSESSMENT PROJECTS FOR FIVE PRIORITY LANDSCAPES IN THE GREAT BASIN REGION—Continued
[Adapted from BLM 2015a, entire]

Potential treatment type		FIAT Assessment area					Totals
		MZ III	MZ IV		MZ V		
			Southern Great Basin	Northern Great Basin	Snake/ Salmon/ Beaverhead	Central Oregon		Western Great Basin/Warm Springs Valley
Invasive Plant Treatment ³	ha	1,196,979	164,748	90,407	212,909	396,197	2,061,239
	ac	2,957,796	407,100	223,400	526,109	979,024	5,093,429

¹ Fire operations include preparedness, prevention, and suppression activities. As opposed to proactive, site-specific planned treatments, fire operations and post-fire rehabilitation treatments are reactive responses to random wildfires.

² Post-fire rehabilitation includes the BLM's ESR Program and the USFS's BAER Program. Program policies limit available funding from 1 to 3 years.

³ For the purposes of FIAT, invasive species were limited to invasive annual grasses.

The planning, implementation, and monitoring of the FIAT assessments are a multiyear process. Planning is completed for some FIAT assessment projects, and implementation has begun

(Table 11). Others similar projects are in early planning stages, but are expected to be implemented in the near future. To date, the BLM has made substantial investments in fuels and restoration

treatments to address the impacts of fire and invasives on sage-grouse habitats, especially within the FIAT assessment areas.

TABLE 11—FIAT PROJECTS IMPLEMENTED IN FISCAL YEAR 2015 AS OF AUGUST 30, 2015

[BLM 2015h, attachment 1]

FY15 FIAT and other sage-grouse fuels program work						
Treatment	Completed			In-progress		
	Number of projects	ha	ac	Number of projects	ha	ac
Conifer Removal	324	56,052	138,508	146	22,210	54,884
Wildfire Pre-suppression	130	16,778	41,460	74	2,217	5,480
Habitat Restoration	248	74,111	183,134	90	25,971	64,176
Totals	702	146,941	363,102	310	50,398	124,540

Secretarial Order 3336—On January 5, 2015, the Secretary signed Secretarial Order 3336 (Secretarial Order), which sets forth enhanced policies and strategies for preventing and suppressing rangeland fire and for restoring sagebrush landscapes impacted by fire across the Great Basin region (DOI 2015b, entire). The Secretarial Order establishes a Rangeland Fire Task Force (Task Force), which completed an Implementation Plan (DOI 2015d, entire) that established a roadmap to accomplish the objectives of the Secretarial Order. The Implementation Plan also provided a timeline and methodology to be used in developing two separate reports on short- (2015 western fire season) and long-term (2016 western fire season and beyond) actions and activities that will be implemented to further address the impacts of wildfire in the Great Basin. The Secretarial Order complements the FIAT process by providing support and resource commitments for some of the projects identified in the FIAT assessments. For example, the

Secretarial Order emphasizes the research on wildfire and invasive plant prevention and restoration (DOI 2015b, entire) that will support the adaptive management of FIAT assessment projects.

Further, the Secretarial Order provides clear direction to all affected Department of the Interior bureaus (DOI 2015b, entire), in particular BLM, for prioritizing actions to address key elements of wildfire management, including effective rangeland management, fire prevention, fire suppression, and restoration at a landscape scale. Building on BLM and USFS' long and successful history of managing wildfire in the Western United States, the Secretarial Order focuses the existing rangewide commitment to effective wildfire management—as well as invasive species control and restoration—to protect large, intact sagebrush landscapes against the destructive effects of wildfire and invasive species. For example, BLM has dedicated increased resources to all aspects of fire management within the species' range

for the 2015 wildfire season. Similarly, BLM is actively pursuing the long-term directives in the Final Report component of the Secretarial Order, such as a national seed strategy, to support effective restoration efforts (DOI 2015a).

Initial Report

On March 1, 2015, the Task Force completed “SO 3336—The Initial Report: A Strategic Plan for Addressing Rangeland Fire Prevention, Management, and Restoration in 2015” (DOI 2015c, entire), detailing activities that could be undertaken in advance of the 2015 western fire season to improve the efficiency and effectiveness of wildfire management efforts. The actions identified in the Initial Report included priorities to strengthen planning and preparedness, such as increasing capabilities of rangeland fire protection associations (RFPA) and volunteer departments, utilizing veteran crews, ensuring fire management organizations are prepared and functional, and increasing initial attack and extended attack capability. In

response, the BLM has allocated additional resources to reflect these FY15 priorities (BLM 2015h; DOI 2015a; DOI 2015e), including:

- Allocating 6 million dollars in additional base funding to bolster fire programs for the long term.
- Allocating approximately 10.6 million dollars to hire additional seasonal firefighters and to support equipment (e.g., dozers, water tenders, etc.). Using this funding, the BLM hired 100 additional firefighters in 2015, and DOI gave each Great Basin State supplemental funding to cover staffing shortages. With supplemental funds from the DOI, the BLM also purchased new equipment for the 2015 fire season. An additional 20 single-engine air tankers were pre-positioned near critical sagebrush habitat throughout the western United States. Helicopters were mobilized to address sage-grouse priority areas, and the helitack crew size was increased in order to provide more efficient initial attack. An additional jet lead plane was available to insure support for retardant planes mobilized

to protect these critical areas. The BLM has also purchased several dozers, dozer transports, water trailers, and semi-trucks to boost or maintain the BLM's initial attack resource capability and initial attack success rate in critical sagebrush areas in the Great Basin.

- Committing 500,000 dollars to train rural fire departments and RFPAs in important sagebrush ecosystems and sage-grouse habitat areas.
- Providing training for more than 200 veterans to work on 20-person firefighting crews. California, Nevada, and Oregon BLM offices have hired returning veterans who bring skills such as physical fitness, endurance, leadership, communications, and operation of heavy equipment.

In addition to these actions, the BLM dedicated fuels program funding for fuels treatment and fire suppression to Great Basin States (BLM 2015h). Fuels treatment projects are prioritized and implemented based on location, opportunities for success, and overall benefit to protecting, conserving, and restoring sagebrush ecosystems and key sage-grouse habitat. Fire management

actions taken by the BLM during the 2015 wildfire season has resulted in fewer acres of sage-grouse habitat burned in the early fire season compared to past years with similar weather and fuel conditions (BLM 2015h). For example, the Fuels Treatment Effectiveness Monitoring (FTEM) system is a database that captures anecdotal information when a wildfire intersects a past fuels treatment (BLM 2015h). So far in 2015, two fires in sage-grouse habitat (i.e., the "499" wildfire in Prineville, Oregon and the "Hwy 290" wildfire in Winnemucca, Nevada) have been entered into the system and demonstrate the effectiveness of the fuels treatment. Additionally, fuels treatments have reduced the size of unplanned wildfires, assisted in providing opportunities to stop or slow the spread of the wildfire, provided for greater firefighter safety, and protected sage-grouse habitat (BLM 2015h). Currently the BLM has completed more than 80 percent of the action items and activities outlined in the Initial Report (Table 12).

TABLE 12—SECRETARIAL ORDER INITIAL REPORT ACTIONS IMPLEMENTED IN FISCAL YEAR 2015

[McKnight, BLM, 2015, pers. comm.]

Status	Action item and description	Deliverable
Section 7.b.i. Integrated Response Plans		
Completed ...	Action Item #1: Increase the capabilities and use of rural/volunteer fire departments and RFPAs and enhance the development and use of veteran crews.	Coordinate with State, tribal, and local government partners to leverage training assets and capabilities. Specifically, the DOI/BLM will seek to deliver training to approximately 2,500 cooperators and increase the utilization of veteran crews.
Completed ...	Action Item #2: Ensure local, multi-agency coordination (MAC) groups are functional and MAC plans are updated.	Report out from States. MAC groups, working with local Federal wildland fire suppression agencies, tribes, State fire suppression agencies, local fire departments, RFPAs, and other cooperators.
Completed ...	Action Item #3: Develop and implement minimum draw-down level and step up plans to ensure availability of resources for protection in priority greater sage-grouse habitat.	Report out from States. All units managing priority sage-grouse habitat will develop and implement a minimum draw-down level and step up plans to clearly identify those suppression resources necessary in order to maintain an effective, aggressive initial attack capability.
Completed ...	Action Item #4: Apply a coordinated, risk-based approach to wildfire response to ensure initial attack response to priority areas.	Report out from States. Review and update CAD systems to ensure initial attack response to priority sage-grouse areas in protection of sage-grouse habitat.
Completed ...	Action Item #5: Develop a standardized set of briefing materials.	Prepare standardized briefing materials on sagebrush-steppe and sage-grouse wildfire protection for incoming Type 1–3 Incident Management Teams and other fire management resources.
Completed ...	Action Item #6: Review and update local plans and agreements for consistency and currency to ensure initial attack response to priority greater sage-grouse areas.	Report out from States. Update and approve all Fire Prevention Plans, Wildland Fire Decision Support System data, Fire Danger Operating Plans, Preparedness Level Plans, and Agreements and Annual Operating Plans.
Completed ...	Action Item #7: Develop supplemental guidance for the use of "severity funding".	Review severity funding policy and update guidance.
Ongoing	Action Item #8: Evaluate the effectiveness of action plans.	Develop annual reporting metrics for effectiveness monitoring of wildland fire response, with particular emphasis on the effectiveness of measures to improve success in rangeland fire response, based upon CAD changes, and reporting of success and/or failure as it pertains to Federal Plans and FMPs, and effectiveness of enhanced training and capacity measures.
Ongoing	Action Item #9: Increase the availability of technology and technology transfer to fire management managers and suppression resources.	Increase access to digital maps and mapping software by providing appropriate technology (such as smartphones and tablets) to fire managers and suppression personnel. Remove barriers for acquisition of appropriate software and hardware.

TABLE 12—SECRETARIAL ORDER INITIAL REPORT ACTIONS IMPLEMENTED IN FISCAL YEAR 2015—Continued
[McKnight, BLM, 2015, pers. comm.]

Status	Action item and description	Deliverable
Completed ...	Action Item #10: Improve the description and awareness of critical resource values threatened in various stages of the fire response process including large fire management.	Improve the collection of information about critical resource values threatened, including sage-grouse habitat and populations, on the existing Incident Status Summary (ICS 209) and ensure this information is captured in the Incident Management Situation Report (SIT Report).
Completed ...	Action Item #11: Ensure compliance and evaluation of the implementation plan action items.	During annual preparedness reviews, review all CAD systems and MAC plans for compliance with the action plans outlined in Action Items #1 through #4.
Section 7.b.ii. Prioritization and Allocation of Resources		
Completed ...	Action Item #1: Communication plan	Establish protocols for providing Federal agency leadership with regular briefings and information on wildfire activity, fire conditions, and significant issues in relation to rangeland fire and the implementation of the Secretarial Order throughout the 2015 wildfire season in order to provide leadership with an accurate understanding and insight to the conditions on the ground. Senior leadership will regularly communicate national strategic priorities and expectations to line officers and fire staffs during the wildfire season.
Completed ...	Action Item #2: Review and update the delegation of authority for the National Multi-Agency Coordination (NMAC) Group.	Ensure roles and responsibilities.
Completed ...	Action Item #3: Issue national level “Leader Intent”.	Provide expectations for 2015.
Completed ...	Action Item #4: Engage Geographic Multi-Agency Coordination (GMAC) groups.	Communicate Leaders Intent.
Ongoing	Action Item #5: Develop “Delegation of Authority” template for use by local line officers.	Create standard language for use in a Delegation of Authority template that identifies the sage-steppe ecosystem and protection of species as a priority. Line officers will use this standard template when delegating authority to an Incident Commander who has responsibility for managing a wildfire incident within a FIAT area or has nexus to one. Delivery to Districts.
Completed ...	Action Item #6: Engage line officers to communicate Leaders’ Intent and expectations.	Each agency use appropriate internal mechanisms to communicate intent and expectations to regional and unit-level managers.
Section 7.b.v. Post Fire Restoration		
Ongoing	Action Item #1: Review and update Emergency Stabilization (ES) and Burn Area Rehabilitation (BAR) policy guidance to address rating and evaluation criteria, project design to promote the likelihood of treatment success, cost containment, monitoring, and continuity and transition to long-term restoration activities and treatments.	Update BAR evaluation and rating criteria and review ES policy and procedures.
Ongoing	Action Item #2: Address acquisition, financial management, and other procedures that pose challenges to timely project implementation.	Work with Departmental and bureau acquisition and finance offices to provide funding and project continuity at the beginning of, and across, fiscal years.
Ongoing	Action Item #3: Accelerate schedule approving BAR projects consistent with the guidelines established for the 2015 fire season.	Accelerate preliminary approvals that will allow sufficient lead time to complete cultural and other clearances (e.g., NEPA and National Preservation Act of 1966 [Section 106]6), procurement planning, and other advance work that will take place prior to the application of full funding at the beginning of the fiscal year.
Completed ...	Action Item #4: Identify non-fire programs and activities that will fund treatments and restoration activities for the long term in conjunction with BAR and ES policy and program review to be conducted in 2015.	Funding of ES and BAR projects will be evaluated based on opportunities and commitments from non-fire program and activities if the work that is proposed will extend beyond the ES and BAR duration.
Ongoing	Action Item #5: Identify requirements for National Fire Plan Operations and Reporting System (NFPORS) capabilities.	Implementation of new criteria for project evaluation and oversight may require updates and changes to NFPORS.
Section 7.b.ix. Seed Strategy		
Completed ...	Action Item #1: Develop the draft National Seed Strategy and Implementation Plan.	Complete the National Seed Strategy and Implementation Plan.
Completed ...	Action Item #2: Identify a forum to discuss and highlight current native seed and restoration techniques and research.	Attend the Institute for Applied Ecology’s National Native Seed Conference.
Completed ...	Action Item #3: Provide an opportunity to discuss current research, case-studies, and tools that inform applied restoration opportunities in the Great Basin.	A series of 15 webinars on seeding and restoration entitled, “The Right Seed in the Right Place at the Right Time: Tools for Sustainable Restoration” are offered through May 2015.

The BLM has longstanding national and local policies that require monitoring vegetation treatments (both implementation and effectiveness monitoring) and guidance to apply monitoring data for adaptive management. These planning policies require the BLM to set land use goals and objectives, and to ensure that all vegetation treatments are responding to those goals and objectives. The FIAT process requires partnership with cooperators, agencies, and others involved in land or wildlife management in the FIAT assessment areas, which helps ensure BLM's treatments are benefitting the sagebrush ecosystem and that proposed treatments provide direct and indirect benefits to sage-grouse populations.

The management strategies identified by the FIAT process are consistent with broader land use plan direction. Habitat restoration treatments (*e.g.*, biological, chemical, seeding, and broadcast burning) are effective at reducing fine fuel loads and ultimately decrease fire spread and area burned. Chemical applications are effective at removing nonnative annual grasses and promoting growth and establishment of native species. Seeding treatments implemented by the BLM are effective at reducing undesirable species and promote the establishment of desirable species because they are timed to achieve a high probability of success. Conifer removal treatments are implemented to reduce fuel loading and effectively reduce fire intensity, fire spread, and area burned. Wildfire pre-suppression activities alter vegetation composition, reducing the negative impacts from wildfire and invasives. Projects are planned using fire behavior analysis tools that consider topography, weather patterns, fire history, and fuel conditions to ensure effectiveness. These treatments ultimately slow fire spread and reduce fire size and area burned (DOI 2015e, *entire*). Fuels treatment effectiveness monitoring reports of 722 wildfire/fuels treatment intersections since 2001 demonstrate fuels treatment effectiveness within the BLM (BLM 2015b, p. 1). Of the wildfire/treatment interactions reported, 85 percent of the treatments helped control the wildfire, and 90 percent changed the fire behavior (BLM 2015b, p. 2). The BLM found that hazardous fuels treatments reduced the size of many unplanned ignitions, assisted in providing opportunities to stop or slow the spread of wildfire, provided for greater firefighter safety, allowed opportunities to manage unplanned ignitions for resource benefits, reduced

the burn area rehabilitation needs and costs, reduced smoke emissions, and allowed for greater resiliency of the environment in returning to a functional ecosystem following wildfire (BLM 2015b, p. 1). The BLM's post-fire emergency stabilization and burned area rehabilitation treatments are planned, deliberate actions that promote land stabilization and rehabilitation of burned landscapes. The BLM is aggressively treating burned areas where there is a high probability of cheatgrass invasion (BLM 2015h). Post-fire recovery treatments are designed to promote native vegetation and to inhibit the establishment of nonnative annual grasses. Some previous post-fire seeding restoration attempts were found to be ineffective, with seeded areas as likely to have sage-grouse occupancy compared to non-seeded areas (Arkle *et al.* 2014, p. 15). However, post-fire seeding restoration was more likely to be successful in higher elevation areas with particular climate regimes and when projects were implemented in years preceding cool, wet growing seasons (Arkle *et al.* 2014, p. 15). Therefore, the FIAT process prioritizes restoration activities in areas with higher resiliency and resistance to fire based on soil and moisture regimes (Chambers *et al.* 2014b, p. 453). These treatments are effective at addressing the impacts posed by invasive plants and ultimately address future wildfire threats.

Once implemented, projects and treatments identified by FIAT will follow the same monitoring protocols as non-FIAT management actions, in accordance with overarching guidance in the Federal Plans. Specifically, monitoring that evaluates the implementation and effectiveness of FIAT management strategies will follow The Greater Sage-Grouse Monitoring Framework (BLM and USFS 2014, *entire*). Given past effectiveness and ongoing monitoring efforts, the BLM expects 95 to 99 percent of all habitat restoration, wildfire pre-suppression, and conifer removal projects that are completed or in progress to effectively ameliorate the impacts of wildfire and invasive plants to sage-grouse (DOI 2015e, p. 9).

At the time of this writing, the 2015 fire season is under way, and we cannot currently predict the outcome of the season in terms of impacts to sage-grouse habitat. Similarly, it is premature to assess how implementation of the wildfire and invasive plant conservation efforts discussed above are working to address impacts during this fire season. At the time of publication, approximately 200,000 ha (500,000 ac)

of sage-grouse habitat has been estimated to be affected by wildfires this year, including approximately 12 ha (30 ac) of SFA. Much of the area burned is associated with a single wildfire that occurred along the Idaho and Oregon border—the Soda Fire. This fire does provide some insight into the implementation of the wildfire conservation measures.

The Soda Fire started on August 10, 2015, burning approximately 114,000 ha (283,000 ac) of Federal, State, and private lands in southwestern Idaho and eastern Oregon (NIFC 2015). Almost all of the burned area is sage-grouse habitat, with more than 20,000 ha (about 50,000 ac) designated by BLM as PHMA for the species. Despite extreme fire behavior, firefighters safely suppressed this wildfire with no loss of life and no serious injuries to firefighters or the public. An interagency Emergency Stabilization and Rehabilitation (ES&R) team of more than 40 natural resource specialists has completed 5 days working on the ground to assess damage and threats to life, property, and resources on BLM-managed lands in both Idaho and Oregon. The ES&R team is now designing treatments to mitigate threats and begin the rehabilitation of the burned area (BLM 2015h). Rehabilitation of burned areas on State and private lands affected by the Soda Fire is being handled through similar authorities and processes by Idaho Department of Lands (IDL) and the NRCS. Other local, State, and Federal organizations are participating throughout the process. A Memorandum of Understanding (MOU) established in 2014 between BLM, Idaho Department of Fish and Game, and IDL plays a key part in authorizing restoration efforts and processes on State land, particularly in PHMAs and Important Habitat Management Areas (IHMAs).

The Soda Fire is one of many examples of why the Secretary of the Interior issued Secretarial Order 3336 to prioritize resources to address the threat of wildfire in sagebrush habitats for Federal land managers. We expect that the actions outlined in the Secretarial Order and BLMs commitments to implement other new strategies and tools identified (BLM 2015h) above will ultimately prove valuable in reducing the negative effects of wildfire on sage-grouse habitat. Importantly, the rapid completion of many of the near-term action items outlined in the Initial Report—many of these measures were in place *before* the onset of the 2015 fire season—signal a strong commitment from wildland fire managers to implement these measures into the future.

Final Report

The “SO3336—Final Report: An Integrated Rangeland Fire and Management Strategy” (DOI 2015c, entire), completed May 1, 2015, outlines a long-term approach to improving the efficiency and efficacy of actions to better prevent and suppress wildfire and to improve efforts to restore fire-impacted landscapes both including and beyond 2016. This approach involves targeted investments to enhance efforts to manage wildfire in the Great Basin, based on relative resilience and resistance of habitat to fire. The Final Report also outlines longer term actions to implement the policy and strategy set forth in the Secretarial Order, including the continued implementation of approved actions associated with the National Cohesive Wildland Fire Management Strategy (DOI 2014, entire) that provides guidance for the safe and effective suppression of wildfires. The actions outlined in the Final Report primarily focus on the Great Basin region, but DOI intends for the strategies developed under the Final Report to be applied rangewide where there is benefit to sagebrush ecosystem habitat and sage-grouse. Measures outlined in the Final Report include the following:

- Designing and implementing comprehensive, integrated fire response plans for the FIAT assessment areas in the Great Basin subject to fire and invasives;
- Providing clear direction on the prioritization and allocation of fire management resources and assets;
- Expanding the focus on fuels reduction opportunities and implementation;
- Fully integrating the emerging science of ecological resilience into design of habitat management, fuels management, and restoration projects;
- Reviewing and updating emergency stabilization and burned area rehabilitation policies and programs to integrate with long-term restoration activities;
- Committing to multiyear investments for the restoration of sagebrush ecosystems, including consistent long-term monitoring protocols and adaptive management for restored areas;
- Implementing large-scale experimental activities to remove cheatgrass and other invasive annual grasses through various tools;
- Committing to multiyear investments in science and research; and
- Developing a comprehensive strategy for acquisition, storage, and distribution of seeds and other plant materials.

The Secretarial Order places a priority on “protecting, conserving, and restoring the health of the sagebrush-steppe ecosystem and, in particular, sage-grouse habitat, while maintaining safe and efficient operations,” and looks to the allocation of fire resources and assets associated with wildfire to reflect

that priority. In preparing the Final Report, the Task Force considered a wide variety of possible actions for conserving habitat for the sage-grouse and other wildlife species as well as economic activity, such as ranching and recreation, associated with the sagebrush ecosystem in the Great Basin. The strategy outlined in the Final Report builds upon the National Cohesive Wildland Fire Management Strategy (DOI 2014, entire) and is intended to ensure improved coordination with local, State, Tribal, and regional efforts to address the potential threat of wildfire at a landscape level.

In 2015, BLM initiated implementation of the National Seed Strategy, a key program included in the Secretarial Order (BLM 2015c, entire; BLM 2015h, entire). The “National Seed Strategy for Rehabilitation and Restoration 2015–2020” (Seed Strategy) provides a coordinated approach for stabilization, rehabilitation, and restoration treatments. The Seed Strategy also provides a framework for actively working with the private sector in order to build a “seed industry” for rehabilitation and restoration. This program was developed specifically in response to concerns about the wildfire and invasive plant cycle in the sagebrush ecosystem, and was identified in the Secretarial Order. The Seed Strategy has the following four goals:

1. Identify seed needs, and ensure the reliable availability of genetically appropriate seed;
2. Identify research needs and conduct research to provide genetically appropriate seed and to improve technology for native seed production and ecosystem restoration;
3. Develop tools that enable managers to make timely, informed seeding decisions for ecological restoration; and
4. Develop strategies for internal and external communication.

The Seed Strategy ensures that adequate supplies of native seed will be available for sagebrush ecosystem restoration. The use of locally appropriate native seed will improve restoration success, serving as an important tool in the suppression of invasive plant infestations after habitat disturbances, such as wildfire. The measures in the Seed Strategy are consistent with COT Report conservation recommendations for post-wildfire restoration (USFWS 2013, p. 40). The initiation of the Seed Strategy by BLM is evidence of DOI’s commitments to fully implement the measures included in the Secretarial Order and serves as an important tool

for the minimization of the wildfire-invasive plant cycle across the species’ range (BLM 2015h, entire).

We analyzed the certainty of implementation and effectiveness of the Secretarial Order pursuant to PECE (68 FR 15100, March 28, 2003). As noted above, the purpose of PECE is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the effectiveness of the conservation efforts to contribute to make listing a species unnecessary.

The majority of the actions identified in the Initial Report have been implemented (BLM 2015h, entire). Specifically, the following actions have taken place: Investments targeted to enhance efforts to manage wildfire in the Great Basin; a process has been established for allocating funds to support policies and strategies for preventing and suppressing wildfire and for restoring sagebrush landscapes impacted by fire across the Great Basin; and funds were provided this year to support efforts under the Secretarial Order (BLM 2015h, entire). The agencies have the legal authorities to carry out the responsibilities under the Secretarial Order and it builds on the BLM and USFS’ long and successful history of managing wildfire in the Western United States. Therefore, we expect that the efforts will continue to be implemented to accomplish the objectives of the Secretarial Order.

The Secretarial Order is expected to work with FIAT and other authorities to further help address the effects associated with wildfire suppression and restoration and the spread of invasive species. The Secretarial Order provides an implementation plan and specific objectives including short-term actions for the 2015 fire season and long-term actions needed to meet the objectives identified in the order. Pursuant to the Secretarial Order, protocols for monitoring vegetation treatments (both implementation and effectiveness monitoring) were established and guidance was developed to apply monitoring data for adaptive management (BLM 2015h, entire).

We expect that the measures will be effective in reducing the impacts of wildfire and invasive plants to sage-grouse and its habitats. The COT Report recommends containing wildfire within the normal range (including size and

frequency), eliminating intentional fires, and restoring burned sagebrush habitats (USFWS 2013, p. 40). As the COT Report noted, reduction of the threat of wildfire is difficult (USFWS 2013, p. 40). However, the Secretarial Order, FIAT and other authorities and actions working in concert have provided the direction needed as described in the COT Report. Many of the actions identified in the Initial Report have already been implemented (BLM 2015h, entire). The actions yet to be fully implemented from the Initial and Final Report have a high level of certainty of implementation, given BLM's past track record of implementation and their commitments and policy direction for future implementation (BLM 2015h, entire). The Secretarial Order and associated actions, both short and long term directly address the recommendations found in the COT Report, are based on the best available

information, and address the major issues related to wildfire prevention and suppression, as well as restoration of areas impacted by wildfire and invasive plants. We expect that the Secretarial Order and associated actions, both short- and long-term, will be implemented and will be effective in reducing the effects to sage-grouse and its habitat from wildfire and invasive species sufficient enough be considered in making our determination.

Resilient Landscapes Funding and Projects—The Wildland Fire Resilient Landscapes (WFRL) program is a new approach to achieve fire resiliency goals across landscapes with the collaborative efforts defined in the National Cohesive Wildland Fire Management Strategy (DOI 2014, entire), and in support of Secretarial Order 3336—Rangeland Fire Prevention, Management, and Restoration. The WFRL program provides opportunities for the DOI

bureaus, working together with other Federal, tribal, State, and local governmental and nongovernmental partners, to identify and complete projects that are intended to contribute significantly to restoring fire resilience in a variety of fire-adapted ecosystems across the country. The Fiscal Year 2015 appropriation provided 10 million dollars to the Fuels Management program to fund resilient landscape activities, as a pilot initiative. Ten proposals were selected for funding in 2015; three projects, representing 68 percent of the funding, are located within the range of sage-grouse, and support the goals of the Secretarial Order (Table 13). The Fiscal Year 2016 President's Budget proposes funding for the WFRL program at 30 million dollars to provide multiyear support for landscape-scale projects and expand the program to new partnerships.

TABLE 13—FISCAL YEAR 2015 WILDLAND FIRE RESILIENT LANDSCAPES PROGRAM PROJECTS FUNDED WITHIN THE RANGE OF SAGE-GROUSE

Collaborative	Location/lead agency	Project objective	Project acres (millions)	Approved funding
Bruneau-Owyhee	Located in Idaho	Treat conifer encroachment to benefit fire resiliency and sage-grouse habitat.	>1	\$166,000
Greater Sheldon-Hart Mountain.	Lead: BLM	Focus on restoring sagebrush shrub and native perennial grass/forb communities by controlling juniper expansion.	~4	3,984,250
Southern Utah	Located in parts of Oregon, Nevada, California.			
	Lead: Service			
	Located in Utah	Remove encroaching pinyon pine and juniper, diversify age class of sagebrush communities, establish desired understory to restore resilience, benefiting sagebrush-dependent wildlife.	7.4	2,605,000
	Lead: BLM			
Totals .....	.....	.....	>12	6,755,250

State Fire Management Programs—Federal, State, and local land and wildlife management agencies collaborate and work under national fire guidance strategies to achieve common goals and objectives. Within the Great Basin region, State Forest Action Plans address the coordinated management of wildfire. State and local fire management agencies view all wildfires as “full suppression” incidents, and make every effort to suppress fires safely and quickly with a strong initial attack. Many States have agreements with their neighboring States to ensure that a rapid initial attack is possible, even if it is from a neighboring State or jurisdiction. Additionally, they may utilize a “unified command” concept to assist in coordination and cooperation (Havlina *et al.* 2015, p. 26). Specific projects are detailed in the State Forest Action Plans to reduce fuels, improve preparedness and initial attack response, identify equipment and training needs, and

ensure safe, rapid, and aggressive response to wildfire ignitions, and address rehabilitation of wildfire-damaged lands to mitigate the spread of invasive plants (Havlina *et al.* 2015, pp. 25–27). For example, Utah's Forest Action Plan (UDFFSL 2015; pp. 33–35) was updated in 2015 to include five Sage-grouse Management Areas (SGMAs) (Box Elder, Bald Hills, Sheep Rock Mountains, Hamlin Valley, and Ibapah) as high priorities in the wildfire risk assessment and as part of the Governor's Catastrophic Wildfire Reduction Strategy. Collectively, these five SGMAs hold 26 percent of the sage-grouse in the State of Utah (UDFFSL 2015, p. 35).

The Oregon State Plan recognizes wildfire as one of the most significant impacts to sage-grouse and their habitat in Oregon and the Great Basin. The Plan also recognizes the interrelated nature of the threat from wildfire with the threats from nonnative annual grasses and

juniper encroachment. The Plan outlines more than 40 conservation actions to address the impacts from wildfire, which are defined as any activity or action which, when implemented or continued to be implemented, will reduce potential threats to sage-grouse and will improve or maintain healthy sagebrush-steppe habitat. These conservation actions are categorized into four areas: Reducing wildfire risk, wildfire suppression, building capacity and supporting local efforts, and post-fire rehabilitation. All of the conservation actions for wildfire are predicated on the FIAT as well as the Secretarial Order, use data specific to Oregon, and are coordinated with the goals and objectives of the BLM's Federal Plans as well as local jurisdictions.

Local Fire Management Programs—Many communities throughout sage-grouse habitat in the Great Basin have rangeland fire protection associations

(RFPAs). The RFPAs are remotely located firefighting units staffed by public volunteers. The RFA volunteers are trained and equipped to respond to wildland fires with the intent to control wildfires at the smallest size that can be safely accomplished. Their location in remote areas allows firefighters to access fires quickly, which increases success of controlling fires before they grow in size, become more challenging to suppress, and cause greater effects to sage-grouse. In Oregon, 18 RFPAs have been created and currently field more than 600 volunteer fire fighters and more than 200 pieces of water-handling fire equipment to protect more than 2 million ha (5 million ac) from wildfire. In southern Idaho, there are currently seven RFPAs with 230 trained members who support wildland firefighters to protect more than 1.4 million ha (3.5 million ac) of the sagebrush ecosystem from catastrophic wildfire. On June 23, 2015, Governor Brian Sandoval signed emergency regulations related to the formation of RFPAs within the State of Nevada (NRS 472 per AB 163, sec. 3.5(1) of the 78th Session of the Nevada legislature).

Wildfire and Invasive Plants Summary

In 2010, we concluded that wildfire was one of the primary factors linked to declines of sage-grouse due to long-term loss of sagebrush and conversion of sagebrush habitats to invasive annual grasses. Loss of sagebrush habitat to wildfire had been increasing in the western portion of the sage-grouse range mainly due to an increase in wildfire occurrence, intensity, and severity (Miller *et al.* 2011, p. 183). We found this change to be the result of incursion of nonnative annual grasses, primarily cheatgrass. The positive feedback loop between cheatgrass and wildfire facilitates future fires and precludes the opportunity for sagebrush, which is killed by fire, to become reestablished. Cheatgrass and other invasive plants also alter habitat suitability for sage-grouse by reducing or eliminating native forbs and grasses essential for food and cover.

While the manner in which wildfire and invasive plants affect sage-grouse has not changed since the 2010 finding, there has been a significant change in the approach to rangeland firefighting and fuels management to address these potential threats. Through development of the FIAT, as well as the Secretarial Order, the BLM and USFS have developed and implemented wildfire management strategies and actions intended to reduce the impact of wildfire and invasive plants (BLM 2015h, entire). Similarly, a paradigm

shift is occurring in the way land managers and the larger conservation community approach invasive plant control and in particular the relationship between invasive plants and wildfire.

Without management, current burn rates would likely continue, potentially impacting another 17 to 25 percent of the species' range within the Great Basin over the next 20 to 30 years. If this level of wildfire did occur, sage-grouse populations in the Great Basin could decline 43 percent over the next 30 years (Coates *et al.* 2015, p. 32), and some small populations could be extirpated. However, we expect that the rates of wildfire and invasive plant habitat loss seen over the past decades will be reduced by conservation efforts. The FIAT assessments that are included in the Federal Plans and the actions implemented under the Secretarial Order provide enhanced policies, strategies, and tools for preventing and suppressing wildfire and for restoring landscapes affected by fire across the Great Basin region. Many of those measures are in place for the current fire season (DOI 2015a). As a result, sagebrush habitats will now be given priority consideration in the treatment of fuels, the deployment of firefighting resources, and the rehabilitation of burned areas. Much of that effort will be focused in those areas most resistant to wildfire and invasive plants, where more than half the breeding habitat in the Great Basin occurs and where prevention and restoration projects are most likely to be successful; this strategy is consistent with recommendations provided in the COT report (USFWS 2013, pp. 40–42) and a recent study of wildfire impacts over the next 30 years (Coates *et al.* 2015, p. 34). Further, if wildfires do occur, monitoring of sage-grouse habitat and population responses to that impact will occur so that other land use activities can be adjusted, if necessary. In response to monitoring, development allowable under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to any identified triggers for population or habitat declines. While not directly related to habitat losses due to fire, these provisions provide a backstop for other disturbance if adaptive management triggers are exceeded. The continued long-term implementation of these wildfire management strategies, in coordination with the Federal Plans and Oregon State Plan (see *Sagebrush Landscape Conservation Planning* for additional details) reduce the risk, or

the degree to which, fire and invasive plants are likely to impact sage-grouse. We expect that the current management emphasis will reduce future losses.

Grazing and Rangeland Management

In 2010, we evaluated the effect of grazing on sage-grouse (including domestic livestock, free-roaming equids, and wild ungulates) and concluded that improper grazing was likely having negative impacts to sagebrush and sage-grouse at local scales, but that population-level impacts were unknown. However, given the widespread nature of grazing, the potential for population-level impacts could not be ignored (75 FR 13910, March 23, 2010, p. 13942). In this section we evaluate the best available information on the impacts of livestock grazing on sage-grouse and on conservation actions since 2010 intended to ameliorate those impacts. We have no new information regarding impacts of native ungulates on sage-grouse populations, which were not considered a substantive threat in 2010; therefore, our analysis focuses exclusively on domestic livestock grazing. The impacts on the species and its habitat of free-roaming equid grazing are addressed in a separate section of this document (see *Free-Roaming Equids*).

Improper grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, affected sagebrush ecosystems across the range of sage-grouse (Knick *et al.* 2003, p. 616). Improper grazing, for the purposes of this assessment, is defined as grazing practices that are inconsistent with local ecological conditions and result in degradation of habitat for local wildlife species. This historical improper grazing caused long-term changes in plant communities and soils (Knick *et al.* 2003, p. 611). In low-elevation Wyoming big sagebrush and low sagebrush habitat, improper grazing reduced perennial herbaceous vegetation and caused high levels of ground disturbance, which promoted the establishment of exotic annual grass species such as cheatgrass (Mack 1981, pp. 148–152). In higher elevation mountain big sagebrush habitat, improper grazing likely reduced fine fuels and decreased fire frequency, resulting in the expansion of fire-sensitive native conifers (Miller and Tausch 2001, pp. 19–26). In both instances, these shifts in the vegetative community have facilitated changes in the wildfire cycle, leading to loss of sage-grouse habitat (see *Wildfire and Invasive Plants*, above).

Livestock grazing is currently the most widespread land use in the sagebrush ecosystem and occurs in all MZs (Knick *et al.* 2011, p. 219; Boyd *et al.* 2014, p. 62). Livestock grazing may positively or negatively affect the structure and composition of sage-grouse habitat (Factor A), depending on the intensity and timing of grazing and local climatic and ecological conditions (Crawford *et al.* 2004, pp. 10–12; Aldridge *et al.* 2008, p. 990; Boyd *et al.* 2014, p. 63). As a result, drawing broad inferences regarding the current impact of grazing on sagebrush habitats across the range of sage-grouse is difficult.

The total number of livestock that currently graze within sage-grouse habitats is unknown. No rangewide data set is available describing the level of livestock grazing that occurs on private lands across the occupied range. Most grazing on Federal lands is managed by BLM and USFS (GAO 2005, p. 5). The BLM and USFS index the number of livestock grazed by Animal Unit Months (AUMs), which takes into account both the number of livestock and the amount of time they spend on public lands. An AUM is defined by BLM as the amount of forage needed to sustain one cow and her calf, one horse, or five sheep or goats for 1 month. The number of AUMs allowed depends upon land health assessments that evaluate the ecological condition of an area and its ability to support grazing (BLM and USFS 2015, entire). The number of AUMs permitted on Federal lands has gradually declined since the 1960s (Mitchell 2000, pp. 64–68). This decline was concurrent with a decline in productivity of western shrublands due to previous grazing history, changes in soils and vegetation, or drought (Knick *et al.* 2011, p. 232). The reduction in AUMs permitted on public lands over time may not translate to a reduction in the effects of grazing in sagebrush systems (Knick *et al.* 2011, p. 232).

Properly managed grazing may benefit sage-grouse. Light to moderate livestock grazing can help maintain perennial vegetation that provides important food and cover for sage-grouse (Crawford *et al.* 2004, pp. 2–12; Boyd *et al.* 2014, p. 63). It can also help control invasives and woody plant encroachment, which may improve habitats and may reduce wildfire risk (Connelly *et al.* 2004, p. 7–49; Boyd *et al.* 2014, p. 68). The net impact of different use levels will vary in accordance with climatic variability, local environment, and season of use (Crawford *et al.* 2004, pp. 10–12). Implementing proper grazing practices that maintain adequate residual grass height and cover under shrubs provides for suitable cover and minimizes the

negative effects of grazing on sage-grouse productivity (Boyd *et al.* 2014, p. 64).

Alternatively, improperly managed grazing can have adverse impacts to sage-grouse habitat. Improper grazing directly influences the composition, productivity, and structure of herbaceous plants in sagebrush plant communities (Boyd *et al.* 2014, p. 64), which in turn influences the quality and quantity of food and cover for sage-grouse (Fleischner 1994, pp. 633–635). By reducing protective vegetative cover, improper grazing may make nesting and brood-rearing habitats less suitable for sage-grouse. Sage-grouse rely on the cover of tall grasses and shrubs to hide from predators, especially during the nesting season, and females will preferentially choose nesting sites based on the height of grasses and shrubs (Hagen *et al.* 2007, p. 46). Grass height is a strong predictor of nest survival and hiding cover can increase nest success, a key vital rate for sage-grouse (Doherty *et al.* 2014, pp. 322–323). Loss of this hiding cover may increase predation during nesting and brood-rearing, subsequently reducing reproductive success rates (Gregg *et al.* 1994, p. 165). Maintaining adequate residual grass height and cover under shrubs minimized the negative effect of grazing on sage-grouse productivity (Boyd *et al.* 2014, p. 64).

Improper livestock grazing can reduce food available to sage-grouse, which can impact reproductive success and chick survival (Coggins 1998, p. 30; Aldridge and Brigham 2003, p. 30; Pederson *et al.* 2003, p. 43). Improper livestock grazing in mesic, brood-rearing habitat may further reduce food resources by altering soils and hydrology and reducing herbaceous plants (Braun 1998, p. 147; Dobkin *et al.* 1998, p. 213). Improper livestock grazing may also reduce the cover and height of sagebrush in key wintering habitats (Rasmussen and Griner 1938, p. 852), potentially affecting the condition and survival of sage-grouse during the winter when resources are scarce. However, implementing appropriate grazing practices can maintain habitat and food resources for sage-grouse or, under very specific conditions, improve conditions by stimulating succulent forb growth (Evans 1986, p. 67; Crawford *et al.* 2004, p. 12; Beck and Mitchell 2000, p. 997).

Beyond habitat impacts, improper grazing can also directly affect sage-grouse (Factor E). Nearby livestock can cause females to flush from their nests (Coates *et al.* 2008, p. 426), inadvertently revealing the nest and its eggs to predators, such as ravens (*Corvus corax*) (Coates 2007, p. 33) and

the abundance of raven predators in sage-grouse habitats may increase near livestock grazing (Coates *et al.*, in press). Livestock can trample or disturb nests (Crawford *et al.* 2004, p. 12). However, no information is available about the extent these potential impacts may be occurring across the occupied range. When they do occur, adverse impacts are likely limited to the local population.

Construction and development associated with grazing, such as watering developments and fences, can have a variety of impacts such as habitat fragmentation and the facilitation of predators and disease. There have been documented incidences of sage-grouse drowning in stock tanks, which can have localized population-level effects (Boyd *et al.* 2014, p. 65), but the rangewide impact is unknown. Grazing management that strategically considers placement and design of fences and livestock water developments could protect other habitats by localizing and minimizing the area of impact. In addition, the timing of water diversions can minimize these impacts and provide mesic vegetation and wet meadow habitats during critical brood-rearing periods when the availability of succulent plants may be limited (Boyd *et al.* 2014, pp. 65–66).

Conservation Efforts

Since 2010, State and Federal agencies have worked collaboratively to develop regulatory mechanisms to reduce or eliminate the impact of improper livestock grazing on sage-grouse habitats. The BLM and USFS amended or revised Federal Plans to set appropriate rangeland health standards in sage-grouse habitats that are required to maintain a Federal grazing permit. States developed and implemented State plans that govern issuance of grazing permits on some State lands. Other conservation efforts designed to improve grazing, including voluntary efforts, are discussed below.

Federal Plans—The BLM and USFS are currently the principle land managers within the range of the sage-grouse, and collectively manage more than 98 percent of the livestock grazing on Federal lands (GAO 2005, p. 5). Nearly all federally owned sage-grouse habitat is managed for livestock grazing (BLM and USFS 2015, entire). Grazing permits and leases generally cover a 10-year period and are renewable if the BLM or USFS determine that the terms and conditions of the expiring permit or lease are being met (BLM and USFS 2015, entire). Permits include standards and guidelines that describe specific conditions required to achieve land

health and the recommended techniques to achieve these standards on each allotment (Knick *et al.* 2011, p. 222; BLM and USFS 2015, entire), as well as mandatory terms and conditions to ensure that land health standards (LHS) are being met (43 CFR 4130). If LHS are not being met or terms and conditions are not being followed, the BLM and USFS have the authority to modify the terms and conditions of grazing permits to correct any deficiencies, suspend the permit, or to revoke the grazing permit entirely (33 CFR 222.4; 43 CFR 4180.2).

In our 2010 finding, we identified concerns with BLM and USFS management of rangelands, contributing to our finding that regulatory mechanisms were not sufficient (75 FR 13910, March 23, 2010, pp. 13975–13980). Historically, not all allotments have been monitored to ensure compliance with LHS and permit terms and conditions, and there was no mandated prioritization of field checks to ensure compliance within sage-grouse habitats. Between 1997 and 2007 the percent of allotments monitored for LHS ranged from 22 percent to 95 percent across surveyed States, with an overall average of 57 percent (Veblen *et al.* 2014, p. 72). Of the allotments monitored, 15 percent failed to meet LHS due to improper livestock grazing (Veblen *et al.* 2014, p. 72).

The Federal Plans represent a major shift in grazing management and monitoring since 2010, with respect to meeting LHS and sage-grouse conservation objectives (BLM and USFS 2015, entire). The Federal Plans manage grazing specifically for sage-grouse habitat objectives by evaluating the numbers and distribution of livestock, evaluating environmental conditions such as drought, closing or changing allotments, managing riparian habitat for sage-grouse, and authorizing water developments only if they would not adversely impact sage-grouse. Specific grazing guidelines have been developed based on the best available science and are applied in upland and riparian/wet meadow habitats to maintain or achieve desired conditions of sagebrush, forbs, and perennial grasses. Upland vegetation guidelines will be applied seasonally and within 4 to 6.2 miles from leks, depending on site-specific information. Riparian and wetland protective measures will be applied in all sage-grouse habitat areas. Further, BLM directed resources in 2015 to fund monitoring crews, and funded activities, like data management, to ensure successful implementation of the monitoring commitments (Lueders, BLM, 2015, pers. comm.). The

President's Budget request for BLM included 8 million dollars to directly support monitoring the implementation and effectiveness of the land use plans (BLM 2015d, p. II–5–6).

Given the large number of allotments across the occupied range, the Federal Plans ensure that the most important habitats are prioritized for protection. Permit review, renewal, and/or modifications occur first in SFAs, followed by PHMA and allotments containing riparian areas. The same prioritization is used for field checks to ensure compliance with permit terms and conditions. In addition, the USFS commits to modify grazing permit conditions and existing livestock improvements within 2 years and mitigate any adverse effects from grazing improvements within 5 years (BLM and USFS 2015, entire). Progress at achieving rangeland health objectives at multiple spatial scales is monitored by BLM and USFS using a habitat assessment framework that provides a consistent approach and similar data set (BLM and USFS 2015, entire).

The Federal Plans' vegetation standards and grazing management measures are consistent with the best available science on sage-grouse habitat needs and the COT report recommendations to minimize grazing impacts (USFWS 2013). The Federal Plans also include monitoring requirements and adaptive management that will ensure that the measures will be effective for the long term and that grazing occurs at proper levels for sage-grouse conservation. With changes in management direction and immediate allocation of resources, full implementation of the Federal Plans will, over time, address effects due to improper grazing. As a result of the Federal Plans, and associated monitoring commitments and adaptive management approach, the risk of improper grazing occurring on Federal lands across the occupied range is greatly reduced from 2010 levels.

State Plans—State plans in Montana and Wyoming include measures to reduce the impact of improper grazing to sage-grouse on State-owned or managed lands. Montana's State plan requires that State Trust grazing lands maintain and improve sage-grouse habitat in core and connectivity areas on State Trust lands in Montana (Montana EO 10–2014, pp. 7–17). In addition, Montana's plan includes voluntary incentives to conserve sagebrush habitats on private and State-owned lands in core and general habitat areas (Montana EO 10–2014, pp. 7–27). Under the Wyoming Plan, in order to receive a permit, new grazing operations on

State Trust Lands must demonstrate that they will not cause declines in sage-grouse populations. While the amount of grazing on lands subject to these State requirements and incentives is minimal compared to that on Federal lands, these measures will reduce the potential for improper grazing that could negatively affect sage-grouse.

Sage Grouse Initiative—Rangeland health inside PACs has been improved through SGI practices by applying grazing systems, re-vegetating former rangeland with sagebrush and perennial grasses, and controlling invasives. To date, grazing systems have been implemented on more than 985,000 ha (2.4 million ac); seeding projects have occurred on more than 19,000 ha (over 48,000 ac); and weed management projects were implemented on more than 6,000 ha (over 15,509 ac), and restoring more than 70 ha (179 ac) of wet meadow (NRCS 2015a, p. 6). To maximize conservation gain, SGI targets their efforts within PACs. Of the more than 985,000 hectares (2.4 million acres) enrolled in grazing systems, 76 percent are clustered within the following five populations: Powder River Basin, Yellowstone Watershed, and the Dakotas in MZ I; Wyoming Basin in MZ II; and Snake/Salmon/Beaverhead in MZ IV (NRCS 2015a, p. 7). In addition more than 74 percent of the newly seeded acres are concentrated in the following five populations: Dakotas, and Yellowstone Watershed in MZ I; Northwest Colorado in MZ II; and Northern Great Basin and Box Elder in MZ IV (NRCS 2015a, p. 7). Although participation in SGI programs is voluntary, participants that receive financial assistance enter into binding contracts or easements to ensure that conservation practices are applied according to schedule and in compliance with NRCS standards and specifications. As part of implementation, the SGI includes a monitoring and evaluation component that measures the response of sage-grouse populations and associated vital rates in order to gauge effectiveness and provide an adaptive management framework to SGI programs. For the private lands involved with this program, SGI has removed the risk of habitat degradation due to improper grazing through the implementation of accepted habitat management tools, and restored previously affected habitat to benefit sage-grouse.

Candidate Conservation Agreements—Lands currently enrolled in CCAAs reduce the potential threat of improper grazing on private lands through implementation of grazing management plans that we have

determined maintain or enhance habitat for sage-grouse. Approved grazing management plans include measures concerning the types of livestock and the appropriate timing, location, duration, and frequency for grazing. All private lands within the species' range in Oregon and Wyoming are eligible for enrollment in CCAAs. Rangelandwide, approximately 745,000 ha (1.8 million ac) of private lands have landowner commitments in the programmatic CCAAs in Oregon and Wyoming. In addition, approximately 1.4 million ha (about 3.5 million ac) are covered by CCAAs covering range management on BLM-administered lands in Oregon and Wyoming, and covering maintenance operations on DOE lands in Idaho (BLM 2013a). The CCAAs require the same conservation measures as the CCAAs, including grazing management plans and habitat enhancement. These CCAAs and CCAAs are consistent with the recommendations of the COT Report (USFWS 2013, p. 45) for conservation measures that will effectively reduce impacts to sage-grouse.

Grazing and Rangeland Management Summary

Livestock grazing is the most widespread land use in the sagebrush ecosystem, and impacts can be positive, negative, or neutral depending on management practices and site-specific characteristics. Improper grazing practices can have adverse effects to sage-grouse and its habitat, and may work synergistically with other potential threats, such as invasive plants and wildfire, to increase impacts. However, well-managed grazing practices can be compatible with sagebrush ecosystems and sage-grouse persistence. In 2010, we concluded that grazing was likely having localized negative effects, but due to the widespread extent of the activity, greater impacts were possible. Since our 2010 finding, updated Federal Plans have been amended or revised in the species' range to ensure that appropriate grazing prescriptions are applied on Federal lands, covering more than half of the range of sage-grouse. As discussed in the *Federal Plans* section above,

monitoring and adaptive management provisions within the Plans contribute to the certainty that livestock grazing will be permitted at levels compatible with sage-grouse persistence. Further, prioritization of field checks and permit reviews provides additional assurances that these regulatory mechanisms will be effective in those areas with the highest breeding bird densities. Rangelandwide, the Federal Plans, along with the Wyoming, Montana, and Oregon State Plans, reduce impacts from grazing to approximately 90 percent of the modeled breeding habitat across the species' range (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness). In addition to these regulatory mechanisms on Federal lands, SGI and State CCAAs provide well-coordinated programs to encourage private landowners to address the impact of improper grazing on non-Federal lands. Taken together, these conservation efforts reduce the potential threat of improper livestock grazing from the levels assessed in 2010. Therefore, we conclude that, although livestock grazing is widespread in the sagebrush ecosystem, and we expect some continued impacts from improper grazing at local scales, existing Federal regulations with full implementation, in combination with voluntary efforts on non-Federal rangelands are reducing the prevalence of improper grazing and its impacts to sage-grouse.

Free-Roaming Equids

In 2010, we evaluated the effect of free-roaming equids (also known as free-roaming horses and burros) on sage-grouse and concluded that grazing (including grazing by free-roaming equids, native ungulates, and livestock) can have negative impacts to sagebrush (Factor A) and consequently to sage-grouse at local scales. Further, we concluded that the impacts of grazing at large spatial scales, and thus on population-levels, was unknown, but given the widespread nature of grazing, the potential for population-level impacts could not be ignored (75 FR 13910, March 23, 2010, p. 13942).

Free-roaming horses (*Equus caballus*) and burros (*E. sinuatus*) were first brought to western North America in the late 16th century. A number of equids subsequently escaped captivity or were released forming free-roaming populations (Beever 2003, p. 888; Garrett and Oli 2013, p. 847). When the BLM began monitoring free-roaming equid populations in the 1970s, they reported the total number of free-roaming horses to be approximately 17,000 individuals, although some believe this was an underestimate (BLM 2005a, p. 3). With protection afforded by the Wild Free Roaming Horse and Burro Act of 1971 (Pub. L. 92–195) (Horse and Burro Act), the number of horses on public lands rose sharply, and by 1980 the number of free-roaming equids had increased to 65,000–80,000 animals (Beever 2003, p. 888, BLM 2005a, p. 3). Active management, starting in the 1980s, reduced free-roaming equid numbers to more than 40,000 by 1999 and to about 37,186 in 2003 (BLM 2005a, p. 3).

The BLM and USFS manage free-roaming equids on Federal lands according to the Wild Free-Roaming Horses and Burros Act of 1971. The BLM's implementing regulations designated Herd Areas as places used as habitat by a herd of free-roaming equids at the time the law was passed (43 CFR part 4700). The BLM evaluated each Herd Area to determine if it had adequate food, water, cover, and space to sustain healthy and diverse free-roaming equid populations over the long term. The areas that met those criteria were designated as Herd Management Areas (HMAs). The BLM manages HMAs to maintain the appropriate management level (AML) of free-roaming equids to be in balance with other public rangeland species, resources, and uses in a given area. The USFS has designated Territories for the management of free-roaming equids and manages them in a similar way. The HMA/Territories currently overlap with about 12 percent of the sage-grouse occupied range, primarily in Oregon, Nevada, and Wyoming (Figure 8).

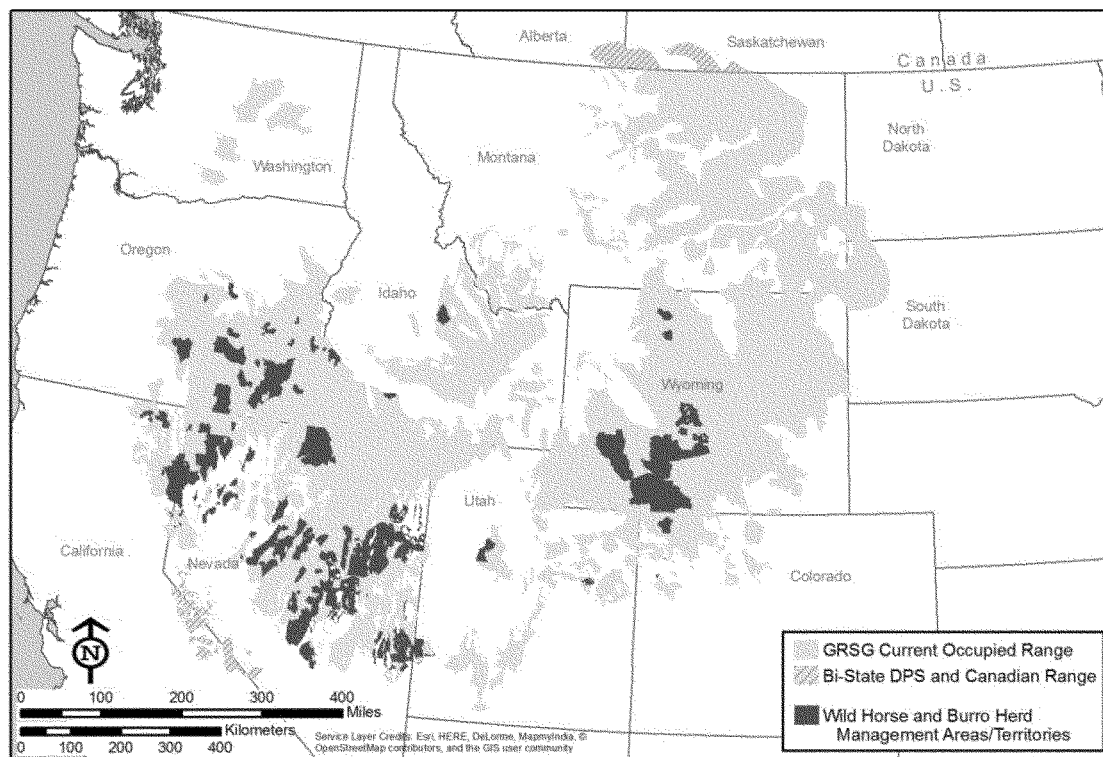


Figure 8. Free-roaming Equid Management Areas within the sage-grouse occupied range.

In 2010, the BLM estimated that 31,000 free-roaming equids were found on BLM-administered lands (75 FR 13910, March 23, 2010, p. 13941). Currently, the BLM estimates 58,150 free-roaming equids (about 47,329 horses and 10,821 burros) exist on BLM-administered rangelands in 10 western States, including two States outside the range of the sage-grouse (BLM 2015e). In 2014, USFS estimated that, on lands it manages, there are an additional 7,447 free-roaming equids (Shepherd & Frolli 2015, BLM and USFS, pers. comm.). The number of free-roaming equids on public lands has been over AML for more than 15 years (BLM 2014c, p. 1). The extent to which free-roaming equids occur on land outside of designated Federal management areas is unknown.

The current population of free-roaming equids is estimated to be nearly double the amount that the BLM and USFS have determined can exist in balance with other public land resources and uses (BLM 2015e, p. 1). Free-roaming equids reproduce rapidly and can have rates of increase averaging 15 to 20 percent annually (BLM 2015e, p. 1). Assuming a population of 45,000 animals and a 20 percent annual growth rate, Garrett *et al.* (1991, p. 647) estimated that 9,000 horses must be removed annually to maintain a stable population. The number of horse and

burro removals by BLM have not kept this pace in recent years, with removals declining from 8,255 in 2012, to 4,176 in 2013, to 1,863 in 2014 (BLM 2015e, entire). At the same time, numbers of horses and burros in BLM corrals and pastures is close to capacity (BLM 2015e, entire).

Free-roaming equids' use of sagebrush landscapes have different ecological consequences than livestock grazing at both local and landscape scales due to biological and behavioral differences (Beever 2003, pp. 888–890; Beever and Aldridge 2011, p. 273). Equids are generalists, but grasses comprise the majority of their diet throughout the year (McInnis and Vavra 1987, p. 61). Because of physiological differences, a horse forages longer and consumes 20 to 65 percent more forage than a cow of equivalent body mass (Wagner 1983, p. 121; Menard *et al.* 2002, p. 127). Unlike domestic cattle and other wild ungulates, equids can crop vegetation closer to the ground, potentially limiting or delaying recovery of plants (Menard *et al.* 2002, p. 127). Equids tend to move to higher elevations in late spring until early fall, which may increase the interactions with sage-grouse, as sage-grouse often move to higher elevation communities to more mesic habitats with forbs throughout the summer (Beever and Aldridge 2011, pp. 285–

286). Conversely, equids tend to spend less time at water, and range farther from water sources than cattle (Beever and Aldridge 2011, p. 286). Because of these differences, greater habitat impacts occur when both horses and cattle are present, compared to when only cattle are present (Beever and Aldridge 2011, p. 286).

As with all herbivores, equid effects on ecosystems vary markedly with elevation, density, season, and duration of use (Beever and Aldridge 2011, p. 273). In some contexts, equid grazing can reduce shrub cover as equids trample, rub against, and consume shrubs (Plumb *et al.* 1984, p. 132; Beever *et al.* 2003, pp. 119–120; Beever *et al.* 2008, p. 180). Equid grazing has also been associated with reduced plant diversity, altered soil characteristics, lower grass cover, lower grass density, and 1.6 to 2.6 times greater abundance of cheatgrass (Beever *et al.* 2008, pp. 180–181). Sage-grouse need grass- and shrub-cover for protection from predators, particularly during nesting season (Connelly *et al.* 2000a, pp. 970–971). Reduction in shrub and grass cover can result in increased predation pressure on both nests and birds. The greatest risk of adverse effects to habitat occurs in the areas with large numbers of horses over AML; the area of greatest concern is Nevada (MZs III, IV, and V)

where free-roaming equid populations are estimated to be more than twice AML.

In addition to adverse effects in sagebrush habitats, free-roaming equids can also negatively affect important meadow and brood-rearing habitats that provide forbs and insects for chick survival (Beever and Aldridge 2011, p. 277; Crawford *et al.* 2004, p. 11; Connelly *et al.* 2004, p. 7–37), as streams and springs within sagebrush ecosystems receive heavy use by horses (Crane *et al.* 1997, p. 380; Beever and Brussard 2000, pp. 243, 246–247). Brood-rearing habitat is often limited in availability compared to other sage-grouse habitats; therefore, any impacts to these areas can adversely affect local populations (NRCS 2015a, p. 44).

Conservation Efforts

Wild Free-Roaming Horses and Burros Act of 1971—The Wild Free-Roaming Horses and Burros Act of 1971, as amended, charges the BLM and USFS with managing wild [free-roaming] equids to achieve a thriving ecological balance with the land (Pub. L. 92–195). The BLM and USFS manage free-roaming equids by conducting surveys, administering fertility control drugs, gathering excess horses, and facilitating adoptions (National Academy of Sciences 2013, pp. 55–73). The BLM plans gathers based on population estimates and vegetation monitoring, but takes into account issues such as areas where equids have moved onto private property or severe local conditions are affecting the health of the herd. The scheduled gathers may be influenced by court orders or emergency situations. Planned gather numbers are based on the available space in holding facilities, anticipated adoptions, and budgets (BLM 2015e, p. 1).

Management of herd size by Federal agencies is an ongoing challenge. Free-roaming equid populations grow rapidly, and in most areas, they have no natural predators (National Academy of Sciences 2013, p. 1). The Wild Free-Roaming Horses and Burros Act (Pub. L. 92–195) requires that free-roaming equid populations be managed at appropriate management levels, and allows for the removal of excess animals for adoption, sale, or destruction. Free-roaming equid management is expensive and often controversial, sometimes limiting options to manage free-roaming equids at appropriate levels (National Academy of Sciences 2013, pp. 1–2).

Federal Plans—The Federal Plans address the impacts of free-roaming equids by prioritizing management in areas most important for sage-grouse

conservation (BLM and USFS 2015 entire). Management actions are prioritized for SFAs and PHMAs, and are managed for AML. Rangeland health assessments will be conducted in PHMAs and SFAs, and herd management area plans (HMAPs) will be amended to incorporate sage-grouse habitat objectives. The plans provide that, if needed to achieve AML and sage-grouse habitat objectives, gathers and population growth suppression techniques would be utilized in prioritized areas. Additionally, if needed, free-roaming equids would be removed or excluded from areas following emergencies, such as wildfire or drought. Further, monitoring and adaptive management criteria provide an additional layer of management to address species or habitat declines regardless of the sources of the impact. The BLM has committed to completing the actions within SFAs in the next 5 years; free-roaming equid management in PHMAs will be the next priority after SFAs (BLM 2015h, entire; DOI 2015a, p. 3).

The Federal Plans' direction to manage free-roaming equid populations at appropriate levels reduces impacts from free-roaming equids into the future. The inclusion of sage-grouse objectives in HMAPs ensures that future decision making is done with consideration of sage-grouse ecological needs. Managing SFAs and PHMAs at AML substantially reduces the potential for habitat degradation in those areas. Based on past BLM and USFS plans and planning efforts, we expect the Federal Plans, including these free-roaming equid measures to be implemented for the next 20 to 30 years.

Sheldon-Hart Mountain National Wildlife Refuge Complex—The Hart Mountain National Wildlife Refuge (NWR) removed free-roaming equids and cattle in the 1990s. Cattle were also removed from the Sheldon NWR in the 1990s. The last gather to remove all equids from Sheldon NWR occurred in the fall of 2014 (Collins, USFWS, pers. comm. 2015). Recovery of plant communities in sagebrush ecosystems, aspen woodlands, and riparian habitats have been documented since these removals (Earnst *et al.* 2012, entire; Davies *et al.* 2014, entire; Batchelor *et al.* 2015, entire). Together, free-roaming equid and livestock removals from Sheldon-Hart Mountain NWR have improved conditions for 9.1 percent of the sage-grouse modeled breeding habitat in MZ V. This area has been identified as important to long-term sage-grouse viability due to the high density of breeding birds and the

connectivity to adjacent populations (USFWS 2014a, entire).

Candidate Conservation Agreements—CCAAs and CCAs, which together can cover up to about 1.4 million ha (3.5 million ac) in Oregon, include conservation measures for free-roaming equids. To date, approximately 745,000 ha (1.8 million ac) are currently enrolled in CCAAs rangewide. Measures include monitoring of free-roaming equid impacts in sage-grouse habitat and reporting to BLM for consideration of horse and burrow relocation (USFWS 2014d, p. 52; USFWS 2015b, p. 55; USFWS 2015c, p. 53; USFWS 2015d, p. 54; USFWS 2015e, p. 53; USFWS 2015f, p. 54). Although not regulatory in nature, these measures will assist BLM in their management of free-roaming equids.

Free-Roaming Equid Summary

In our 2010 finding, we reported that approximately 36,000 free-roaming equids occurred in 10 western States (including 2 States outside the range of sage-grouse) and HMAs/Territories occupied approximately 12 percent of the range of sage-grouse. The number of free-roaming equids has increased since 2010, with about half occurring in Nevada where estimated free-roaming equid population levels are twice AML. Since our 2010 finding, the Federal Plans provide a suite of actions that, with full implementation, will manage free-roaming equids to substantially reduce potential impacts to sage-grouse, as recommended by the COT Report (USFWS 2013, pp. 46–47). Some localized degradation of habitat will likely continue, particularly in Nevada, as implementation of these actions will take time. However, full implementation of the measures outlined in the Federal Plans will reduce impacts in the most important areas for sage-grouse (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness). Important habitats that are designated as SFAs will receive priority management to reduce wild-equid population levels that can exist in the sagebrush ecosystem without adverse effects to sage-grouse habitats (BLM 2015h, entire). In addition, conservation efforts directed at these issues have been implemented on other lands since 2010, most notably the removal of horses from Sheldon NWR in 2014, which provides habitat for an important breeding bird stronghold. As a result, while some localized impacts to habitat are likely to continue in the near future, management measures by the BLM and USFS substantially reduce

the impact of free-roaming horses and burros across the range of the species.

Conifer Encroachment

In 2010, we evaluated the effect of pinyon juniper encroachment and concluded that it contributed to habitat fragmentation, particularly in the Great Basin portion of the range. Pinyon and juniper and some other native conifers were expanding due to decreased fire-return intervals, livestock grazing, and increases in global carbon dioxide concentrations associated with climate change, among other factors. The 2010 finding recognized the potential value of conifer removal treatments, particularly when done in the early stages of encroachment when sagebrush and forb encroachment is still intact (75 FR 13910, March 23, 2010).

Prior to 1860, two-thirds of the Great Basin was treeless and occupied by sagebrush ecosystems (Miller *et al.* 2008, p. 13), but since that time the extent of pinyon-juniper has increased ten-fold (Miller and Tausch 2001, pp. 15–16). Based on 1999–2012 imagery (LANDFIRE 1.3.0), approximately 4.7 million ha (more than 11.5 million ac) of conifer woodlands occur within the current range of sage-grouse, comprising more than 6 percent of the current occupied range. Conifer encroachment is of greatest concern in MZs III, IV, and V, but is present at least locally in all MZs (USFWS 2013, pp. 23–36).

Conifer expansion presents a stressor to sage-grouse because sites invaded by conifers do not provide suitable sage-grouse habitat (Factor A). For example, 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). Sage-grouse have been found to avoid areas where conifers have encroached (Doherty *et al.* 2010b p. 1547; Casazza *et al.* 2011, p. 163; Baruch-Mordo *et al.* 2013, p. 239). Trees may also offer perch sites for avian predators, potentially increasing the predation risk (see *Predation*, below).

The extent of conifers within the species' range is anticipated to expand in the future unless effectively treated. Rangewide, 6 to 13 percent of sage-grouse habitat may be at risk of conifer encroachment (Manier *et al.* 2013, p. 92). The most pronounced risks are across the Great Basin (Manier *et al.* 2013, p. 92) where approximately 35 percent of sagebrush habitat is estimated to be at high risk of alteration by pinyon-juniper in 30 years, 6 percent at moderate risk, and 60 percent at low risk (Connelly *et al.* 2004, pp. 7–8 to 7–14). While pinyon-juniper expansion

appears less problematic in the eastern portion of the range (MZs I, II and VII) and silver sagebrush communities (primarily MZ I), conifer encroachment is an impact 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, pp. 2–23). Based upon current habitat information, approximately 10 percent of the occupied range in the Great Basin and 2 percent of the occupied range in the Rocky Mountains are impacted by conifer encroachment (USFWS 2015a). Efforts are under way to more precisely identify areas at risk of conifer encroachment; that information is currently unavailable, but will help target removal efforts in the future. Conifer encroachment rates have been estimated between 0.4 and 4.5 percent annually (Sankey and Germino 2008, p. 413). Encroachment rates are predicted to increase with long-term changes in climate (see *Climate Change and Drought*, below; Neilson *et al.* 2005 cited in Miller *et al.* 2011, p. 145).

Miller *et al.* (2005, p. 24) characterized three stages of woodland succession: Phase I, where conifer are present but shrubs and herbaceous species remain the dominant vegetation that influence ecological processes (*e.g.*, hydrologic, nutrient and energy cycles); Phase II, where conifer are co-dominant with shrubs and herbaceous species, resulting in modifications of ecological processes; and Phase III, where conifer becomes the dominant species, with reduced shrub canopy cover and herbaceous species diversity. Approximately 80 percent of sites invaded by conifers are still in Phase I and Phase II, where some native shrubs and bunchgrasses are present (Miller *et al.* 2008, p. 9). Transition of sagebrush habitats from Phase II to Phase III is of particular concern because treatment options become more limited in Phase III (Johnson and Miller 2006, p. 8). Without intervention, 75 percent of conifer encroachment in the western portion of the sage-grouse range may transition into Phase III within the next 30–50 years (Miller *et al.* 2008, p. 12).

Conservation Efforts

Since 2010, considerable effort has been undertaken to remove conifers, thus reducing the impacts of conifer encroachment to sage-grouse habitat. Federal Plans and State Plans provide commitments to reduce conifer encroachment. The SGI has been actively treating conifer encroachment on private lands across the species' range. Lastly, private land owners have pursued conifer removal projects,

including commitments associated with enrollment in CCAAs.

The effectiveness of these current and planned treatments varies with the technique used and proximity of the site to invasive plant infestations, among other factors (Knick *et al.* 2014, p. 553). The plant-community response to these treatments is not always consistent or predictable, and succession may not move in a desirable direction following treatment (Miller *et al.* 2014, entire). Areas treated for conifers have the greatest likelihood of sage-grouse using them after treatment when implemented in areas still containing some sagebrush, near mesic habitats, and near sage-grouse populations (Cook 2015, p. 96). Sage-grouse appear to be more likely to use treated areas when suitable habitat is limited in an area (Frey *et al.* 2013, pp. 269–270). We are not aware of any study documenting a direct correlation between conifer treatments and sage-grouse population response. Successful treatment of conifers in the future requires targeted management of conifers in the most important habitats for sage-grouse.

Sage Grouse Initiative—Most of the conifer treatments completed to date have been accomplished on private lands by the SGI. Since 2010, SGI has removed conifers from 163,995 ha (405,241 ac) primarily in Phase I and II encroachment areas in the Great Basin (MZs III, IV, V) (NRCS 2015a, p. 7). Eighty-four percent of these treatments occurred in PACs in the Great Basin. Nearly half of these acres are in Oregon (MZ V), where conifer encroachment was reduced by 68 percent on private lands (NRCS 2015a, p. 2). The SGI in Oregon targeted conifer removal in PACs near active leks and other occupied seasonal habitats (NRCS 2015a, p. 18). SGI will invest an additional 80 million dollars over the next 3 years to implement restoration and enhancement projects on approximately 1.4 million ha (3.4 million ac), including conifer treatment projects (NRCS 2015a, p. 29; NRCS 2015b, p. 6). Given the past accomplishments and the continued dedication of NRCS to sage-grouse conservation, we are confident that these investments in conifer treatments will continue.

Candidate Conservation Agreements—Approximately 745,000 ha (1.8 million ac) are currently enrolled in CCAAs rangewide. Lands enrolled in CCAAs require removing undesirable conifers/junipers encroaching into sage-grouse habitats (USFWS 2014d, p. 47; USFWS 2015b, p. 50; USFWS 2015c, p. 48; USFWS 2015d, p. 49; USFWS 2015e, p. 48; USFWS 2015f, p. 49).

Federal Plans—The Federal Plans completed in 2015 include commitments to remove conifers through implementation of the FIAT. The FIAT assessments include treatment schedules for mechanical and prescribed fire removal. Conifer removal is prioritized in areas closest to occupied sage-grouse habitat and where juniper encroachment is in Phase I or Phase II. Cumulatively, the FIAT step-down assessments identify approximately 3 million ha (7.4 million ac) of conifer treatments for five priority landscapes (*i.e.*, Central Oregon, Northern Great Basin, Snake/Salmon/Beaverhead, Southern Great Basin, and Western Great Basin/Warm Springs Valley) in the Great Basin region (MZs III, IV, and V).

Conifer Encroachment Summary

The potential threat of conifer encroachment has changed since the last status review. In 2010, we found habitat fragmentation, due in part to conifer encroachment, to be a threat to the species; regulatory mechanisms and conservation efforts were insufficient to address this threat. 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. However, projects to remove conifers near sage-grouse habitat have been implemented for PACs, and regulatory measures included in Federal and State plans have resulted in a paradigm shift in land management objectives and practices that will further reduce conifer impacts on sage-grouse and sagebrush habitat. The Federal agencies have committed to continue conifer removal projects in the most important habitats identified in the COT Report (USFWS 2013, pp. 16–29) and the FIAT Assessments (BLM 2015a, *entire*). For a detailed discussion of conservation measure implementation and effectiveness, see *Sagebrush Landscape Conservation Planning*.

Mining

In 2010, we evaluated mining as part of the energy development assessment and concluded that energy projects contributed to habitat loss and fragmentation. Mining was identified as occurring across the species' range, but was most prevalent in Nevada (MZs III, IV, and V) and Wyoming (MZs I and II). At that time, regulations addressing effects from mining were determined to be inadequate. As a result, the 2010 finding concluded that habitat loss and fragmentation, caused in part by mining and inadequate regulatory mechanisms,

were significant threats to the species such that listing was warranted under the Act (75 FR 13910; March 23, 2010).

Mining has occurred throughout the range of sage-grouse since the mid-1800s (Nevada Mining Association 2015), and mining in sagebrush habitats continues today (American Mining Association 2014). Mining is generally divided into three categories, based on the type of mineral extracted: Locatable, leasable, and salable minerals (BLM 2015f, p. 1). Additionally, each of these mining categories has its own specific regulations. Locatable minerals are hard rock minerals whose extraction is subject to the General Mining Law of 1872, such as gold, silver, and copper. Leasable minerals include resources such as coal, oil, and gas. Saleable minerals are more common, lower value resources, such as sand and gravel (BLM 2015f, p. 1). The extent of mining for any individual mineral varies widely, as does the size and activity of individual mines, making generalizations of impacts difficult.

Consistent with our 2010 finding (70 FR 13910, March 23, 2010, pp. 13948–13949), we do not have a comprehensive dataset about existing and proposed mining activity to do a quantitative analysis of potential impacts to sage-grouse. In 2010, we were aware of approximately 25,500 ha (63,000 ac) of existing mining-related disturbance within the range of sage-grouse; those mining projects and associated impacts are likely continuing today. These projects likely removed sagebrush habitat when first implemented (70 FR 13910, March 23, 2010, pp. 13948–13949) and continue to have indirect effects to sage-grouse populations near the project sites through disturbance from noise, human presence, equipment, and explosives (Moore and Mills 1977, *entire*). Overall, the extent of these projects directly affects less than 0.1 percent of the sage-grouse occupied range. Although direct and indirect effects may disturb local populations, ongoing mining operations do not affect the sage-grouse rangewide.

Currently, surface and subsurface mining activities are conducted in all 11 States within the sage-grouse range (Minerals Education Coalition 2015; National Mining Association 2014a BLM 2011, *entire*). Minerals are not distributed evenly across the sage-grouse landscape, and as a result, mining activities tend to be localized or regional. Coal is primarily found in the Rocky Mountain States, while lithium has been mined exclusively in Nevada (although a more recent discovery has been made in southwestern Wyoming) (Mining.com 2014). Precious metals,

while being mined to some degree in all 11 States across the sage-grouse range, primarily occur in Nevada and Colorado (USGS 2013).

By reducing and fragmenting habitats and disturbing individual sage-grouse, mining can directly or indirectly affect sage-grouse. Surface and subsurface mining can reduce sagebrush habitat, ranging from potential losses of many thousands of hectares at large industrial mines to 4 ha (10 ac) or less at smaller mining operations (Factor A). Habitat loss and fragmentation could preclude movements of sage-grouse between seasonal habitats (Connelly *et al.* 2011a, pp. 82–83; Knick and Hanser 2011, *entire*). In addition, indirect effects associated with mining include disturbance from increased human presence, traffic, blasting, reduced air quality, noise, increased dust, and an increased abundance of human-associated predators (Factor E) (Moore and Mills 1977, *entire*; Brown and Clayton 2004, p. 2). Mining operations can also contaminate water sources in sage-grouse habitats (Moore and Mills 1977, pp. 115, 133; Adams and Pickett 1998, p. 486; Ramirez and Rogers 2002, pp. 434–435). Settling ponds near mines could also provide breeding areas for mosquitos and increase the risk of WNV (Walker and Naugle 2011, p. 132).

Projections of future mining activities are difficult, as market prices for any specific mineral commodity vary greatly. The overall extent of mining activities in the United States has remained fairly consistent over the past 5 years (National Mining Association 2014b, p. 1), although coal production, including the number of coal mines, within the range of sage-grouse has generally declined since 2008 (EIA 2015, p. 93). We anticipate that some amount of mining will occur within the range of the sage-grouse indefinitely, depending on the extent of the desired mineral resource, development of new mining techniques, and market conditions. Conservation efforts are discussed below.

Conservation Efforts

Since 2010, a number of landscape-scale efforts have been undertaken to reduce impacts to sage-grouse across the range, including habitat loss and fragmentation from mining. The Federal Plans are the primary tools for managing mining impacts to sage-grouse. State plans in Wyoming and Montana include regulatory mechanisms to address impacts from mining. These conservation efforts are consistent with the recommendations in the COT Report (USFWS 2013, p. 49). The Federal and State plans, as well as individual efforts

reported to the CED, are discussed in detail below.

Federal Plans—In the United States, mining activity is authorized under an array of statutes affecting resources administered or leased by the BLM, both on federally administered lands as well as other lands where mineral rights have been reserved to the United States (*i.e.*, split-estate lands). The BLM's statutory and regulatory authority depends upon the nature of the mineral deposit (*i.e.*, leasable, salable, or locatable). The General Mining Law of 1872 called for all locatable mineral deposits on Federal lands to be free and open to exploration and purchase (BLM 2011c, p. 3), limiting the ability to manage these activities for sage-grouse conservation. Only areas that have been withdrawn to mineral entry by a special act of Congress, regulation, or Secretary of the Interior public land order are truly closed to locatable mineral entry. Coal is administered by the Office of Surface Mining Reclamation and Enforcement, which in turn may delegate their authority to the States.

The majority of mining activity within the sage-grouse range occurs on Federal lands where the Federal Plans direct the management of mineral development (BLM and USFS 2015, entire). Except in Wyoming, all PHMA is closed to new mineral material sales and leasable mineral operations, with exceptions for Free Use Permits and the expansion of existing operations. Free Use Permits allow governmental agencies and nonprofit organizations to extract and use mineral materials for up to 10 years (BLM 2013b, p. 1). Any proposed expansion of existing mining operations in PHMA would require design features to minimize impacts and would require mitigation of any impacts. Wyoming remains open to new mining activities within PACs, but those activities are restricted by a disturbance and density cap as per the Wyoming Plan (see *Wyoming State and Federal Plans*, above).

The Federal Plans designate the most important sagebrush habitat as SFAs where locatable mineral withdrawal is recommended, except in Wyoming where only a portion is recommended for withdrawal. For proposed coal projects, the BLM will determine at the time of a new lease if an area is suitable for development. During that evaluation, PHMA will be considered essential for sage-grouse conservation, ensuring that decisions are made with consideration of sage-grouse conservation needs. General sage-grouse habitats (GHMA) are open to mineral development, but are subject to stipulations designed to protect sage-

grouse. In addition to these mining-specific measures, no discretionary anthropogenic activities in PHMA would be allowed to impact more than 3 percent (or 5 percent in Wyoming and Montana) of the total sage-grouse habitat within a Biologically Significant Unit (BSU). Any authorized activities that result in loss of sage-grouse habitat would require mitigation in an amount or manner that results in a net conservation benefit to the species. Further, in response to monitoring, activities allowable under the Federal Plans may be adjusted based on adaptive management criteria to provide an immediate, corrective response to identified triggers for population or habitat declines. Due to limitations explained above, the disturbance caps may have limited applicability to some types of mining activities, but do place limits on other disturbance if adaptive management triggers are exceeded.

These measures reduce potential mining impacts to sage-grouse on approximately 14 million ha (35 million ac) of PHMA. The restrictions on leasable and salable mining in PHMA eliminate nearly all potential habitat loss associated with those activities. To the limited extent those activities could occur in PHMA, design features would be required to minimize disturbance, and mitigation would be required for any impacts. The laws governing locatable mineral development and coal mining limit the ability to completely remove this threat from PHMA. Locatable mineral development is likely to continue in the future, but it is difficult to know the location or extent of future mining activity within the range of sage-grouse. The SFAs contain the habitats and populations most important to the long-term conservation of the species and needing protection from future mining impacts, and at this time we are currently unaware of planned mining activity in these areas that rise to the level of causing population-level impacts to sage-grouse.

Within the areas of greatest conservation importance (SFAs), DOI will recommend withdrawal from locatable mineral entry. We support the recommendations for mineral withdrawal in SFAs that would remove potential impacts on approximately 4 million ha (10 million ac) of sage-grouse habitat. In Wyoming, the BLM adopted the State strategy, which has proven to be effective in directing activities outside of habitat and limiting impacts when they do occur (see *State Plans*, below). These measures minimize mining impacts in priority habitats for the life of the management plans, estimated to be the next 20 to 30 years.

Based on what we know today, no mining activities are likely to result in loss of these important areas for conservation, but we recognize that economic changes or technological advances may increase the risk of development in the future. Therefore, the long-term protection of the sage-grouse habitat in the SFAs from locatable mineral development will ensure that these important populations are conserved into the future.

State Plans—State plans in Wyoming and Montana include regulatory mechanisms that reduce impacts to sage-grouse from mining on applicable lands. The Wyoming and Montana Plans include controlled surface use, lek buffers, and seasonal and noise restrictions to reduce impacts in Core Areas (Montana EO 10–2014, pp. 14–19; Wyoming EO 2015–4, entire).

The States also implement Federal regulations for coal mining. Coal mining is regulated by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which is implemented by the Office of Surface Mining and Reclamation. This Federal law requires consideration of fish and wildlife resource information for the permit and adjacent area, along with a detailed analysis by the permittee on how impacts will be minimized or avoided. Permittees must also include a plan for enhancement of fish and wildlife resources on the permit area. The OSM has delegated the regulatory authority for implementing the SMCRA to five States within the range of sage-grouse: Wyoming, Montana, Utah, Colorado, and North Dakota. Sage-grouse, therefore, must be considered in the implementation of the SMCRA, and coal mining, in those States. The implementation agency must consider impacts on fish and wildlife, including sage-grouse. Sage-grouse are also typically addressed in all States within its range during the development of coal resources simply due to its status as a State trust resource.

Mining Summary

The impacts of mining have been reduced since the last status review. In 2010, we concluded that habitat fragmentation, due in part to mining, was a significant threat to the species, and regulatory mechanisms were not sufficient to address the threat. The scattered nature and intensity of mining, coupled with market uncertainty, makes it difficult to accurately predict impacts to sage-grouse on a rangewide basis. If future locatable mineral development occurred, it could have local impacts to leks and populations. This type of mining impact is most likely to occur in

Nevada where locatable mineral development has occurred the most historically; however, predictions of future mining activities would be speculative. The regulatory mechanisms in the Federal and State Plans will be effective in reducing potential mining impacts on State owned-lands, and in the case of Wyoming and Montana, in Core Areas. Controlled surface use directs activities outside of sage-grouse habitat to minimize the potential for habitat loss and fragmentation. Indirect impacts from human activity, noise, and traffic are reduced by lek buffers and seasonal and noise restrictions. When mining does occur, disturbance caps ensure that no more than 3 percent of the habitat in an area is impacted in most areas, and no more than 5 percent in Wyoming and Montana. Collectively, the Federal and State plans reduce impacts related to various types of mining on 90 percent of sage-grouse breeding habitat (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness).

Renewable Energy

In 2010, we evaluated the impacts of renewable energy development (wind, solar, and geothermal) on sage-grouse, and concluded that it was a threat to the species (75 FR 13910, March 23, 2010, pp. 13949–13954). At that time, renewable energy development was increasing across the species' range, and regulatory mechanisms were inadequate to address impacts to the species.

Development of commercially viable renewable energy continues to increase across the sage-grouse range (EIA 2015, entire; DOE 2014, entire). Studies examining the impacts of renewable energy development on sage-grouse populations are limited. Renewable energy facilities typically require many of the same features for construction and operation as do nonrenewable energy resources, and, therefore, we anticipate their impacts will be similar. These include direct habitat loss and habitat fragmentation (Factor A) through construction and operation of an energy facility, and indirect effects resulting from the presence of power lines, human activity, introduction of invasive plants and novel predators, and noise (Connelly *et al.* 2004, pp. 7–40 to 7–41; Holloran 2005, p. 1; Pruett *et al.* 2009, p. 1258; Patricelli *et al.* 2013, p. 231; Howe *et al.* 2014, p. 46; see *Nonrenewable Energy, Mining, and Infrastructure*).

Given the incentives provided by the Energy Policy and Conservation Act, and State mandates, we anticipate the

development of commercially viable renewable energy will continue into the future. However, since 2010, conservation efforts have been implemented to direct the location of development to reduce renewable energy impacts across the occupied range of the species. The potential future extent and impacts of the three primary kinds of renewable energy within the occupied range of sage-grouse (wind, solar, and geothermal) are discussed further below, as well as the conservation efforts that ameliorate the effects.

Wind

Wind energy development is facilitated by Federal and State energy laws and policies that encourage its development. In 2008, the DOE issued an initiative to increase wind energy production by 20 percent by 2030 (DOE 2014, entire). Idaho and California provide tax incentives and loan programs for renewable energy development (State of Idaho 2015; California Energy Commission 2015), and Colorado and Nevada have laws requiring increased renewable energy production (AFWA and USFWS 2007, p. 8; Nevada Public Utilities Commission 2015). With the advent of Federal tax credits for wind energy facilities, wind development increased 20 percent in 2013 (Esterly and Gelman 2013, p. 3).

The current amount of implemented wind development within the species' occupied range is low. A geospatial assessment of currently implemented projects reveals that, within the species' occupied range, about 1,400 ha (3,500 ac) have been impacted by wind energy development; these projects occur in MZs I, II, III, and IV and impact less than approximately 0.002 percent of the occupied range (USFWS 2015a). The BLM has issued several ROWs in support of continued and future wind development that may influence sage-grouse habitats, but actual development of these ROWs into commercial facilities is not certain (Manier *et al.* 2013, p. 61).

Wind energy has the potential for development throughout the sage-grouse's occupied range. The National Renewable Energy Laboratory has modeled and mapped the wind resources in each of the States and classified the potential for wind power generation. All MZs contain areas where wind resources have been identified as economically developable over the next 20 years. More than 14 percent of the sage-grouse occupied range has high potential for commercial wind power, with MZs I and II having the greatest

potential (BLM 2005b, p. 5–103; NREL 2014, p. 2). In a separate assessment, the BLM estimated that 600 km² (232 mi²) of BLM-administered lands could be developed within the sage-grouse's range before 2025 (BLM 2005b, pp. ES–8, 5–2). We are aware of four preliminary, planning-stage wind project proposals in Montana (MZ I) that may encroach into sage-grouse habitat (USFWS 2015a). Adverse impacts to sage-grouse could occur if these projects were implemented, but whether or not these proposals may be further refined, or even constructed, is unknown.

Wind development projects can have a variety of direct and indirect impacts to sage-grouse (LeBeau *et al.* 2014, entire). Habitat loss and fragmentation can occur from the construction of wind farms and associated facilities such as power lines, roads, power substations, meteorological towers, and work facilities (BLM 2005b, pp. 3.1–3.4). Sage-grouse, similar to other lekking birds, have been found to avoid human-made structures such as power lines and roads (*e.g.*, Holloran 2005, p. 1; Pruett *et al.* 2009, p. 1258). Wind power facilities may provide perches and subsidized food that attracts predators and increases predation on sage-grouse (LeBeau *et al.* 2014, p. 528). Noise from turbines or associated human activities may interfere with normal foraging, resting, and breeding behaviors and contribute to higher stress levels and reduced fitness (Patricelli *et al.* 2013, p. 231). Sage-grouse could be killed by flying into turbine rotors or towers (Erickson *et al.* 2001, entire), although reports of this happening are limited.

Solar

Like other forms of renewable energy, solar energy development has increased in recent years, but minimal activities have occurred within the range of sage-grouse. Currently, only two solar projects have been constructed within the range of sage-grouse, in Nevada and Oregon (USFWS 2015a). The primary impact from solar facilities is habitat loss due to the installation of solar panels and diversion of water to support the facilities (Manier *et al.* 2013, p. 66). However, at this time large-scale solar-generating systems have not contributed to any calculable direct habitat loss for sage-grouse.

Future impacts from solar energy development are forecast to be extremely limited. In 2012, the BLM assessed potential solar development on their lands within six western States (BLM 2012). That assessment provided direction to exclude solar development from identified sage-grouse habitat on BLM public lands in Nevada and Utah.

Future development on private lands is possible, but the best available information does not indicate that any large-scale solar projects are planned on private lands within the range of sage-grouse at this time.

Geothermal

Geothermal exploration and development activity on Federal lands has been sporadic, but activity has increased in recent years. Currently, four geothermal facilities have been constructed within the range of sage-grouse in MZs III and IV, totaling 57,384 ha (141,800 ac; Manier *et al.* 2013, p. 70). The BLM has approved several geothermal leases throughout MZs III, IV, and V and covering approximately 0.29 percent of the occupied range, but the potential of these leases being developed is unknown. Many of these leases have existing stipulations protecting sage-grouse seasonal habitats (BLM and USFS 2015, entire). No geothermal development has occurred in MZs I and II, although geothermal potential exists throughout these MZs (Manier *et al.* 2013, p. 70).

The greatest potential for future commercial geothermal energy development is within MZs III, IV, and V (EIA 2009, entire). Currently, approximately 1,800 km² (694 mi²) of active geothermal leases exist on public lands primarily in the Southern (MZ IV) and Northern Great Basin (MZ III) (Knick *et al.* 2011, p. 245). However, it is unknown what portion of these leases will ever realize an operational geothermal project. Nevada is predicted to experience the greatest increase in geothermal growth across the United States (BLM and USFS 2008, pp. 2–35).

Impacts from geothermal energy development have not been studied, but are expected to be similar to oil and gas development (Manier *et al.* 2013, p. 70). Direct habitat loss could occur from development of well pads, structures, roads, pipelines, and transmission lines. Sage-grouse could be disturbed by human activity during installation and operation of geothermal projects (EIA 2009, entire). Water needed for installation and operation of geothermal facilities could deplete local water sources and potentially impact brood-rearing habitat.

Conservation Efforts

Since 2010, State and Federal agencies have worked collaboratively to develop regulatory mechanisms to reduce or eliminate the potential threat of new renewable energy development. The BLM and USFS amended or revised Federal Plans to restrict development in priority habitats. States developed and

implemented State plans that govern development on State and private lands. These efforts are in addition to direction to conserve sage-grouse that was provided by wind, solar, and geothermal assessments conducted by the BLM.

Federal Plans—The Federal Plans substantially reduce potential impacts to sage-grouse from renewable energy development on more than half the species' occupied range. The Federal Plans generally exclude new utility-scale and commercial solar and wind developments on 14 million ha (35 million ac) of PHMA (BLM and USFS 2015, entire). Within the 13 million ha (32 million ac) of GHMA, renewable energy project locations are to be prioritized for development outside sage-grouse habitat. In addition, in Nevada, California, Utah, and Colorado, the Solar Energy Development Programmatic Environmental Impact Statement (EIS) (BLM 2012, entire) excludes solar development in sage-grouse habitat, protecting a majority of the habitat areas on BLM lands with solar potential. Based on a geospatial assessment of these measures, the Federal Plans reduce the percentage of modeled breeding habitat potentially impacted by solar development from 15 percent to less than 1 percent and by wind development from 42 percent to 6 percent.

For geothermal projects, NSO is required in the 14 million ha (35 million ac) of PHMA for all States except Nevada and Wyoming. In Nevada, limited geothermal development could occur on Federal lands if it is determined that sage-grouse will not be impacted (BLM and USFS 2015, entire). In Wyoming, geothermal projects are subject to use restrictions including disturbance caps. Geothermal projects are allowed in GHMA, with measures such as timing limitations to minimize impacts. Priority will be given first to leasing and authorizing developing geothermal projects outside of PHMA and GHMA, then to non-habitat areas within PHMA and GHMA, and lastly to the least suitable sage-grouse habitat. Based upon a geospatial assessment of the land uses, the Plans reduce the percentage of breeding habitat potentially impacted by geothermal development from 33 percent to 4 percent (USFWS 2015a).

State Plans—Three State Plans provide regulatory mechanisms that effectively reduce impacts from renewable energy development in that State. In Wyoming, the Wyoming Plan does not allow wind energy development, the primary type of renewable energy pursued in Wyoming, in Core Areas, effectively removing this

potential threat on approximately 6 million ha (15 million acres) of important sage-grouse habitat. Since 2007, Wyoming has denied 27 lease applications for wind development on State trust lands due to this restriction in Core Areas. On State lands or where State authorizations are required, Montana's Plan requires avoidance of wind development in Core Areas and recommends no such development within 4 miles of active leks in general habitat (unless best available science demonstrates there will be no decline in sage-grouse populations) (Montana EO 10–2014, pp. 18, 19, 21). Oregon's Plan requires avoidance, minimization, and compensatory mitigation actions for development in sage-grouse habitat on State and private land and, in conjunction with BLM's Federal Plan, caps the amount of disturbance on sage-grouse core habitat to 3 percent per PAC (Oregon OAR 635–140–0025, entire; and Oregon OAR 660–023–0115, entire).

Renewable Energy Summary

In 2010, renewable energy was identified as a potential contributor to habitat fragmentation, and we concluded that regulatory mechanisms were not sufficient to address the threat in the future. Since 2010, regulatory mechanisms provided by Federal Plans and Wyoming, Montana, and Oregon Plans that eliminate or restrict most new renewable energy development in important sagebrush habitats substantially reduce this potential impact on approximately 90 percent of the sage-grouse breeding habitat. Some renewable energy development will occur in the future, primarily on private land or in GHMA, but it is impossible at this time to predict if, where, or how much development could occur. Avoidance and minimization measures included in the Wyoming, Montana, and Oregon Plans and the Federal Plans would reduce potential impacts if those projects did occur (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness), consistent with recommendations in the COT Report (USFWS 2013, pp. 43–44). Based on previous land use planning efforts, we expect these regulatory measures to be in place for the next 20 to 30 years.

Urban and Exurban Development

In 2010, we evaluated the impact of urban and exurban development together with agricultural conversion and infrastructure, and determined that collectively those land uses were contributing to habitat fragmentation (75 FR 13910, March 23, 2010, p. 13931).

Furthermore, the 2010 finding concluded that habitat fragmentation and inadequate regulatory mechanisms were threats to the species such that listing was warranted under the Act (75 FR 13910, March 23, 2010).

Impacts from European settlement began in the southwestern portion of the sage-grouse range (MZ III) as early as the 1600s and were widespread in the northern portion of the range by the mid-1800s (Schroeder *et al.* 2004, pp. 371–372). Today, urban and exurban development are part of the human footprint on the landscape along with other anthropogenic features, such as roads and power lines (Leu *et al.* 2008, p. 1119; Bar-Massada *et al.* 2014, p. 429). We consider urban areas to be those areas that are densely developed residential, commercial, and industrial built-up areas (U.S. Census Bureau 2012, p. 1) and typically have a housing density of more than one unit per 0.4 ha (more than one unit per ac) (Brown *et al.* 2005, p. 1853). Exurban development includes both development at the fringe of urban areas and rural residential development, typically with a housing density of one unit per 0.4 to 16 ha (1 to 40 ac) (Brown *et al.* 2005, p. 1853). Exurban development has been one of the fastest growing land uses in the United States in recent years (Hansen *et al.* 2005, pp. 1893–1894; Theobald 2005, p. 1).

Most urban development is at the edge of the sage-grouse range while exurban development is scattered throughout the range, though limited to private lands (Connelly *et al.* 2004, p. 7–25; Knick *et al.* 2011, p. 212). Major urban areas include the Columbia River Valley in Washington (MZ VI), the Snake River Valley in Idaho (MZ IV), and the Bear River Valley in Utah (MZ II) (Connelly *et al.* 2004, p. 7–25). Using the information in Theobald 2014 (entire), we completed a geospatial assessment of 2010 Census data and estimated that urban and exurban development directly affects less than 1 percent of the sage-grouse occupied range. Indirect areas of influence related to increased predator impacts may extend up to 3.0 km (1.86 mi) from these direct footprints (Bui *et al.* 2010, p. 65). Factoring in these indirect effects, urban and exurban development could influence approximately 12.4 percent of the sage-grouse's occupied range. Since human population data only considers primary residences, the impact of exurban development in rural areas, especially areas affected by seasonal and recreational use, is likely underestimated (Brown *et al.* 2005, p. 1852).

Urban development affects sage-grouse habitat through the removal of vegetation and subsequent construction of buildings and associated infrastructure (Factor A; Knick *et al.* 2011, p. 217). In contrast to urban areas, exurban areas may continue to provide some sagebrush habitat, but it is typically less suitable due to associated anthropogenic disturbances (Connelly *et al.* 2004, p. 7–26). Both urban and exurban development can result in an increase in predation from pets and novel predators typically associated with humans (*e.g.*, ravens, skunks [*Mephitis mephitis*], fox), invasive plants, and recreation impacts. Noise associated with urban and exurban development may also affect breeding activity and other sage-grouse behavior (Factor E); however, little information is available that assesses this impact relative to urban activities (Blickley *et al.* 2012, p. 470). Sage-grouse avoid human development for nesting and brood-rearing (Aldridge and Boyce 2007, p. 508). Approximately 99 percent of active leks are in landscapes with less than 3 percent developed lands; whereas inactive leks have more than 25 times the development and human density of active leks (Wisdom *et al.* 2011, p. 462; Knick *et al.* 2013, p. 1547). Sage-grouse extirpation was determined to be most likely in areas that had a human population density of at least four persons per 100 ha (four persons per 0.01 km² or 247 ac) (Aldridge *et al.* 2008, pp. 983 and 991).

Human populations have increased in size and spatial extent over the past century, particularly in the western portion of the sagebrush biome (Stiver *et al.* 2006, Appendix C–2; Torregrosa and Devoe 2008, p. 10). Between 2000 and 2039, the U.S. population is projected to increase by 29 percent, with much of that increase likely to happen in western States (Torregrosa and Devoe 2008, p. 10). The areas of the species' occupied range at highest risk of development are private lands along the southeastern, southwestern, and southern portions of the species' range, and south of the Snake River, and in the Columbia Basin (USFWS 2013, pp. 16–29). If these projected population increases occur, the human footprint from development and resultant impacts will also increase, leading to additional habitat loss and fragmentation in those areas. Over half of the sage-grouse's occupied range is on federally owned lands that are not at risk of urban and exurban development. Nonetheless, development on adjacent private lands could have indirect impacts, as discussed above.

Conservation Efforts

Avoiding or minimizing additional urban and exurban development in sage-grouse habitats requires identifying habitats most at risk to development, developing and implementing land policies to acquire, maintain, or enhance habitat, and promoting ecologically sustainable private lands and ranches in sage-grouse habitat (Stiver *et al.* 2006, p. 33). Because urban and exurban development occurs primarily on private lands, conservation efforts focused on private land management, such as CCAAs and SGI, are most effective in ameliorating this impact.

Candidate Conservation Agreements—CCAAs are an effective tool for eliminating future development on private lands within the occupied range of sage-grouse. This outcome is because landowners enrolled in sage-grouse CCAAs have agreed not to pursue subdivision of rangeland, new building construction, or other new associated infrastructure. To date, all private lands within the species' range in Oregon and Wyoming are potentially covered by CCAAs; approximately 745,000 ha (1.8 million ac) have landowner commitments, effectively removing the risk of urban and exurban development in these areas.

Sage Grouse Initiative—Conservation easements are voluntary agreements between a landowner and with a land trust, the NRCS, or other organizations or agencies that maintain the land in private ownership with development restrictions that are typically permanent. Conservation easements can permanently protect sagebrush habitat from subdivision while providing compensation to landowners. The NRCS, through implementation of the SGI, has entered approximately 182,870 ha (451,884 ac) into conservation easements through fiscal year 2013 (NRCS 2015a, p. 38). Most easements for sage-grouse are located inside PACs (79 percent), and 94 percent of them provide permanent protection from future development.

State Plans—The Montana, Wyoming, and Oregon Plans include measures to address urban and exurban development. The Montana Plan regulates habitat loss due to urbanization on State lands and on private lands if a project needs an authorization from the State. The Montana Plan includes seasonal, timing, and noise restrictions; disturbance caps; lek buffers; and other conservation measures to reduce the potential threat of urbanization (Montana EO 10–2014, pp. 13–21). The Wyoming Plan includes

disturbances from exurban and urban development in calculations of their disturbance caps, which are used to limit overall disturbance in Core Areas. Oregon's State regulations require cities and counties to avoid sage-grouse habitat when amending land use planning designations that could increase opportunities for urban and exurban development or when making changes to their codes that may affect sage-grouse habitat. To the extent that urban and exurban development were to occur, it also would be subject to regulations (requiring avoidance, minimization, and compensatory mitigation) and a cap on the amount of disturbance on sage-grouse core habitat to 3 percent per PAC (Oregon OAR 635–140–0025, entire; and Oregon OAR 660–023–0115, entire).

Federal Plans—Lands administered by the BLM and USFS are not directly affected by urban and exurban development, as those agencies are not authorized to permit those land uses. The Federal Plans require that any PHMAs and GHMAs be retained in Federal management, thus preventing transfer to private landownership that could result in urban or exurban development. Limited exceptions to this provision could be allowed if transfer of land ownership would benefit sage-grouse or not cause any adverse effects. As a result of the Federal land ownership and limitations on transference provided by the Federal Plans, the risk of urban and exurban development is reduced on approximately 90 percent of the breeding habitat across the species' range.

Summary of Urban and Exurban Development

The 2010 finding concluded that growing human populations and associated urban and exurban development were adversely affecting sage-grouse. Urban and exurban development is expected to continue to affect sagebrush habitat throughout the sage-grouse range, causing localized impacts to individuals and populations. The impacts are not anticipated to occur evenly across the range; they are expected to occur primarily upon private lands and likely near existing developed areas as populations expand. Fifty-three percent of the occupied range is on federally owned lands where urban and exurban development is unlikely to occur, although associated infrastructure and indirect effects are possible. Existing urban and exurban development will continue to affect sagebrush habitat at many locations scattered throughout the sage-grouse's

range, causing impacts to individuals or populations. Substantial private land conservation efforts that are consistent with the recommendations of the COT Report (USFWS 2013, pp. 50–51), including SGI's completion of more than 182,870 ha (451,884 ac) of conservation easements, have minimized potential impacts of new development throughout the range.

Recreation

In 2010, we evaluated the effect of recreation on sage-grouse and concluded that it was not a threat to the species (75 FR 13910, March 23, 2010, pp. 13984–13985). We have no new information at this time to change the conclusion that recreation is not a threat to the species. Recreational hunting of sage-grouse is discussed in another section (see, *Hunting*) and is not discussed in this section.

Recreational activities occur across the range of the species (42 of the 48 sage-grouse populations; USFWS 2013, pp. 16–29), but are of limited severity and typically concentrated in specific, designated areas, such as trails and campgrounds. Recreational activities include hiking, camping, fishing, horseback riding, mountain biking, off-highway vehicle use, and wildlife viewing (Ouren *et al.* 2007, p. 2; Ibrahim and Cordes 2008, p. 14; Knight 2009, p. 167; NDOW 2014, p. 1). The majority (72 percent) of recreational visits to BLM-administered lands occurred in areas not containing sagebrush (ECONorthwest 2014, p. 13), indicating that sage-grouse habitat may be affected less frequently by recreation than other areas. Little information exists about the level of impacts that may be occurring from recreational activities (ECONorthwest 2014, p. 13); however, off-highway vehicle impacts to sage-grouse habitat have been reported in a few areas in Oregon (Hagen 2011, pp. 197–198). Impacts have also been reported at leks in Oregon and Nevada, where regular lek viewing has caused disturbance (Budeau, Oregon Department of Fish and Wildlife, 2014a, pers. comm.; Espinosa, Nevada Department of Wildlife, 2014a, pers. comm.).

Though limited in extent and frequency, recreational activities can have a variety of direct and indirect effects to sage-grouse. Although rare, people can crush eggs or strike birds with vehicles (Factor E) (Connelly *et al.* 2000b, p. 228; Wiechman 2013, p. 12). Activities could degrade habitat, introduce invasive plants, or increase wildfire risk (Factor A) (NWCG 1999, pp. 6–7, Ouren *et al.* 2007, p. 16; Knick *et al.* 2011, p. 219). Noise and

movement associated with recreational activity may disrupt sage-grouse behavior or movement patterns (Factor E) (Blickley *et al.* 2012, pp. 467–470, Patricelli *et al.* 2013, p. 242). Predation (Factor C) may increase due to increases in trash associated with recreational activities or due to the presence of pets accompanying humans (Knick *et al.* 2011 p. 219; Young *et al.* 2011, pp. 126–127).

Given the limited data about recreational activities occurring in sage-grouse habitat, it is difficult to accurately predict future impacts on sage-grouse throughout the range. However, based on historical and current trends, recreational activities are likely to continue on the landscape indefinitely. Recreational activities may increase over time in correlation to predicted increases in human populations.

Conservation Efforts

Federal Plans—The Federal Plans include conservation measures consistent with the COT Report recommendations (USFWS 2013, p. 50) to reduce recreation impacts (BLM and USFS 2015, entire). The Federal Plans exclude new recreational facilities in PHMA, with limited exceptions when needed for safety or when beneficial to sage-grouse. Off-highway vehicle travel will be limited to existing routes and trails and that have neutral or net positive impacts on sage-grouse in PHMA and GHMA. Additional measures to minimize potential impacts that might result from development of recreational facilities and infrastructure include seasonal and timing restrictions, lek buffers, disturbance caps, and mitigation.

State Plans—The Montana State Plan includes conservation measures, such as seasonal and noise restrictions and lek buffers, to reduce impacts from new recreation facilities on State lands and private lands where State authorization is required (Montana E.O. 10–2014, pp. 4, 13–21). In addition, most States discourage recreational viewing of sage-grouse during the breeding season and do not provide lek locations to the general public (Budeau, Oregon Department of Fish and Wildlife 2014a, pers. comm.; Robinson, North Dakota Game and Fish Department, 2014a, pers. comm.; Schroeder, Washington Department of Fish and Wildlife 2014, pers. comm.; Wightman, Montana Fish, Wildlife, and Parks 2014a, pers. comm.). In addition, Wyoming and Washington have measures to minimize impacts from recreational lek viewing, including wildlife harassment laws (Christiansen, Wyoming Game and Fish Department,

2014a, pers. comm.; Schroeder, Washington Department of Fish and Wildlife, 2014, pers. comm).

Summary of Recreation

In the 2010 finding, we concluded that recreation was not a threat to the species. No additional evidence has been discovered or presented suggesting that recreational activities or the associated impacts have changed since the 2010 finding. Recreation continues to be an activity that occurs sporadically across the range of the species, with some localized impacts, but no population-level effects to the species. Together, the Federal Plans and Wyoming, Montana, and Oregon State Plans reduce impacts from recreation to the areas identified as PHMA and GHMA, which encompass approximately 90 percent of the modeled breeding habitat across the species' range (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness). Therefore, we conclude that recreation is not a threat to the species, now or in the future.

Climate Change and Drought

In 2010, we evaluated the effect of climate change and drought on sage-grouse (75 FR 13910; March 23, 2010; pp. 13954–13957). While the direct impact of climate change on sage-grouse was unknown, we found climate change to be intensifying other threats such as fire and invasive species. We found drought not to be a substantial threat to the species across its range.

Climate Change

Our analysis of impacts to sage-grouse attributable to climate change includes the consideration of ongoing and projected changes in climate across the sage-grouse's range. The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative,

and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–19). In seeking to evaluate the potential impacts of climate change on sage-grouse, we have weighed relevant information, including areas of uncertainty, together with our understanding of sage-grouse biology and ecology.

Increases in global and regional ambient temperature and variable changes in precipitation are projected out to the end of the 21st century (IPCC 2013, p. 19). Some degree of uncertainty is inherent in these and other projections of future change; however, climate change will likely affect to some degree the entire range of sage-grouse, with the greatest potential adverse impacts occurring in the southern Great Basin (Schlaepfer *et al.* 2011, p. 380).

Direct impacts of climate on individual birds are unknown for most species, including sage-grouse (Factor E), but climate is likely to influence the distribution and quality of sage-grouse habitat (Factor A) (Miller *et al.* 2011, pp. 174–179; Gardali *et al.* 2012, p. 3). The natural distribution of sagebrush is driven by soil-water availability (Schlaepfer *et al.* 2014, p. 349; Schlaepfer *et al.* 2015, pp. 7–8), which is influenced by the amount and seasonality of precipitation and by temperature (Bradford *et al.* 2014, p. 595). Changes in precipitation timing and increases in ambient temperature are projected to lead to increased evaporation and transpiration in sagebrush habitat and a lengthening summer period of dry soil conditions (Bradford *et al.* 2014, p. 599). These conditions are projected to be most pronounced along the southern edge of the current distribution of sagebrush (MZs III and VII), and particularly at low elevations (Schlaepfer *et al.* 2015, p. 13; Still and Richardson 2015, p. 33). In these areas, climate change may result in northward and upslope shifts in frost-sensitive woodland vegetation into areas currently suitable for sagebrush (Neilson *et al.* 2005, pp. 153–155; Comer *et al.* 2012, p. 142; reviewed in Friggens *et al.* 2012, pp. 8–11; Rehfeldt *et al.* 2012, p. 126), potentially altering, or displacing sagebrush habitat. It is unknown to what extent these changes could result in habitat loss and fragmentation, but adverse effects to populations could occur if habitat loss exacerbates impacts from other stressors (Johnson *et al.* 2011, pp. 447–450; Miller *et al.* 2011, pp. 183–184; Wisdom *et al.* 2011, pp. 465–468).

Beyond affecting sagebrush directly, the effects of climate change can interact with and increase effects from other stressors (Chambers *et al.* 2014c, p. 368), such as invasive plants, drought, and wildfire. For example, cheatgrass grows best with wet and warm conditions, so increasing temperature coupled with increased winter and spring precipitation is likely to facilitate its spread (Balch *et al.* 2013, p. 174). Combined, these stressors could have additive impacts to sagebrush habitat (Bradford *et al.* 2014, p. 599; Chambers *et al.* 2014c, entire) as discussed further in *Cumulative Effects*. Climate change is likely to shift the distribution of sagebrush at the southernmost extent of the species' range, including areas in MZ III (Schlaepfer *et al.* 2011, p. 380). Any other effects of climate change are unknown at this time, and the extent of potential cumulative effects is also unknown.

Drought

Drought is a natural, periodic occurrence throughout the range of the sage-grouse. Large-scale drought lasting a decade, similar to the 1930s Dust Bowl drought, has occurred once or twice per century on average (Woodhouse and Overpeck 1998, p. 2706; Ault *et al.* 2014, p. 7529), and periodic drought regularly influences sagebrush ecosystems (Bar-Massa *et al.* 2006, p. 1; Miller *et al.* 2011, p. 145; Miller *et al.* 2011, p. 145). In the future, certain portions of the range (MZs I and VI and portions of MZs II and IV) are forecast to have increased risk and higher severity of drought, though the entire range will likely be affected (Cook 2015, p. 6).

Drought impacts to sage-grouse habitat may affect adult survival, nesting success, and chick survival (Factor A). Structural composition of plants vital for sustaining sage-grouse nesting success, including plant height and percent plant cover, may be affected during drought (Hanf *et al.* 1994, p. 41). Decreases in insects and forbs important for sage-grouse chick survival during drought may negatively affect sage-grouse populations (Johnson and Boyce 1990, p. 91; Crawford *et al.* 2004, p. 6; Aldridge and Bridgman 2003, p. 31; Fischer *et al.* 1996, p. 197). Drought has been correlated with declines in populations (Patterson 1952, p. 33; Braun 1998, p. 139) and has coincided with periods of low population levels (Connelly and Braun 1997, pp. 231–232). In the period 1950–2003, drought had a weak negative effect on sage-grouse persistence, with extirpation most likely in areas having three or

more severe droughts per decade (Aldridge *et al.* 2008, pp. 983, 992).

Based on precipitation and temperature projections, drought frequencies are expected to increase across the country, especially in the Rocky Mountain and southwestern States, including all sage-grouse MZs (Strzepek *et al.* 2010, p. 1).

The risk of decade-scale drought occurring within the southern MZs within the sage-grouse range (MZs III, V, and VII and portions of MZs II and IV) this century is estimated between 20 and 70 percent (Ault *et al.* 2014, pp. 7541–7542). The probability of decade-scale drought in the northern MZs (MZs I and VI and portions of MZs II and IV) is between 10 and 50 percent (Ault *et al.* 2014, pp. 7541–7542).

Conservation Efforts

Ameliorating the impacts of climate change and drought to sage-grouse involves addressing other impacts to the species to improve the resilience of the species and its sagebrush habitat under changing environmental conditions. Maintaining large expanses of undisturbed habitat is the best way to address potential impacts that could lead to habitat fragmentation; as discussed in other impacts sections and *Sagebrush Landscape Conservation Planning*, new regulatory mechanisms and conservation efforts are in place to address those potential impacts. In addition, many conservation actions have been implemented to address those other impacts that are most influenced by climate change and drought, such as wildfire, invasive plants, improper grazing, and conifer encroachment. Full discussions of the best management practices, conservation efforts, and regulatory mechanisms associated with these compounding impacts are included under each impact section in *Summary of Information Pertaining to the Five Factors*.

Climate Change and Drought Summary

The understanding of impacts from climate change and drought has not changed substantially from the 2010 finding. Climate change effects on the timing and amount of precipitation could adversely affect sagebrush habitat and food availability, with potential negative consequences for sage-grouse survival and recruitment; however, the extent and nature of this potential impact is not understood. Drought is a natural part of the sagebrush ecosystem, and sage-grouse abundance has been shown to fluctuate in correlation to drought conditions. Climate change and drought are most likely to affect individuals and populations at the

southern extent of the species' range; however, the extent or nature of those effects to sage-grouse are unknown at this time. The greatest concern from climate change and drought is their potential to increase wildfire and invasive plant impacts in the Great Basin. If hotter and drier conditions lead to increased burn rates, then increased habitat loss due to wildfire could be predicted (see *Wildfire and Invasive Plants*, above); however, the extent to which climate change and drought may change burn rates is unknown. Therefore, based on the best available information, climate change and drought are not threats to sage-grouse, now or in the future.

Predation

In 2010, we evaluated the effect of predation on sage-grouse and concluded that predation was not a threat to the species (75 FR 13910, March 23, 2010, p. 13973). We concluded that landscape fragmentation is likely contributing to increased predation on sage-grouse. However, except in localized areas where habitat is compromised, we found no evidence to suggest that predation is limiting sage-grouse populations rangewide. New information developed since that time does not alter our conclusion.

Predation (Factor C) is the most commonly identified cause of direct mortality for sage-grouse during all life stages (Blomberg *et al.* 2013b, p. 347; Caudill *et al.* 2014, p. 808). Rangewide, sage-grouse are exposed to a number of different predators, including raptors, small mammals, and snakes (Schroeder *et al.* 1999, pp. 10–11; Coates *et al.* 2008 pp. 424–425; Lockyer *et al.* 2013, p. 248). However, sage-grouse have co-evolved with their predators, resulting in the development of cryptic plumage and behavioral adaptations that have allowed them to persist despite this mortality factor (Coates and Delehanty 2008, p. 635; Hagen 2011, p. 96). Sage-grouse mortality rates due to predation vary widely by location and time of year, and short-term studies are often not representative of population dynamics for the species across the range (Taylor *et al.* 2012b, p. 337).

The habitat fragmentation and development that began across the sagebrush ecosystem in the late 19th century (see *Habitat Fragmentation*, above) has caused predator dynamics to change (Fichter and Williams 1967, p. 225; Baxter *et al.* 2007, p. 266; Coates and Delehanty 2010, p. 240). Decreased habitat quality and quantity has created a situation in which the sage-grouse are more vulnerable to predation (Connelly *et al.* 1991, p. 524; Coates 2007, pp. 38–

39; Hagen 2011, p. 96). Agricultural development, landscape fragmentation, and encroaching human populations may increase the diversity and density of predators (Summers *et al.* 2004, p. 523; Coates and Delehanty 2010, p. 246; Dinkins *et al.* 2014, p. 639). Degraded and fragmented landscapes can benefit predators by increasing their kill efficiency, as well as subsidizing their food and nest or den substrate (Hagen 2011, p. 100). The abundance of red foxes (*Vulpes vulpes*), raccoons (*Procyon lotor*), crows (*Corvus brachyrhynchos*), and ravens, which historically were rare in the sagebrush landscape, has increased in association with human-altered landscapes (Luginbuhl *et al.* 2001, p. 570). Raven abundance has increased as much as 1,500 percent in some areas of western North America since the 1960s (Coates and Delehanty 2010, p. 244). Several studies have documented negative effects to sage-grouse associated with increased corvid populations (corvids are a group of birds that include ravens, crows, magpies (*Pica* spp.), and jays) (Holloran 2005, p. 58; Coates 2007, p. 130; Conover *et al.* 2010, p. 335; Lockyer *et al.* 2013, p. 242; Coates *et al.* 2014, pp. 73–74; Howe *et al.* 2014, p. 36). Ravens may prefer certain sage-grouse habitats, such as big sagebrush communities and wet meadows, and the abundance of ravens may increase near livestock grazing and agriculture (Coates *et al.*, in press).

High predator abundance within a sage-grouse nesting area may negatively affect sage-grouse productivity without causing direct mortality. The increase in the numbers of corvids within the sagebrush ecosystem is an important change because sage-grouse nests are at greater risk of predation by these visual predators (Conover *et al.* 2010, p. 335). Even low but consistent raven presence can influence sage-grouse reproductive behavior (Bui 2009, p. 32; Dinkins *et al.* 2012, p. 606). Sage-grouse females tend to select nest and brood-rearing locations that are farther away from predator perches and have lower densities of avian predators (Dinkins *et al.* 2012, p. 606; Dinkins *et al.* 2014, p. 637). When nesting in areas with relatively higher abundances of ravens, females reduce the amount of time they spend off their nests, potentially compromising their ability to secure sufficient nutrition to complete the incubation period (Coates and Delehanty 2008, p. 636).

Data are lacking that definitively link sage-grouse population trends with predator abundance. At the rangewide scale, predation is not believed to be a widespread factor limiting sage-grouse

population growth (Connelly *et al.* 2000a, p. 975; Connelly *et al.* 2004, p. 10–1). However, in localized areas where habitat is compromised by human activities, predation could be limiting local sage-grouse populations (Coates 2007, p. 131; Bui 2009, p. 33; Lockyer *et al.* 2013, p. 242). Holloran (2005, p. 58) attributed increased sage-grouse nest depredation to high corvid abundances in western Wyoming, which resulted from anthropogenic food and perching subsidies in areas of natural gas development. Mammalian predators and ravens are suspected of causing sage-grouse population decline and extirpation in Washington (Schroeder *et al.* 2014, p. 10). Raven abundance was also strongly associated with sage-grouse nest failure in Nevada, resulting in negative effects on sage-grouse reproduction (Coates 2007, p. 130; Lockyer *et al.* 2013, p. 242). Studies on increasing raven populations have also been recently conducted in Idaho (Coates *et al.* 2014, entire; Howe *et al.* 2014, entire) and central Utah (Conover *et al.* 2010, entire).

Since 2010, conservation efforts have been implemented to address predation and associated impacts. Conservation measures can limit the effects of predation by preventing habitat fragmentation caused by transmission lines, roads, and nonnative vegetation (Howe *et al.* 2014, p. 46). As discussed in other sections of this finding, regulatory measures provided by the Federal Plans and certain State Plans limit new development within important sage-grouse habitat, thus reducing habitat fragmentation that facilitates increased predation (see *Nonrenewable Energy Development, Mining, Renewable Energy, and Urban and Exurban Development*). Measures to remove predator perches or subsidized food sources could minimize effects, but predator removal programs have not yet proven to be effective, as predator populations quickly rebound without continual control (Coates 2007, p. 152; Hagen 2011, p. 99).

In summary, predation was identified as a potential threat in the 2010 finding and will likely continue to have adverse impacts to local populations, particularly in areas where habitat fragmentation has occurred. Mortality due to nest predation by ravens or other human-subsidized predators is increasing in some areas (*e.g.*, in MZs III, VI, and VII), at times causing local population declines, and in extreme cases, local extirpations. However, information about the rangewide extent of predation is limited and there is no indication that predation is causing a rangewide decline in population trends.

Since the 2010 finding, regulatory mechanisms from Federal Plans and Wyoming, Montana, and Oregon State Plans have been implemented that limit additional future habitat loss and fragmentation to the areas identified as PHMA and GHMA which encompass approximately 90 percent of the modeled breeding habitat across the species' range (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness). These restrictions on future development will effectively eliminate new disturbances that remove cover habitat and facilitate the expansion of predators, thus reducing the potential for predation on sage-grouse.

Disease

In 2010, we evaluated the effect of disease (Factor C) on sage-grouse and concluded that disease was not a threat to the species (75 FR 13910, March 23, 2010, p. 13970). In that finding, we determined that, while WNV was affecting some populations, no evidence existed that disease was a substantial mortality factor for the persistence of sage-grouse across the species' range (75 FR 13910, March 23, 2010, p. 13970). We have no new information to indicate that analysis has changed.

Sage-grouse are host to numerous parasites and pathogens (Connelly *et al.* 2004, pp. 10–4 to 10–8; Christiansen and Tate 2011, pp. 114–118). The presence of parasites or pathogens is not synonymous with the presence of disease or population-level impacts (Connelly *et al.* 2004, p. 10–3; Christiansen and Tate 2011, p. 114). To date, most parasites and pathogens found in sage-grouse are not known to cause substantial, chronic mortality or other adverse impacts to sage-grouse populations (reviewed in Christiansen and Tate 2011, pp. 114, 119–125).

West Nile virus is known to have localized impacts to sage-grouse populations (Christiansen and Tate 2011, p. 122; Walker and Naugle 2011, p. 139). Similar to other North American bird species (McLean 2006, p. 54), sage-grouse are highly susceptible to WNV, with mortality rates nearing 100 percent of infected birds (McLean 2006, pp. 53–54; Clark *et al.* 2006, p. 18). West Nile virus is transmitted among birds mainly through a mosquito-bird-mosquito infection cycle that relies on optimal climate conditions and movement of birds (McLean 2006, p. 52). The mosquito (*Culex tarsalis*) is the primary vector of WNV in sage-grouse (Naugle *et al.* 2005, p. 617). Most sage-grouse infected with WNV die in as few as 6

days, but a small proportion of infected birds survive, as evidenced by the presence of WNV-specific antibodies in live birds (Walker *et al.* 2007b, p. 691; Dusek *et al.* 2014, p. 726). High mortality rates from WNV can reduce average annual adult survival, a limiting factor in sage-grouse population growth (Johnson and Braun 1999, p. 81; Taylor *et al.* 2012b, p. 343). Population-level impacts can also result from WNV mortality in juvenile sage-grouse by decreasing recruitment into the breeding population the following year (Kaczor 2008, p. 65; Taylor *et al.* 2012b, p. 343).

West Nile virus has been detected across the species' range, with localized outbreaks occurring in 10 of 11 States and 1 of 2 Canadian provinces in the species' range (WNV has not been detected in Washington or Saskatchewan (USFWS 2014b)); however, sage-grouse are likely to have been infected in Saskatchewan as well (Walker and Naugle 2011, p. 133). West Nile virus infections in other species in Washington suggest that sage-grouse in the Columbia Basin could be exposed to the disease (USGS NWHC 2014). West Nile virus was first detected in sage-grouse in 2003, with localized outbreaks occurring from 2004 to 2009 (Naugle *et al.* 2004, p. 705); no outbreaks have been recorded since 2009 (USFWS 2014b). However, no rangewide disease surveillance program exists to know for certain the extent of outbreaks across the species' range, and it is likely that many WNV-related sage-grouse mortalities go undocumented.

Although WNV is present throughout the range of sage-grouse, on a finer scale WNV presence depends upon water sources that provide aquatic breeding habitat for mosquitoes (Zou *et al.* 2006, p. 1035; Doherty 2007, pp. 60–61). The development of anthropogenic water sources could provide breeding habitat for mosquitoes that contribute to WNV outbreaks. In addition, WNV outbreaks in humans are associated with drought conditions and high ambient temperature in spring and summer (Epstein and Defilippo 2001, p. 106), and drought conditions likely increase the probability of WNV outbreaks in sage-grouse as well. When high temperature and drought combine, sage-grouse are concentrated in shrinking mesic habitats (Schrage *et al.* 2011, p. 2). Under these conditions, contact between mosquitoes and birds increases, and the risk of WNV transmission and an outbreak among sage-grouse is elevated (Walker and Naugle 2011, p. 131).

The primary conservation measure for WNV is the control of mosquitoes and their breeding habitat (Walker and

Naugle 2011, pp. 140–141). Measures that limit development that creates new mosquito breeding habitat or measures that manage existing water features so that mosquitoes cannot use them to breed (e.g., circulating water, using larvicides, or mosquito fish (*Gambusia* spp.)) are most effective in reducing future WNV outbreaks. As discussed in other sections of this finding, regulatory measures provided by the Federal Plans and the Wyoming, Montana, and Oregon Plans limit new development within important sage-grouse habitat, thus reducing the risk of anthropogenic water sources being constructed that could provide mosquito breeding habitat (see *Nonrenewable Energy Development, Mining, Renewable Energy, and Urban and Exurban Development*). In addition, the Federal Plans contain RDFs that will minimize the risk of WNV outbreaks, such as requirements for water feature installation to minimize the likelihood of mosquito breeding (see *Sagebrush Landscape Conservation Planning* for a detailed discussion of conservation measure implementation and effectiveness). The SGI program includes assistance to private landowners to manage water features in a way that minimizes the likelihood of mosquito breeding.

With the exception of WNV, we could find no evidence that disease poses an impact to sage-grouse across the species' range. West Nile virus currently is a localized stressor that has had impacts on some sage-grouse populations, having caused declines and in some cases local extirpations of populations in North Dakota, South Dakota, southeast Montana, and Idaho. In those affected areas, WNV is likely to have an adverse effect on population growth rates, with small populations being at greatest risk of extirpation if outbreaks reduce population size below a threshold where recovery is no longer possible (Walker and Naugle 2011, pp. 137–139, 140). The incidence of WNV is likely to continue across the species' range in the future. The factors most likely to affect future occurrence are climate change and the abundance and the distribution of anthropogenic surface water. Conservation measures that limit and or manage the development of new artificial water sources will minimize habitat availability for mosquitoes that could spread WNV. As noted in our 2010 finding, a complex set of environmental and biotic conditions that support the WNV cycle must coincide for an outbreak to occur, and the annual patchy distribution of the disease is currently keeping population-level

impacts at a minimum (75 FR 13910, March 23, 2010, p. 13970).

Recreational Hunting

In 2010, we evaluated the effect of recreational hunting on sage-grouse and concluded that recreational hunting is not a threat to the species (75 FR 13910; March 23, 2010; p. 13965). In 2010, we also determined that the effects of falconry hunting and poaching are negligible due to their extremely limited extent (75 FR 13910; March 23, 2010; p. 13965). We have no new information about falconry hunting or poaching to change those determinations; therefore, they will not be discussed further in this status review.

During the late 1800s and early 1900s, the sage-grouse was heavily exploited by both commercial and sport hunters (Factor B) (Patterson 1952, pp. 30–33; Autenrieth 1981, pp. 3–11). State wildlife agencies were sufficiently concerned with the observed declines in the 1920s and 1930s that many closed their hunting seasons and others reduced bag limits and season lengths as a precautionary measure (Patterson 1952, pp. 30–33; Autenrieth 1981, p. 10). By the 1950s, populations were considered recovered and recreational hunting was again allowed throughout the range (Patterson 1952, p. 242; Autenrieth 1981, p. 11). In recent years, hunting seasons and bag limits have fluctuated and become more conservative across the species' range as States responded to changing population numbers and perceived threats to birds (Reese and Connelly 2011, p. 104).

In 2014, sage-grouse hunting took place in 8 of the 11 States where sage-grouse occur. Sage-grouse are listed as a threatened species in Washington (Stinson *et al.* 2004, p. 1), and hunting has been closed since 1988. Sage-grouse has not been hunted in Saskatchewan since 1938, and Alberta closed the season in 1996 (Aldridge and Brigham 2003, p. 25). In 1998, sage-grouse was designated as endangered in Canada, and hunting is prohibited there (Connelly *et al.* 2004, p. 6–3). North Dakota closed its hunting season in 2008 due to low lek count numbers, and it has remained closed. South Dakota closed its hunting season in 2013 due to low lek count numbers; it also remained closed in 2014. Montana Fish and Wildlife Commission closed all or parts of 32 counties to sage-grouse hunting in 2014, and shortened the hunting season from 2 months to 1 month.

Sage-grouse hunting is regulated by State wildlife agencies. Hunting seasons are reviewed annually, at which time States can adjust harvest management

based on updated abundance information and adaptive management criteria established in State wildlife management plans. Information on abundance and local habitat conditions is used to make any adjustments to the hunting season necessary to reduce the potential for additive mortality. Seasonal adjustments take the form of changes to the number of permits issued, changes to the season length or bag limit, or total closure of the hunting season. Bag limits and season lengths are relatively conservative compared to prior decades (Connelly 2005, p. 9; Gardner, California Department of Fish and Game, 2008, pers. comm.; USFWS 2014b). Emergency closures, changes in permit numbers, and implementation of more conservative hunting seasons have been used for populations in decline or in areas experiencing other issues of potential concern (Budeau, Oregon Department of Fish and Wildlife, 2014b, pers. comm.; Christiansen, Wyoming Game and Fish Department, 2014b, pers. comm.; Espinosa, Nevada Department of Wildlife, 2014b, pers. comm.; Griffin, Colorado Parks and Wildlife, 2014, pers. comm.; Moser, Idaho Department of Fish and Game, 2014, pers. comm.; Robinson, Utah Division of Wildlife Resources, 2014b, pers. comm.; Wightman, Montana Fish, Wildlife, and Parks, 2014b, pers. comm.).

Recreational hunting is anticipated to continue into the future, though it is difficult to make accurate predictions about specific levels of hunting mortality because States make adjustments annually. Given the downward trend in hunting mortality reported over the last several decades, mortality rates from hunting will likely continue to decrease. Rangewide, hunting seasons are more conservative than in the past, which has resulted in a reduction in sage-grouse hunting mortality across all sex and age classes (USFWS 2014b). Many States have reported estimated hunting mortality to be lower than the 10 percent mortality cap recommended by Connelly *et al.* (2000a p. 976) (Christiansen 2010, p. 12; Budeau 2014b, pers. comm.).

In 2010, we concluded that hunting was not a threat to the species and based on current information about harvest rates, it continues not have substantial impacts to sage-grouse. To date, changes in the management of sage-grouse hunting have resulted in a substantial reduction in sage-grouse hunting mortality rangewide.

Scientific and Educational Use

In 2010, we evaluated the potential overuse of sage-grouse for scientific and educational purposes and determined

that it was not a threat to the species (75 FR 13910, March 23, 2010). Scientific use was occurring at low levels, but no evidence existed to indicate that scientific use was affecting populations or abundance trends. No educational use was known at that time. As discussed further below, we have no new information indicating that the level of utilization for scientific purposes has changed since the 2010 status review.

Sage-grouse are one of the most intensely researched and monitored birds in North America. Scientists researching or monitoring sage-grouse typically observe, approach, capture, handle, band, or attach radio transmitters to individual sage-grouse to study their movements, behaviors, and population dynamics. Translocations have been used for a variety of scientific purposes, such as a management tool to restore or augment declining populations of sage-grouse and to improve the genetic diversity of populations (Alberta Environment and Sustainable Resource Development 2013, p. viii; White 2013, p. 9; Schroeder *et al.* 2014, p. 8; Yakama Nation 2015, entire).

During research-related activities, scientists could unintentionally kill, disturb, or reduce the survival of individual sage-grouse (Factor B) (Connelly *et al.* 2003, p. 32; Gibson *et al.* 2013, p. 773). Despite these potential impacts, sage-grouse mortalities from scientific activities are extremely rare. Annually, less than 3 percent of the sage-grouse captured for research or monitoring activities die as a result of their capture and handling (USFWS 2014b). Radio transmitters have had negative impacts to individual birds (Connelly *et al.* 2003, p. 32; Colorado Parks and Wildlife 2013, p. 48; USFWS 2014b), but no population-level impacts have been observed.

Survival rates of translocated sage-grouse vary from 36 percent in central Idaho (Musil *et al.* 1993, p. 88) to greater than 45 percent in north-central Utah (Baxter *et al.* 2013, p. 809) and 62.4 percent in northeastern California (Bell and George 2012, p. 373). The efficacy of translocation efforts have been questioned because translocation success, as measured by persistence of reintroduced populations or increases of extant populations, has been low (Reese and Connelly 1997, pp. 235–238). However, more recent attempts have been successful (Alberta Environment and Sustainable Resource Development 2014, p. 6; Baxter *et al.* 2006, p. 182). When translocation protocols are followed, translocated female sage-grouse survive just as well as resident

individuals and quickly integrate into the local population (Bell and George 2012, p. 373). Sage-grouse translocated into the Columbia Basin in Washington (MZ VI) have generally survived (White 2013, p. 9; Schroeder *et al.* 2014, pp. 8, 17, 21). Translocations will likely continue at similar rates, and there is no evidence that the removal of sage-grouse from source populations has caused declines in abundance.

In summary, although research or monitoring of sage-grouse could potentially affect individuals, the best available information does not indicate that adverse impacts are occurring at the population level. Information gained through these methods has directly benefited the species. In addition, while translocations have variable success rates, the best available information does not indicate that the translocations affect the populations from which the birds were removed. Although sage-grouse are intensely studied and monitored, there is no evidence to indicate that sage-grouse use for scientific purposes is affecting the species locally or rangewide.

Contaminants

In 2010, we determined that contaminants were not a threat to the sage-grouse (75 FR 13910, March 23, 2010, pp. 13982–13984). Sage-grouse exposed to contaminants may become sick or die (Factor E), and contaminants may reduce or remove sage-grouse habitats (Factor A). Types of contaminants that potentially affect sage-grouse include but are not limited to pesticides, products from mining and energy development, human waste, fire retardants, and airborne pollutants from roads, vehicles, and other machinery (Beck and Mitchell 2000, p. 997; Olsgard *et al.* 2009, p. 178; Hansen *et al.* 2011, p. 593; Christiansen and Tate 2011, p. 125). Contaminants may be intentionally introduced into sage-grouse habitats to improve conditions for crops and livestock, extract nonrenewable and nuclear energy resources, construct infrastructure, and manage wildfires (Larson *et al.* 1999, p. 115; Gibbons *et al.* 2015, p. 105). Spills or leaks along pipelines, highways, roads, and railroads can also unintentionally release contaminants into sage-grouse habitats.

In the past, pesticides were used to remove sagebrush, other unwanted woody shrubs, invasive plants, and nuisance insects in sage-grouse habitats in order to improve conditions for agricultural crops and livestock (Connelly *et al.* 2004, p. 7–28; Beck *et al.* 2012, p. 445). Exposure to pesticides and herbicides can kill sage-grouse,

cause abnormal behavior, or degrade sagebrush habitat (Blus and Connelly 1998, p. 23; Christiansen and Tate 2011, p. 125; Mineau and Palmer 2013, p. 20; Gibbons *et al.* 2015, p. 105). However, Federal and State regulations to protect air and water quality and ban certain pesticides have likely reduced applications in sagebrush habitats. Generally, pesticides and herbicides are now used to improve sagebrush habitats for native wildlife rather than for livestock (Beck *et al.* 2012, p. 446), and properly applied pesticides should not poison sage-grouse (Call and Maser 1985, p. 15; APHIS 2002, p. 10). Furthermore, light applications of some herbicides may benefit sage-grouse by decreasing the shrub canopy and increasing the cover of grasses and forbs that are important to sage-grouse during the nesting and brood-rearing periods (Crawford *et al.* 2004, p. 2). Therefore, pesticides do not likely affect more than individual sage-grouse.

Nonrenewable energy development and chemical spills could expose sage-grouse to contaminants, such as oil, gas, and waste products. Sage-grouse may encounter harmful radiation, metals, minerals, or contaminated fluids and waste released by nuclear facilities, nonrenewable energy developments, and mines (Ramirez and Rogers 2002, pp. 434–435; Beyer *et al.* 2004, p. 116; Hansen *et al.* 2011, p. 593). Although nonrenewable energy development can expose sage-grouse to contaminants, there is only one documented case of a dead, oil-covered sage-grouse discovered in a wastewater pit near an oil and gas well (Domenici 2008, USFWS, pers. comm.). Deaths or injury from wastewater pits are likely rare as sage-grouse typically do not require free water (Schroeder *et al.* 1999, p. 6) and the intense noise, activity, and lack of vegetative cover around the pits likely deter sage-grouse. Therefore, contaminants released from nonrenewable and chemical spills are not likely to affect more than individual sage-grouse.

Conservation Efforts

The risk of exposure to contaminants is often related to anthropogenic activities that also present potential impacts to sage-grouse, such as nonrenewable energy development and mining, as discussed in other sections of this finding. Any conservation measures that minimize the exposure of sage-grouse to those activities also minimize the risk of exposure to contaminants. Regulatory measures provided by the Federal Plans and the Wyoming Plan limit new development within important sage-grouse habitat, thus

potentially reducing the risk of contaminant exposure in those areas (see *Nonrenewable Energy*, and *Mining*). Based on previous Federal plans, we expect these regulatory mechanisms to be implemented for the next 20 to 30 years.

Summary of Contaminants

While potential exposure to contaminants occurs across the species' range, the best available information indicates that killing or injury of birds is rare and has not had population-level impacts. Regulatory mechanisms that substantially reduce new energy development and mining in important habitats further reduce the potential for impacts to sage-grouse. For a detailed discussion of conservation measure implementation and effectiveness, see *Sagebrush Landscape Conservation Planning*.

Military Activity

In 2010, we did not identify military activity as an impact to the species. Since 2010, we have become aware of several military facilities that overlap to varying degrees with the occupied range of sage-grouse and which have confirmed sage-grouse presence. Military installations in Idaho, Montana, Nevada, Utah, Washington, and Wyoming encompass less than 1 percent of the currently estimated sage-grouse range. With the exception of YTC, most of the installations have little habitat or sage-grouse on the property. The YTC contains one of the two sage-grouse populations in MZ VI (Stinson and Schroeder 2014, p. 3), and was designated as a PAC in the COT Report (USFWS 2013, p. 39).

Military training and testing activities have the potential to negatively impact sage-grouse (Factor E) and their habitats. Training activities can ignite wildfires resulting in habitat loss and fragmentation (Factor A). This issue has been a particular concern in MZ VI, where approximately one quarter of the remaining sage-grouse in the MZ are located on YTC (Stinson and Schroeder 2013, p. 3). In addition to impacts from wildfire, habitat can be degraded by cross-country maneuvers with military vehicles if they crush vegetation, compact soil, or introduce invasive plants (Stinson and Schroeder 2014, p. 3). These kinds of impacts are limited, because the levels of military surface training occurring across the sage-grouse range are limited.

Compared to surface training, the military manages more extensive sections of the sage-grouse occupied range as Special Use Airspace for both testing and training. Military training

airspace occurs over portions of all MZs. Recent research has demonstrated that sage-grouse are sensitive to noise (Blickley *et al.* 2012, p. 467); however, this study did not examine aircraft noise (Blickley *et al.* 2012, entire). The behavioral response of sage-grouse to overflight noise has not been examined. Potential impacts include increased detectability by predators and disruption of breeding and nesting behavior if sage-grouse repeatedly flush in response to the noise (Blickley *et al.* 2012, pp. 467–470).

The U.S. military must balance its role of public land steward with its primary mission of maintaining a well-trained, combat-ready fighting force. The Sikes Act (16 U.S.C. 670a–670f, as amended), enacted in 1960 with subsequent amendments, provides for cooperation between the DoD and DOI for planning, developing, and maintaining fish and wildlife resources on military lands (see *Regulatory Mechanisms*, below). The Sikes Act applies to Federal land under DoD control and requires military services to establish Integrated Natural Resources Management Plans (INRMPs) to conserve natural resources for their military installations. Through installation-specific INRMPs, developed in cooperation with the Service and State fish and wildlife agencies, the military has implemented conservation and mitigation actions for sage-grouse.

The YTC continues to manage habitat in Washington that supports one of two populations of sage-grouse in the State. Management of sage-grouse and its habitat at YTC is described in the Western Sage-Grouse Management Plan (Livingston 1998, entire), which is incorporated in the Cultural and Natural Resource Management Plan (CNRMP) (DoD 2002, entire). The CNRMP specifies management prescriptions and actions for sage-grouse and their habitat, including identifying conservation objectives and measures for habitat quantity and quality necessary for maintaining a sage-grouse population at or above the 10-year average of 200 birds. Direct protection of sage-grouse and their habitat is done through timing and area restrictions, including air space restrictions. Vegetation restoration of sagebrush ecosystems is required to address habitat impacted by wildfire and military training activities. Wildfire protection measures are required to prevent, contain, and rapidly extinguish wildfires. Monitoring of sage-grouse and their habitats, including monitoring of habitat restoration activities, is conducted within YTC jurisdictional boundaries.

In 2011, additional measures were implemented to protect sage-grouse on YTC. The Fort Lewis Army Growth and Force Structure Realignment Record of Decision's realigned sage-grouse protection area (SGPA) boundaries to incorporate new sage-grouse habitat use information and updated habitat management objectives (DoD 2011, entire). As a result, all but one active lek on the installation are protected. In addition, vegetation management of five primary containment areas within SGPAs was changed to fit with wildfire management objectives; flight restrictions were revised to cover newly proposed SGPAs; WNV surveillance and control was increased; and construction of forb greenhouse facilities was proposed for use in habitat restoration projects. The Army is currently updating the YTC resource management plan to reflect these improved sage-grouse conservation measures.

Overall, military installations cover less than 1 percent of the species' occupied range, and most installations have little or no sage-grouse habitat on or near their property. The YTC is the only installation where impacts to sage-grouse are a potential concern, in part because two of the four populations in MZ VI occur on that installation. The CNRMP has been effective in minimizing impacts to these populations, and its implementation is expected to continue into the future. Based on studies of noise impacts from others activities, it is possible that overflight noise could affect sage-grouse, but no research has been done to know if this impact actually occurs and any assessment of potential impacts would be speculative.

Small Populations

In 2010, we determined that small population size could result in extirpation of some populations, but was not a threat to sage-grouse rangewide (75 FR 13910, March 23, 2010, p. 13985). As summarized below, although small population size likely places some populations at risk of extirpation, sage-grouse is a widely distributed species with large, interconnected populations at the core of the range (USFWS 2013, pp. 16–29 and Appendix A). As discussed below, we again find that small population size is not a rangewide threat to the species, now or in the future.

Overall, small, isolated populations are more susceptible to impacts and relatively more vulnerable to extinction due to potential losses of genetic diversity, demographic and environmental fluctuations, and susceptibility to environmental

catastrophes (Pimm *et al.* 1988, p. 757; Frankham and Ralls 1998, p. 442). As population size decreases, a population's susceptibility to adverse impacts and its risk of extinction can increase. In general, the minimum population size needed to sustain the evolutionary potential of a species has been estimated to be approximately 500 to 5,000 adult individuals so that the population retains sufficient genetic diversity needed to avoid the detrimental effects of inbreeding (Traill *et al.* 2010, p. 32). Although we know of no published estimates of minimum population sizes in sage-grouse, up to 5,000 individual sage-grouse may be necessary to maintain an effective population size of 500 birds based on individual male breeding success, variation in reproductive success of males that do breed, and the survival rate of juvenile birds (Aldridge and Brigham 2003, p. 30; 75 FR 13910, March 23, 2010, p. 13985).

A number of sage-grouse populations across the species' range have been identified as at risk due to their small

population size (Figure 9 and Table 14). These small populations (Table 14) may lack connectivity to other habitats and populations, and may have experienced negative population impacts from other stressors, such as WNV outbreaks, recent wildfire, habitat loss, and habitat fragmentation (USFWS 2014b). These populations may be at increased risk of extirpation due to their isolation, low population numbers, and continued impacts from natural and human-caused sources (Pimm *et al.* 1988, p. 757). Further, these small populations may be at risk from loss of genetic diversity. For example, populations in Jackson Hole and Gros Ventre in Wyoming and southeastern Montana were genetically isolated with reduced genetic diversity compared to nearby populations (Schulwitz *et al.* 2014, p. 567). Sage-grouse populations in Canada (MZ I) are also small, with less than 100 sage-grouse counted in 2012 (Alberta Environment and Sustainable Resource Development 2013, p. 8). Some of the small populations have already been

estimated below minimum population values (Garton *et al.* 2011, entire; WAFWA 2015, entire), suggesting their ability to persist long term may have already been compromised if that value is correct.

Although small, some of the identified sage-grouse populations may not have experienced declines in genetic diversity. For example, small sage-grouse populations in northern Montana may have a sufficient number of dispersing sage-grouse to maintain genetic diversity. Additionally, despite population declines and habitat loss, sage-grouse populations occupying fragmented landscapes at the northern extent of the species' range (Bush *et al.* 2011, p. 539) and in a peripheral population in northeastern California (Davis *et al.* in press) exhibited high genetic diversity with no evidence that these populations were genetically depressed. However, increased habitat fragmentation could cause demographic declines in these small, peripheral populations (Bush *et al.* 2011, p. 539).

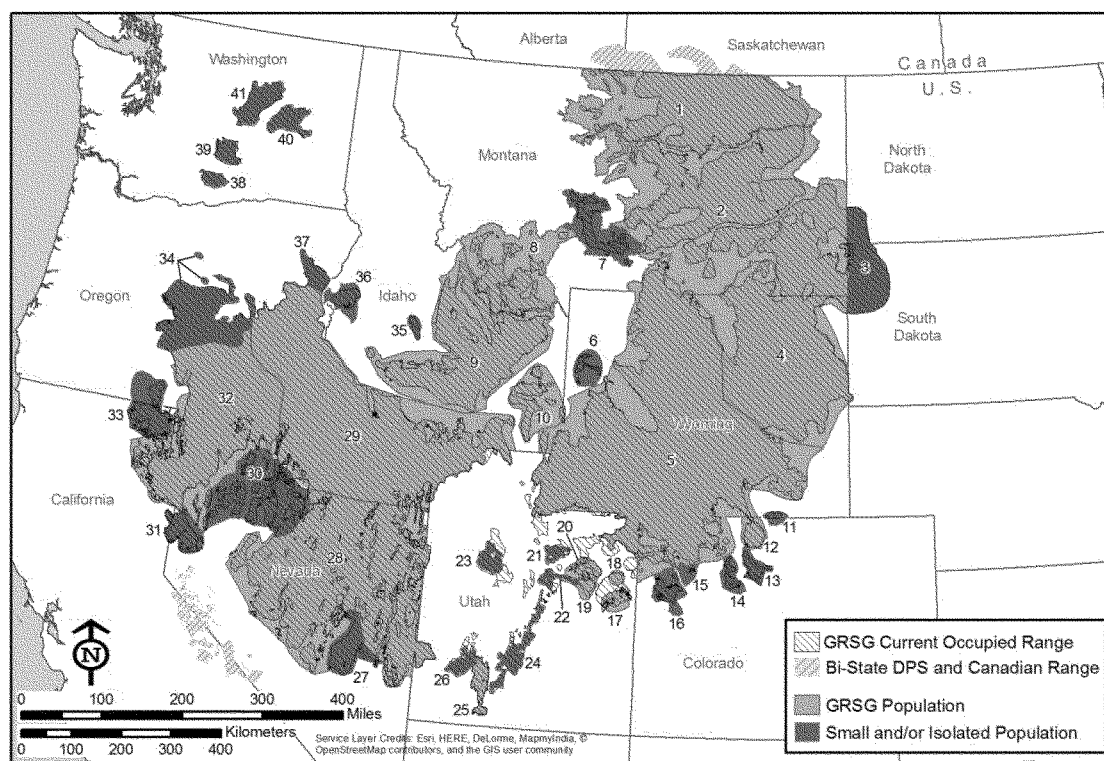


Figure 9. Sage-grouse populations identified as 'small' and/or 'isolated' in the Conservation Objection Team Final Report (USFWS 2013, pp. 16–29). For the purposes of the status review, Ibapah (UT) and Hamlin Valley (UT) were joined with the rest of the southern Great Basin population.

TABLE 14—SAGE-GROUSE POPULATIONS THAT HAVE BEEN IDENTIFIED AS SMALL AND/OR ISOLATED
[USFWS 2013, pp. 16–29]

Management zone	Population ID No.	Population name (state)
I	3	Dakotas (ND/SD).
II	6	Jackson Hole (WY).
	11	Laramie (CO/WY).
	13	Middle Park (CO).
	14	Eagle-South Routt (CO).
III	21	Strawberry Valley (UT).
	22	Carbon (UT).
	23	Sheeprock Mountains (UT).
	24	Parker Mountain & Emery (UT).
	26	Bald Hills (UT).
	30	Northwest Interior (NV).
	27	Quinn Canyon Range (NV).
	¹ 28	¹ 28 Ibapah (UT; <i>portion of the Southern Great Basin</i>).
		Hamlin Valley (UT; <i>portion of the Southern Great Basin</i>).
IV	7	Belt Mountains (MT).
	10	East Central (ID).
	35	Sawtooth (ID).
	36	Weiser (ID).
	37	Baker (OR).
V	31	Warm Springs Valley (NV).
	33	Klamath (OR/CA).
VI	38	Yakama Indian Nation (WA).
	39	Yakima Training Center (WA).
	40	Crab Creek (WA).
	41	Moses Coulee (WA).
VII	15	Meeker-White River (CO).
	16	Parachute-Piceance-Roan Basin (CO).

¹ For the purposes of the status review, the Ibapah (UT) and Hamlin Valley (UT) populations were joined with the rest of the southern Great Basin population.

As summarized above, the potential loss of the small, Columbia Basin populations in Washington (MZ VI), which contain approximately 0.6 percent of the estimated rangewide abundance (Doherty *et al.* 2015, entire), would not represent a significant loss for the status of the sage-grouse as a whole (See *Columbia Basin Population* section). However, the four populations in MZ VI are identified above as being at risk due to small population size and are reliant on management actions, such as translocations, to maintain the population size and its genetic diversity. These populations also face potential habitat loss and fragmentation from agricultural conversion (See *Agricultural Conversion* section above) and military training activities (See *Military Activities* section above). Connectivity between these populations is also very limited (Crist *et al.* 2015, p. 12). Although the populations in MZ VI have declined from historical levels, are exposed to a variety of potential impacts, and have limited connectivity, population trends in MZ VI are currently stable (WAFWA 2015, pp. 40–41), likely due to active management and translocations. Further, the State of Washington has protected sage-grouse as a State threatened species since 1998

and developed a recovery program (Stinson *et al.* 2004, entire).

Although some populations of sage-grouse are small and/or isolated (Table 14), with some at risk of extirpation, the remaining populations of sage-grouse are well distributed across the overall range of the species (see *Distribution and Population Abundance and Trends*, above). The number and size of these more robust populations provide redundancy for the sage-grouse, and the wide distribution of the populations across the species' overall range provides resiliency. Additionally, the rangewide distribution of the larger populations provides representation, by capturing the variation of habitat and climatic conditions across the species' range such that the loss of any of the small populations will not result in the loss of ecological diversity. These small or isolated populations represent only a small percentage of the overall species' range, and the relative population index and their potential loss may affect connectivity (Crist *et al.* 2015, p. 18) but is unlikely to put the entire species at risk now or in the future.

Regulatory Mechanisms

In the 2010 finding, we concluded that existing regulatory mechanisms were inadequate to protect the species

(75 FR 13910, March 23, 2010, p.13982). Since 2010, there have been substantial changes in regulatory protections for sage-grouse and their habitats (Factor D). The most significant change is the Federal Plans and the Montana, Wyoming, and Oregon State Plans, which collectively manage approximately 90 percent of the breeding habitat (See *Sagebrush Landscape Conservation Planning* section above). Combined, these efforts have substantially improved the regulatory mechanisms across the range of the sage-grouse since the 2010 finding, such that we now determine that existing regulatory mechanisms adequately address effects to the species and its habitats (Factor D). Other Federal and State laws and local authorities are discussed below.

Federal Laws

In addition to the Federal Plans, other Federal laws provide regulatory authorities to Federal agencies to address sage-grouse and habitat management for the species.

Other BLM Authorities—The Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, gives the BLM responsibility for oil and gas leasing on BLM, USFS, and other

Federal lands, as well as private lands where mineral rights have been retained by the Federal Government. The Geothermal Steam Act of 1970, as amended (84 Stat. 1566; 30 U.S.C. 1001–1025), provides the Secretary of the Interior with the authority to lease public lands and other Federal lands, including USFS lands, for geothermal exploration and development in an environmentally sound manner. This leasing authority has been delegated to the BLM. The BLM implements the Mineral Leasing Act through 43 CFR 3200.

The General Mining Law of 1872, as amended, opened the public lands of the United States to mineral acquisition by the location and maintenance of mining claims. Mineral deposits subject to acquisition in this manner are generally referred to as locatable minerals. Locatable minerals include metallic minerals (e.g., gold, silver, lead, copper, zinc, and nickel), nonmetallic minerals (e.g., fluor spar, mica, gypsum, tantalum, heavy minerals in placer form, and gemstones), and certain uncommon variety minerals. Under the new Federal Plans, locatable minerals have been recommended for withdrawal in the SFAs. Valid existing rights would not be impacted by these recommended withdrawals. Withdrawals on BLM and USFS lands are processed under the BLM's withdrawal regulations (43 CFR 2310) and, if 5,000 acres or more, shall be subject to the Congressional review provision (43 U.S.C. 1714(c)).

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 the species' occupied range (Knick 2011, p. 28). 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 sage-grouse on their lands, except in localized areas (e.g., specific wildlife refuges, reservations). A notable exception, where substantial populations of sage-grouse occur, is the YTC (discussed above under *Military Activity*).

The YTC continues to manage habitat in Washington that supports one of two

populations of sage-grouse in the State. As a joint base, YTC is now a sub-installation of the Fort Lewis McCord Army installation. Management of sage-grouse and its habitat at YTC is dictated by management direction described in their Western Sage Grouse Management Plan (Livingston 1998, entire), which is tiered to their CNRMP (DoD 2002, entire), combined with changes contained in the Fort Lewis Army Growth and Force Structure Realignment Record of Decision (DoD 2011, entire) (also known as Grow the Army). The 2002 CNRMP is currently being updated into a newer Integrated Natural Resources Management Plan, but is not yet final. The Grow the Army Final Environmental Impact Statement analyzed the environmental and socioeconomic impacts of stationing approximately 5,700 soldiers and their families at Fort Lewis and additional aviation, maneuver, and live-fire training needs at both installations.

The CNRMP specifies management prescriptions and actions for sage-grouse and their habitat, including identifying conservation objectives and measures for habitat quantity and quality necessary for maintaining a sage-grouse population at or above the 10-year average of 200 birds. Direct protection of sage-grouse and their habitat (*i.e.*, mating, nesting, and brood-rearing) is achieved through timing and area restrictions, including air space restrictions. Vegetation restoration of sagebrush ecosystems is required to address habitat impacted by wildfire and military training activities. Wildfire protection measures are required to prevent, contain, and rapidly extinguish wildfires. Monitoring of sage-grouse and their habitats, including monitoring of habitat restoration activities, are conducted within YTC jurisdictional boundaries. Army participation in sage-grouse recovery planning efforts and adaptive management through implementation reviews are also required.

The Grow the Army Record of Decision realigned sage-grouse habitat and core use area protection boundaries to incorporate new sage-grouse habitat use information and updated habitat management objectives. New leks were incorporated into the management scheme, SGPAs were reconfigured, vegetation management of fire primary containment areas within SGPAs were changed to fit with wildfire management objectives, flight restrictions were revised to cover newly proposed SGPAs, WNV surveillance and control was increased, and construction of forb greenhouse facilities were proposed for use in habitat restoration

projects. The SGPAs currently protect almost all active leks at YTC. The Grow the Army Record of Decision also established Army commitment to updating their Sage-Grouse Management Plan; participating in sagebrush ecosystem conservation partnerships to promote sagebrush ecosystem conservation, restoration, and protection from wildfire in and around the PAC; and establishment of a candidate conservation agreement with the Service.

Coal mining is regulated by the provisions identified in the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which is implemented by the Office of Surface Mining and Reclamation. This Federal law requires consideration of fish and wildlife resource information for the permit and adjacent area, including species listed under the Endangered Species Act, along with a detailed analysis by the permittee on how impacts will be minimized or avoided. SMCRA also requires that activities permitted under this law cannot result in the jeopardy of a listed species, or the destruction of adverse modification of designated critical habitat. Species-specific standards and procedures must also be developed if necessary to protect listed species and their habitats (USFWS 1996). Permittees must also include a plan for enhancement of fish and wildlife resources on the permit area. While SMCRA does not specifically address candidate species, protection must be given to all potential future listed species that may be affected by coal mining activities (USFWS 1996, p. 4).

The OSM has delegated the regulatory authority for implementing SMCRA to five States within the range of sage-grouse: Wyoming, Montana, Utah, Colorado, and North Dakota. Sage-grouse, therefore, must be considered in the implementation of SMCRA, and coal mining, in those States. The implementation agency must consider impacts on fish and wildlife, including sage-grouse. Sage-grouse are also typically addressed in all States within the species' range during the development of coal resources simply due to its status as a State trust resource.

State Mining Regulations

The Utah Executive Order provides a regulatory mechanism to minimize potential effects from mining to sage-grouse habitat on State and private lands (Utah EO 2015–002). The Utah Executive Order requires the Utah Division of Oil, Gas and Mining to coordinate with the Utah Division of Wildlife Resources before issuing

permits for energy development. The Executive Order further directs the Utah Division of Oil, Gas and Mining to implement recommendations provided by the Utah Division of Wildlife Resources that could require avoidance and minimization measures on State and private lands consistent with the conservation plan. However, these measures are subject to the statutory requirements to protect rights on private property and avoid waste of the mineral resource.

State General Wildlife Protection Laws

All States across the range of sage-grouse have laws and regulations that provide for the general protection, conservation, propagation, management, and use of wildlife and that regulate the taking of wildlife, including sage-grouse (see Connelly *et al.* 2004, pp. 2–2 through 2–11). While these statutes limit direct taking of sage-grouse, none provide specific and binding protections for sage-grouse habitat.

Many States have laws to list and protect threatened and endangered species, but these laws vary in their statutory provisions to protect species from threats (George and Snape 2010, pp. 345–346). Sage-grouse are listed as a threatened species by the State of Washington under the authorities of RCW 77.12.020. Threatened status in Washington means that a species cannot be hunted (WAC 2015, 232–12–011) and also requires the State to develop a recovery plan, which must include target population objectives, criteria for reclassification, an implementation plan, and a monitoring plan (WAC 2015, 232–12–297). However, implementation of recovery plan actions is discretionary and subject to funding.

Several States list the sage-grouse as a “species of concern,” (e.g., Montana) or “species of special concern (e.g., California, South Dakota), but these are administrative designations and do not afford any substantive regulatory protections.

State Sage-Grouse Hunting Regulations

Sage-grouse hunting is regulated by State wildlife agencies. Hunting seasons are reviewed annually, and States can adjust limits on updated abundance information and adaptive management criteria established in State wildlife management plans. States maintain flexibility in hunting regulations through emergency closures or season changes in response to unexpected events that affect local populations. As discussed in more detail under the *Hunting* section, 8 of the 11 States with sage-grouse had open hunting seasons for sage-grouse in 2014, with hunting

prohibited in Washington, South Dakota, North Dakota, and Canada (Aldridge and Brigham 2003, p. 25; Connelly *et al.* 2004, p. 6–3; Stinson *et al.* 2004, p. 1). In 2014, Montana closed hunting of sage-grouse across much of the State and reduced the length of the hunting season to respond to population declines (Montana Fish, Wildlife and Parks 2014). South Dakota closed its hunting season for sage-grouse in 2013 and 2014. As evidenced by recent changes, States can and have adopted more conservative hunting seasons based on new information and population levels. Rangewide, hunting seasons are more conservative than in the past, which has resulted in a large reduction in sage-grouse hunting mortality. Therefore, hunting regulations are adequate in managing hunting impacts to sage-grouse.

State Noxious Weed Laws

Some State regulations require that landowners control noxious weeds on their property, but designations of noxious weeds and the development of noxious weed lists vary by State. For example, only five States list medusahead as a noxious, regulated weed, but the grass is problematic in at least two additional States. Similarly, despite the proliferation of cheatgrass across the range of the sage-grouse, Colorado is the only western State that recognizes the grass as a noxious weed (USDA 2015). Therefore, State regulations that address noxious weeds may help reduce impacts to sage-grouse in local areas, but large-scale control of the most problematic invasive plants is currently unfeasible and uncoordinated (Pyke 2011, p. 543; Ielmini *et al.* 2015, pp. 2–3). While State noxious weed laws are not effectively addressing potential impacts from invasive plants, measures provided by the Federal and State plans, as discussed above, have substantially reduced the potential threat of invasive plants (see *Wildfire and Invasive Plants*).

Canadian Federal and Provincial Laws and Regulations

Sage-grouse were first listed in Canada in 1997 as threatened by the Committee on the Status of Endangered Wildlife in Canada because of very small and declining populations in Saskatchewan and Alberta. The species' status was changed to endangered in 1998, and sage-grouse are now federally protected in Canada as an endangered species under schedule 1 of the Species at Risk Act (SARA). This designation protects sage-grouse and their nests and eggs on Federal lands and prohibits unauthorized killing, harming,

harassing, capturing, taking, possessing, collecting, buying, selling, or trading of individuals of the species (SARA 2002, p. 17). SARA also provides for identification of habitat on Federal lands that is critical to the survival and recovery of species designated as threatened or endangered, and the Canadian Government is responsible for ensuring that critical habitat is protected. Although voluntary measures are the preferred method for protecting critical habitat, SARA provides the means for the government to promulgate regulations to ensure that critical habitat is not destroyed (SARA 2002, pp. 27–30). However, at this time, no such regulations have been developed for sage-grouse critical habitat.

On December 4, 2013, the Canadian Government issued an Emergency Order for the protection of the sage-grouse under SARA (CWS 2013, entire). The Emergency Order prohibits construction of new tall (greater than 1.2 m [3.9 ft]) structures, new roads, and new fences and destruction of native plants, and requires nightly noise reduction in April and May (CWS 2013, p. 112). These restrictions apply to critical habitat identified on 1,672 km² (646 mi²) of Federal and provincial crown lands in southeastern Alberta and southwestern Saskatchewan (CWS 2013, p. 111).

In 2014, the Canadian Government finalized an amended recovery strategy for sage-grouse (Environment Canada 2014, entire). In addition to updating the 2008 document to reflect the most recent scientific information about the status of sage-grouse in Canada and establishing population objectives, the 2014 amended strategy completed the identification of critical habitat for the species in accordance with SARA (Environment Canada 2014, p. 23). The 2008 recovery strategy did not identify critical habitat, citing a lack of information (Lungle and Pruss 2008, p. 27). In 2009, a replacement for the critical habitat section of the strategy identified “necessary, but not sufficient” critical habitat in breeding, nesting, and brood-rearing habitat for sage-grouse in Alberta and Saskatchewan (Lungle and Pruss 2009, p. 2) for a total of 165 km² (63 mi²). The amended recovery strategy identifies 2,812 km² (1,086 mi²) of year-round habitat and 12.5 km² (4.8 mi²) of lek critical habitat in Saskatchewan and Alberta (Environment Canada 2014, pp. 23–30). Therefore, as a result of the amended recovery strategy and the Emergency Order combined, a total of 3,354 km² (1,295 mi²) of Federal and provincial crown lands in Saskatchewan and Alberta, including Grasslands National Park in Saskatchewan, is

identified as critical habitat for sage-grouse (Environment Canada 2014, p. iv; Parks Canada 2015, p. 693). The amended recovery strategy also includes numerous nonregulatory actions for the protection of critical habitat and the recovery and conservation of sage-grouse.

The sage-grouse is listed as endangered at the provincial level in Alberta and Saskatchewan, affording additional protections to the species on provincial and private lands. Recreational hunting has been closed in Saskatchewan since at least the 1930s (Weiss and Prieto 2014, p. 1), and in Alberta since 1995 (Alberta Environment and Sustainable Resource Development 2013, p. 1). In Saskatchewan, sage-grouse were designated as threatened in 1987 under The Wildlife Regulations (Saskatchewan 1981, entire), and as endangered in 1999 under the province's Wildlife Act of 1998 (Weiss and Prieto 2014, pp. 1, 13). The Wildlife Act states that, without a license, no one may "kill, injure, possess, disturb, take, capture, harvest, genetically manipulate or interfere with or attempt to do any of those things . . . export or cause to be exported from Saskatchewan . . . [or] traffic in" designated species (Saskatchewan 1998, p. 20). Sage-grouse habitat in Saskatchewan is protected under The Wildlife Habitat Protection Act, which prohibits sage-grouse habitat from being sold or cultivated (Saskatchewan 1983, p. 4). Restrictions put in place under the Wildlife Act formerly prohibited development within 500 m (1,640 ft.) of leks and prohibited construction activities within 1,000 m (3,281 ft.) of leks between March 15 and May 15 (Aldridge and Brigham 2003, p. 32). In our 2010 finding, we deemed these buffers inadequate to protect sage-grouse from disturbance. These activity restrictions were revised in 2012 to increase lek buffers to 3,200 m (10,499 ft.); include 1,000-m (3,281-ft) buffers between development and lekking, brood-rearing, and wintering habitat; and make these restrictions apply year-round instead of only during the breeding season (Environment Canada 2014, p. 16; Weiss and Prieto 2014, p. 13).

Alberta's Wildlife Act requires that an Endangered Species Committee provide recommendations to the provincial Minister regarding designation of endangered species in Alberta and development of recovery plans, which may include population goals, conservation strategies, and the identification of critical habitat (Alberta Wildlife Act 2000, p. 13). The law states that "[a] person shall not willfully

molest, disturb or destroy a house, nest or den of prescribed wildlife" (Alberta Wildlife Act 2000, p. 25), but does not require development and implementation of recovery plans for species designated as endangered. However, Alberta Environment and Sustainable Resource Development has designated more than 3,880 km² (1,500 mi²) as conservation habitat for sage-grouse, including areas adjacent outside of federally identified critical habitat (Nicholson, Alberta Environment and Sustainable Resource Department, 2015, pers. comm.). All known active and inactive leks are protected by 12-ha (30-ac) Protective Notations designated by the Province, and Protective Notations covering the range of sage-grouse in Alberta prohibit public land sales and potentially restrict surface development (Alberta Environment and Sustainable Resource Development 2013, pp. 19–20). In addition, in 2013 the Alberta Department of Energy restricted all new surface access for oil and gas development through subsurface addenda to leases or other drilling rights accorded to private businesses (Nicholson, Alberta Environment and Sustainable Resource Department, 2015, pers. comm.). Aside from Protective Notations, regulation of new surface access, and the protection of individual sage-grouse by provincial law, efforts to recover the species and protect its habitat in Alberta (e.g., Alberta Environment and Sustainable Resource Development 2013, pp. 18–21) are nonregulatory.

Regulatory Mechanisms Summary

In 2010, we concluded that regulatory mechanisms in place at that time were not adequate to reduce the threats to the species and its habitat, and that the absence of adequate regulatory mechanisms was a threat to the species, then and into the foreseeable future. Since then, there have been major changes in the regulatory mechanisms that avoid or minimize impacts to sage-grouse and their habitats. Most importantly, BLM and USFS adopted amended or revised Federal Plans to conserve sage-grouse over more than half of its occupied range (See *Federal Plans* section above). The Federal Plans include provisions to address activities that could occur in sage-grouse habitats and threats identified in 2010 as having inadequate regulatory measures including: Oil and gas development, wildfire and invasive plants, infrastructure, and improper livestock grazing. In addition, the Federal Plans include provisions to avoid or minimize impacts authorized in sage-grouse habitats for monitoring, adaptive

management, limitations on anthropogenic disturbance, and requirements for mitigation. The Federal Plans are the foundation of land-use management on BLM and USFS managed lands. We are certain that the Federal Plans will be implemented and that the measures included are based on the best scientific information and are effective at avoiding and minimizing impacts to the species and its habitat.

Since 2010, of the 11 States within the occupied range of the sage-grouse, 10 have revised and adopted grouse conservation plans and regulatory mechanisms to address threats to the species and its habitat identified in 2010. State sage-grouse conservation plans in Wyoming, Montana, and Oregon contain regulatory mechanisms that minimize impacts to the species and its habitat. Since 2008, the Wyoming Plan has effectively minimized impacts within core habitats, protecting the highest density areas for the species within the State. The Montana and Oregon regulatory mechanisms include proven conservation measures, including disturbance caps, density restrictions, and lek buffers, to minimize disturbance to important habitats. In combination, the Federal and three State plans, cover 90 percent of the sage-grouse breeding habitat. Taken together, these efforts have substantially altered the regulatory landscape across the range of sage-grouse since the 2010 finding, such that we now determine that existing regulatory mechanisms adequately address effects to the species and its habitat (Factor D).

Other Conservation Plans

Since 2010, all States except California have drafted, revised, finalized, or implemented conservation plans for the sage-grouse to address threats to the sage-grouse. These plans take different approaches, but in general, they identify important conservation objectives and provide mechanisms to incentivize conservation. We anticipate that state plans and related efforts will continue into the future and will strengthen as implementation continues. In this section we provide a summary of the non-regulatory conservation plans (See *Conservation Efforts* section above for a description of the Wyoming, Montana, and Oregon Plans and the *Regulatory Mechanisms* section above for a description of the Utah Executive Order).

California

California does not have a State Sage-grouse Conservation Plan. California

recognizes sage-grouse as a State-species of special concern that should be considered during the State's environmental review process. The California Environmental Quality Act (CEQA) (Public Resources Code sections 21000–21177) requires that State agencies, local governments, and special districts consider impacts that their proposed project may have to species of concern, including sage-grouse.

Colorado

Colorado has contributed to greater sage-grouse conservation and research, working with numerous partners over the last several decades. This coordination spans from local and State levels, to rangewide participation. The State conservation plan for greater sage-grouse (State of Colorado 2008, entire) has been implemented since 2008 over 1.5 million ha (approximately 3.7 million ac) across all landownership types. The plan uses voluntary conservation strategies to address and promote the conservation of sage-grouse in Colorado. It provides guidance to address impacts to sage-grouse from habitat fragmentation and conversion, agriculture, urbanization, conifer encroachment, recreation, nonrenewable energy, and other impacts.

The plan and the State of Colorado recommend measures to help reduce impacts from nonrenewable energy development. Colorado regulations require that effects to sage-grouse be considered by the Colorado Oil and Gas Conservation Commission (COGCC) and the Colorado Department of Reclamation and Mining Safety during their permitting processes. In addition, Colorado Parks and Wildlife (CPW) makes recommendations based on the State's conservation plan designed to reduce impacts to greater sage-grouse from nonrenewable energy development (State of Colorado 2008, pp. 22, 109, 123, 313, 325–331).

In addition, the State of Colorado issued an Executive Order (Colorado E.O. D 2015–004) in May 2015 to promote the conservation of greater sage-grouse and further implement the 2008 conservation plan. This order enhances communication and coordination among State agencies, including CPW, the State Land Board, and COGCC, as well as designating a single point of contact for external greater sage-grouse communications. Under the order, the COGCC will evaluate its existing wildlife siting rules for potential improvement and develop a comprehensive tracking system for development in sensitive wildlife habitat. Lastly, the order also prioritizes

the completion of the Colorado Habitat Exchange, a voluntary compensatory mitigation tool for impacts to the species.

Dakotas

North and South Dakota finalized State management plans that emphasized working cooperatively with private landowners due to the relatively large acreages of private lands in those States. Both States have provided assistance working through the Sage Grouse Initiative under NRCS and are continuing sage-grouse research efforts to prioritize the best sage steppe habitat for conservation, expand core areas, and further their understanding of WNV. Both States have closed sage-grouse hunting seasons.

South Dakota has provided additional firefighting resources and in the past has restricted off-road travel if drought conditions may elevate fire danger during hunting seasons (State of South Dakota 2014, p. 23). Further, the South Dakota Department of Game, Fish and Parks works with the South Dakota School and Public Lands Office, Public Utilities Commission, and the Department of Environment and Natural Resources to provide comments and input if oil and gas development, wind development, or other proposed projects may impact sage-grouse core areas (State of South Dakota 2014, pp. 23, 24).

Idaho

Earlier this year, the Governor signed an Executive Order adopting Idaho's Sage-grouse Management Plan, which focuses on the management of invasive vegetation, fuels and wildfire (Idaho E.O. 2015–04). The plan provides wildfire suppression guidance to complement Secretarial Order 3336, and commits the State to assist with fire rehabilitation and with implementation of fuel breaks, weed control, and conifer removal in mixed State and Federal ownerships. Under the plan, Idaho assumes responsibility for development, coordination, and equipping and training for Rangeland Fire Protection Associations to provide rapid response to sagebrush fires. In FY 2016 the Idaho legislature appropriated over \$500,000 for various sage-grouse conservation efforts of which \$120,000 was dedicated to better support RFPA implementation and effectiveness (S–1128). In Idaho, RFPAs currently account for approximately 230 firefighters in 6 areas in Idaho resulting in protection of approximately 5.7 million acres within greater sage-grouse habitat. An additional 4 RFPAs are in development within greater sage-grouse habitat. Idaho's Governor directed that all State

agencies, to the extent consistent with existing State law, apply the elements of Idaho's Sage-grouse Plan to all land ownerships across the State (Idaho E.O. 2015–04).

Nevada

The State of Nevada has implemented several measures to conserve habitat in the State. On September 26, 2008, the Governor of Nevada signed Executive Order 2008–10–29 calling for the preservation and protection of sage-grouse habitat in the State of Nevada. The Executive Order directs the Nevada Department of Wildlife (NDOW) to work with State and Federal agencies and the interested public to implement Nevada's conservation plan for sage-grouse (Nevada E.O. 2008–10–29). The Executive Order also directs other State agencies to coordinate with the NDOW in these efforts. Further, the Nevada Conservation Credit System establishes a mitigation market to facilitate exchanges between credit sellers and buyers. In November 2012, the Governor signed Executive Order 2012–09 establishing the Sagebrush Ecosystem Council, a multiagency and multidiscipline group that was tasked with developing a conservation strategy for sage-grouse in Nevada. In October 2014, the Sagebrush Ecosystem Council finalized the Nevada Greater Sage-grouse Conservation Plan (State of Nevada 2014, entire). The Nevada plan creates the Conservation Credit System, which creates financial incentives for private landowners to conserve sage-grouse habitat for use as compensatory mitigation. Nevada's plan requires that any development that affects greater sage-grouse habitat in Nevada will need to acquire credits to compensate for those effects before the development proceeds. In addition, on June 23, 2015, the Governor signed emergency regulations related to the formation of Rural Fire Protection Associations (RFPAs) within the State of Nevada (NRS 472 per AB 163, sec. 3.5(1) of the 78th Session of the Nevada legislature). RFPAs, as seen in other States, help support fire suppression efforts by adding capacity and resources for fire suppression.

Utah

Utah issued a final conservation plan for the sage-grouse on February 14, 2013, and the Governor of Utah's Executive Order (Utah E.O. 2015/002) mandated its implementation on February 25, 2015. Utah's Plan and Executive Order includes mechanisms aimed at addressing threats to sage-grouse associated with fire, invasive species, predation, conifer

encroachment, recreation, energy development, and the removal of sagebrush. The Utah Plan applies to all lands within the State's 11 Sage-Grouse Management Areas (SGMAs) across approximately 3 million ha (7.5 million ac), which conserves 90 percent of the State's greater sage-grouse habitat and approximately 94 percent of the State's population. Many of the conservation measures in the plan are voluntary and rely on negotiated incentive-based covenants, easements, or leases to achieve conservation on private lands, School and Institutional Trust Administration Lands, and local government lands (See Regulatory Mechanisms section above for a discussion of the Utah Executive Order). In 2014, Utah's incentive-based approach, coupled with efforts from State, Federal, and private partners, exceeded the Utah conservation plan objectives, reporting 249,170 acres of habitat enhancement and restoration (UDNR 2014, p. 5).

The Utah Plan addresses fire control, suppression, and rehabilitation by providing an organizational framework for partners to prioritize suppression efforts and fire rehabilitation, and leverage funding and agency resources (State of Utah 2013, p. 13). The Utah Governor's Executive Order also directs the Utah Division of Forestry, Fire and State Lands to prioritize fuels-mitigation activities and pre-attack planning and coordination with other Federal and local fire suppression partners, second only to the protection of human life and structures (State of Utah 2015, p. 4). Furthermore, the Utah Governor's Catastrophic Wildfire Reduction Strategy was completed in 2013, establishing a Statewide steering committee and regional working groups to develop a Statewide risk map that will include prioritized sage-grouse habitat areas (UDNR 2014, page 10).

Washington

Sage-grouse are State-listed as threatened in Washington. The State's recovery plan and actions implemented to date have relied heavily on voluntary conservation actions, on which the State and its partners have made progress (Stinson *et al.* 2004, entire). For example, sage-grouse have been translocated to the Columbia Basin from Idaho, Oregon, Nevada, and Wyoming to help supplement and maintain the Washington population (Livingston *et al.* 2006, pp. 2–3; Schroeder *et al.* 2014, pp. 8, 14–15).

Finding

As required by the Act, we considered the five factors in assessing whether the

sage-grouse is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and foreseeable future threats faced by sage-grouse. Foreseeable future describes the extent to which we can reasonably rely upon predictions about the future (DOI 2009). In this context, "reliable" does not mean "certain": It means sufficient to provide a reasonable degree of confidence in the prediction. Because information for each threat may be reliable for different periods of time, each threat may have different extents of foreseeability. The final conclusion may be a synthesis of this information.

For the purposes of this determination, we conclude that the foreseeable future is 20 to 30 years. This timeframe is based on the time horizons for which various threats can be reliably projected into the future. Many of the analyses on which we have relied, such as the fire modeling and the period for climate change predictions, cover a 30-year timeframe. Additionally, other potential threats will be governed by Federal and State Plans across the most important habitats as long as these plans are in place. Based on our assessment of existing BLM and USFS land use plans, the typical lifespan is 20 to 30 years (BLM 2015g). While these plans are in place, the extent of impacts from energy development, infrastructure, grazing, mining, and other regulated activities will be dictated by stipulations in these plans. Therefore, we can reliably predict over 20 to 30 years the extent of impacts from fire, climate change, and potential effects to the species and habitat addressed by the Federal Plans. Beyond these timeframes is a high degree of uncertainty, which precludes credible predictions of the effectiveness of actions that will be implemented beyond the planning horizon and how the species may or may not respond. Exceeding this timeframe, we have concluded, goes into the realm of speculation.

Our regulations direct us to determine if a species is endangered or threatened due to any one or a combination of the five threat factors identified in the Act (50 CFR 424.11(c)). We consider cumulative effects to be the potential threats to the species in totality and combination; this finding constitutes our cumulative effects analysis. The discussions above evaluated the individual impact of the following potential threats to the sage-grouse: Nonrenewable energy development (Factor A), infrastructure (Factor A), agricultural conversion (Factor A), wildfire and invasive plants (Factor A

and E), improper grazing (Factor A), free-roaming equids (Factor A), conifer encroachment (Factor A), mining (Factor A), renewable energy (Factor A), predation (Factor C), disease (Factor C), urbanization (Factor A), recreation (Factor A), climate change (Factor E), drought (Factor A), hunting (Factor B), scientific and educational use (Factor B), contaminants (Factor A), military activities (Factor A), and small populations (Factor E). We also evaluated the inadequacy of existing regulatory mechanisms (Factor D). As discussed above, based on new information and effective regulatory mechanisms implemented since the 2010 finding, we determined that none of these impacts are substantial threats to the sage-grouse individually. Additionally, despite past reductions in occupied range, sage-grouse currently occupy 56 percent of their historical range. In this section, we evaluate whether some or all of these impacts act cumulatively to increase the overall scope and magnitude of potential effects to the sage-grouse now and into the foreseeable future such that cumulative effects are a threat to the species.

The sagebrush ecosystem has changed over time. Prior to the influence of human settlement, the sage-grouse inhabited parts of 13 states and 3 Canadian provinces. Before European settlers converted sagebrush habitats to croplands and pasturelands in the 1800s, natural events, such as blizzards, droughts, and large wildfires historically impacted sage-grouse. With the arrival of European settlers, agricultural conversion, urbanization, energy development, and other activities increased the loss and fragmentation of sage-grouse habitats across the overall range. Due to the historical loss and fragmentation of sagebrush habitats, sage-grouse now occupy approximately 56 percent of their historical range. Despite historical losses of occupied range, today the sage-grouse is relatively well-distributed across portions of 11 states and 2 Canadian provinces. The sagebrush ecosystem upon which the sage-grouse depends remains one of the largest, most widespread ecosystems in the United States, spanning approximately 70 million ha (173 million ac).

Declines in the extent of the sagebrush ecosystem and sage-grouse populations have been a concern for more than 25 years. Since 1999, we have reviewed 8 petitions and reviewed the status of the species 3 times. In our first evaluation completed in 2005, we found that listing the sage-grouse was not warranted because the species occurred over a large area and potential threats

were not well defined. In 2010, we determined that sage-grouse were warranted for listing due to a long-term decline in abundance throughout their range, habitat loss and fragmentation, and inadequate regulatory mechanisms to address threats.

The 2010 finding serves as the baseline for this current review. In the 2010 finding, we concluded that sage-grouse was warranted for listing because of habitat loss and fragmentation due to a variety of causes, such as nonrenewable energy development, agricultural conversion, wildfire, and infrastructure and the inadequacy of regulatory mechanisms to address these conditions. We acknowledged the existence of substantial landscape elements containing high-quality habitat and abundant sage-grouse, particularly in southwestern Wyoming and in the northern Great Basin, but expressed concern that, without adequate regulatory mechanisms, habitat loss, and abundance, declines would continue (75 FR 13910, March 23, 2010, pp. 13986–13988). As noted in that finding, when determining its listing priority status, we considered the threats that the sage-grouse faced to be moderate in magnitude because the threats did not occur everywhere across the range, and, where they were occurring, they were not of uniform intensity or of such magnitude that the species required listing immediately to ensure its continued existence. While sage-grouse habitat had been lost or altered in many portions of the species' range, substantial habitat still remained to support the species in many areas of its range (75 FR 13910, March 23, 2010, pp. 14008–14009).

In the 2010 finding, we identified the types of conservation actions that would remediate or ameliorate these threats, and encouraged land managers and other interested parties to implement such measures. In particular, we noted that the Federal Plans could provide adequate regulatory mechanisms to address the threats of nonrenewable and renewable energy development and infrastructure if they were amended to consider sage-grouse conservation needs (75 FR 13910, March 23, 2010, p. 13982). Further, we recommended changes in prevention, suppression, and restoration activities to address threats from the wildfire and invasive plant cycle. This current finding describes the extent to which recent conservation efforts—particularly the Federal and State Plans—have addressed the impact of potential threats and positively affected the species' status.

Since 2010, Federal and State agencies have collaborated on the

development of landscape-scale conservation efforts to protect the most important habitats across the range of the species (as discussed in detail in *Changes Since the 2010 Finding*, above). The 2013 COT Report outlined where those most important habitats occurred (also known as PACs) and identified them as the areas necessary for species' resilience, redundancy, and representation. The COT Report also provided conservation objectives and recommended conservation actions to preserve the PACs and served as the foundation of a landscape-level conservation strategy (Federal, State, and private) developed and implemented by BLM, USFS, SGI, the States of Wyoming, Montana and Oregon, and private landowners. Together, the Federal Plans, Wyoming Plan, Montana Plan, and Oregon Plan reduce potential threats on 90 percent of sage-grouse breeding habitat across the species' range. These conservation efforts result in the preservation of large expanses of undisturbed habitat supporting the largest, best-connected sage-grouse populations into the foreseeable future.

The Federal Plans, Wyoming Plan, Montana Plan, and Oregon Plan provide adequate regulatory mechanisms to reduce the threats of human-caused habitat disturbance on the most important sage-grouse habitats (as discussed in detail in the *Changes Since the 2010 Finding*, above). The Federal Plans designate PHMAs, and the State Plans designate Core Areas, all of which correspond closely with the PACs identified in the COT Report and include important breeding and seasonal habitats for the species. The PHMAs and Core Areas are managed for sage-grouse habitat objectives, primarily by excluding or avoiding major new surface-disturbing activities that could cause habitat destruction (BLM and USFS 2015, entire). For example, in many important habitats, the Federal Plans require NSO for nonrenewable energy development, which results in no new oil and gas wells or associated infrastructure being constructed within PHMAs. For the few ongoing land uses that could continue to occur in PHMAs, such as limited wind development in certain areas and existing rights for nonrenewable energy or mining, the Federal, Wyoming, Montana, and Oregon Plans work together to limit the total amount of human-caused habitat disturbance on PHMAs and Core Areas to no more than 3 to 5 percent. To prevent indirect impacts to sage-grouse that could occur from land uses in areas outside of PHMAs and Core Areas, the

Federal Plans, Wyoming Plan, Montana Plan, and Oregon Plan all require lek buffers so that breeding birds will not be disturbed by human activities. Lastly, the Federal Plans require any project that may adversely affect sage-grouse (in both PHMA and GHMA) to minimize impacts by implementing RDFs and mitigating to a net conservation benefit for sage-grouse. As a result of these measures, the Federal and three State Plans reduce the potential threat of habitat loss caused by human-caused disturbances on approximately 90 percent of breeding habitat across the species' range. These measures were effective immediately upon the implementation of the Federal Plans, the Wyoming Plan, the Montana Plan, and the Oregon Plan and will be in place for the next 20 to 30 years.

Wildfire and its interaction with invasive annual grasses, especially cheatgrass, is a significant risk to the sage-grouse and its habitat. In 2010, we determined that the combination of wildfire and invasive plants was a threat to the sage grouse and a major contributor to our finding that protection for the sage-grouse was warranted. Some wildfires will continue in the Great Basin, as we cannot manage the lightning strikes that spark many wildfires. Between 2000 and 2014, just less than one percent of sage-grouse habitat has burned per year. A recent modeling study predicts there could be a 43 percent decline in sage-grouse abundance within the next 30 years unless effective management is implemented to reduce the effects of wildfire and invasive plants.

The Federal and State Plans include commitments to change ongoing land uses and to prioritize wildfire management and invasive plant treatments in ways that reduce the synergistic threat of flammable invasive vegetation and altered wildfire regimes to sage-grouse habitats (as discussed in detail in *Changes Since the 2010 Finding*, above). Within the Great Basin, where wildfire is most prevalent, the majority of breeding habitat is in habitats that are most resilient to invasive plants and wildfire. To reduce the magnitude and severity of future wildfires, FIAT assessments prioritize wildfire and invasive plant management strategies in those most resilient areas that reduce the risk of habitat loss from wildlife and invasive plants. Fire and its impacts will be managed across the landscape by the implementation of the FIAT assessments and the Secretarial Order that prioritize suppression of wildfire in sage-grouse habitat. When a wildfire occurs in sage-grouse habitat, suppression in sage-grouse habitat will

continue to receive the highest priority allocation of wildfire suppression and rehabilitation management, after human safety. After a wildfire, the FIAT assessments and the commitments in the Secretarial Order ensure that restoration will be initiated in the immediate aftermath of the fire, when restoration is most effective in preventing invasive plant infestations. To reduce impacts from grazing and free-roaming equids that could stimulate the wildfire and invasive plant cycle, the Federal Plans require that livestock and free-roaming equids be managed at levels that achieve sage-grouse habitat objectives in the 4.5 million ha (11 million ac) of SFAs, and after that in the 14 million ha (35 million ac) of PHMA. Implementation of these measures began in 2015, with the completion of the Secretarial Order, and will continue throughout the 20- to 30-year lifespan of the Federal Plans. The work needed to protect the highest priority areas for conservation (SFAs) will be completed within 5 years (BLM 2015h, entire; DOI 2015a, p. 3). The new focus and prioritization of wildfire suppression and restoration for sage-grouse is an unprecedented change in wildfire fighting in sagebrush habitats that has been successfully implemented during the 2015 wildfire season. As described in the Wildfire and Invasive Plants section above, we expect the Secretarial Order and all other wildfire related actions will be implemented and effective. This sustained change in wildfire strategies reduce the risk that fire and invasive plants are likely to impact sage-grouse now and into the future. While we expect to see some continued loss of habitat and sage-grouse in the future due to wildfire and invasive plants, we do not expect that the species will be at risk of extinction or likely to become so due to risks posed by wildfire and invasive plants.

In addition to the benefits provided by the regulatory mechanisms and management activities in PHMAs and SFAs, the Federal Plans require new minimization measures in GHMA, where habitat is important for connectivity between populations and restoration opportunities (as discussed in detail in Changes Since the 2010 Finding, above). In GHMA, the plans reduce potential threats from human-caused disturbances by avoiding certain uses, such as infrastructure. When land-uses are allowed, science-based lek buffers (Manier *et al.* 2014, entire) are required for any projects implemented in GHMAs to ensure that the project is sited at a distance away from leks so that breeding sage-grouse are not

disturbed. All projects implemented in GHMAs include RDFs to minimize indirect effects to sage-grouse, such as design and management of water features so that mosquito habitat is not created that could provide a vector for WNV. Lastly, all projects implemented in GHMAs (and PHMAs) are required to be fully mitigated to a net conservation gain for sage-grouse; these measures are a substantial improvement from management in 2010, where no avoidance, minimization, or mitigation was required. GHMA corresponds with approximately 27 percent of breeding habitat rangewide. These measures were effective immediately upon the implementation of the Federal Plans and will be in place for the next 20 to 30 years.

Some other minor potential threats exist such as hunting, disease, predation, recreational activities, and scientific use. As discussed in the assessment of those potential threats (see Summary of Information Pertaining to the Five Factors, above), some minor or localized adverse effects may occur, but the best available information does not indicate that rangewide population-level effects are occurring. For example, while sage-grouse hunting continues to be allowed in several States, it is highly regulated and monitored with season and bag limits adjusted based on population monitoring so that this activity does not negatively impact the sustainability of this species. In addition, some of those potential threats are ameliorated by the Federal and State Plans, as the exclusion or limitation on land uses thereby further minimizes these minor potential threats. For example, exclusion of surface development of nonrenewable energy in PHMA and Core Areas and RDFs for those projects in GHMA prevents the creation of human-made water sources that provide breeding habitat for mosquitos that are vectors for WNV, thus reducing the potential for disease outbreaks in sage-grouse populations.

In addition to the Federal and State Plans, extensive work by private landowners is an important part of the rangewide sage-grouse conservation effort that has been implemented since 2010 (as discussed in detail in Changes Since the 2010 Finding, above). Private lands comprise about 39 percent of the species' range and contain some key habitat types that are important to sage-grouse. Since 2010, SGI has completed targeted sage-grouse habitat restoration and enhancement actions on more than 1.8 million ha (4.4 million ac) of private ranchlands throughout the species' occupied range. This work includes conifer removal, which will be

strategically implemented through use of new conifer mapping (NRCS 2015a, 19). It also includes more than 180,000 ha (450,000 ac) of conservation easements that protect sage-grouse habitat from future agricultural conversion or urban and exurban development. The SGI is also actively engaged in the BLM and USFS efforts to address the wildfire and invasive plants cycle by working with ranchers to implement grazing practices and fuels treatments to improve resistance and resilience of the sagebrush ecosystem. The NRCS has committed 198 million dollars to continue these efforts, with a goal of doubling previous accomplishments by 2018 (NRCS 2015a, p. 30, NRCS 2015b, p. 6).

Private lands conservation has occurred in Oregon and Wyoming with the completion of CCAAs that provide opportunities for enrollment for all private lands within those States (as discussed in detail in Changes Since the 2010 Finding, above). Programmatic and Umbrella CCAAs in these States provide sage-grouse guidance for ranch management practices, ensuring that enrolled lands will be managed to benefit sage-grouse. The programmatic agreements in Oregon provide a framework for other landowners to easily enroll without a large amount of time and paperwork, making it likely that others will enroll in the future. These agreements have resulted in substantial private lands conservation for sage-grouse. For example, landowners in Oregon have either completed enrollment or have signed formal letters of intent to enroll, representing more than 575,000 ha (1.4 million ac) of private rangeland in Oregon. In Wyoming, a completed umbrella CCAA covers important private lands in the range of the sage-grouse, and 36 private landowners have completed CCAAs in Wyoming under this programmatic CCAA. Collectively, there are 180,223 ha (445,343 ac) of private and State lands in the umbrella CCAA.

To summarize, in the 2010 finding, we determined that the regulatory mechanisms needed to address the loss and fragmentation of sage-grouse habitats were inadequate. Five years later, and following an unprecedented conservation planning effort by Federal, State, local, and private partners, we now determine that regulatory mechanisms and conservation efforts adequately address the loss and fragmentation of sage-grouse habitats based on the following reasons:

- The BLM and USFS have successfully amended or revised 98 land use plans that

govern approximately 50 percent of the sage-grouse occupied range. These plans now clearly outline the expectations for management that will conserve sage-grouse habitat on BLM and USFS lands.

- The States of Wyoming, Montana, and Oregon completed plans with regulatory mechanisms that effectively reduce the loss and fragmentation of sage-grouse habitats. Collectively, the Federal Plans and three State Plans reduce impacts on more than 90 percent of sage-grouse breeding habitat under this umbrella of Federal and State protection.

- The implementation of the FIAT and Secretarial Order is reducing and restoring habitat lost to wildfire in important sage-grouse habitats and making the protection and rehabilitation of sage-grouse habitats a priority second to human health and safety. During the 2015 wildfire season, we are already seeing the positive results of these focused efforts to reduce habitat loss and fragmentation from wildfire.

- The SGI, led by the NRCS, is working with private landowners across the range of the sage-grouse. The initiative targets land within priority sage-grouse habitat and is improving rangeland health on more than 2.4 million acres.

- We have worked with the States and private landowners, especially in Oregon and Wyoming, to implement CCAAs that cover more than 1.8 million acres. These agreements will ensure the conservation of sage-grouse habitat while providing working landscapes for the landowners.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.”

We recognize that all impacts to the species have not been completely eliminated, and that existing and ongoing activities will continue to affect the species and its habitat. Therefore, it is likely that, over the foreseeable future, there will be some reduction in available habitat quantity and quality, some decrease in the relative population index, and local range contraction (including the loss of some small populations on the edges of the species’ range). The conservation efforts included in this analysis, however, have significantly reduced the impacts in the most important habitats for the species. These areas are highly correlated with the PACs identified in the COT Report as areas necessary for sufficient representation, resilience, and redundancy to ensure persistence of the species.

The conservation efforts by Federal, State, and private partners have greatly changed the likely trajectory of the species from our 2010 projections when we determined that the species warranted listing. We conclude that,

taking into account the potential, but now minimized, effects to the species over the foreseeable future, the species is not likely to become endangered within the foreseeable future because of the number of large, connected populations distributed across the species’ range and the unprecedented level of conservation actions now in place for 90 percent of the breeding habitat across the species’ range. In other words, even with the remaining likely reduction in habitat and populations discussed above, the sage-grouse will retain sufficient representation, resilience, and redundancy throughout the foreseeable future.

The sage-grouse has a broad distribution across the seven MZs, 11 States, and 2 Canadian Provinces. Despite historical reductions in occupied range, sage-grouse occupy approximately 703,453 km² (271,604 mi²), more than 50 percent of their historical range. The species occurs over a variety of habitats that vary by vegetation, elevation, soil type, and precipitation. Through this broad distribution in these varied ecological conditions, the species will maintain representation. The species will continue to exist in the large and most of the small populations across the range, providing species redundancy now and into the future. The larger populations, which comprise the core of the species’ range and are protected through Federal and State Plans, will be more resilient to direct impacts and are expected to rebound following disturbance. In summary, for sage-grouse, maintaining representation, redundancy, and resilience means having multiple and geographically distributed populations throughout the varied habitats across the species’ range, and we conclude that this goal is achieved through the Federal and State Plans.

The new Federal land-management paradigm is established in 98 amended Federal Plans that reduce and minimize threats to the species in the most important habitat for the species. Several States have adopted their own regulatory measures to reduce habitat loss and fragmentation on non-Federal lands. Many private landowners have also engaged in proactive conservation efforts that provide additional benefits to the species and indicate a shift in cultural attitudes towards the sagebrush ecosystem. Together, the Federal Plans and State Plans in Wyoming, Montana, and Oregon reduce threats on approximately 90 percent of the breeding habitat across the species’ range. Looking ahead, we expect these

conservation efforts will continue to be implemented for the next 20 to 30 years, ensuring the protection of the most important habitats so that large sage-grouse populations continue to be distributed across the species’ range. These conservation efforts occur in the areas needed for redundancy, representation, and resilience of the species.

Therefore, we find that the magnitude and imminence of threats either individually or in combination do not indicate that sage-grouse is currently in danger of extinction (endangered). Further, based on our analysis and the conservation provided by the conservation efforts described throughout this document, we find that the magnitude and imminence of threats either individually or in combination do not indicate that the sage-grouse is likely to become endangered within the foreseeable future (threatened). Therefore, based on our assessment of the best available scientific and commercial information, we find that listing the sage-grouse as a threatened or an endangered species is not warranted at this time.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so throughout all or a significant portion of its range. The Act defines “endangered species” as any species which is “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as any species which is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature.” We published a final policy interpreting the phrase “Significant Portion of its Range” (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act’s protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is “significant” if the species is not currently endangered or threatened throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or

likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. If the species is neither in danger of extinction nor likely to become so throughout all of its range in the foreseeable future, we then determine whether the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some

way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of “significant” (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both: (1) Significant; and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is endangered or threatened in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the “significant” question first, or the status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is significant.

Because we determined that the sage-grouse is neither endangered nor threatened throughout all of its range, due largely to the effective reduction and amelioration of threats by ongoing and future regulatory mechanisms and other conservation efforts, we must next determine whether the sage-grouse may be endangered or threatened in a significant portion of its range. To do this, we must first identify any portion of the species' range that may warrant consideration by determining whether there is *substantial information* indicating that: (1) The portions *may be* significant, and (2) the species *may be* in danger of extinction in those portions or is likely to become so within the foreseeable future. We note that a positive answer to these questions is not a determination that the sage-grouse is endangered or threatened within a significant portion of its range, but rather a positive answer to these

questions confirms whether a more detailed analysis is necessary.

While the overall range of the sage-grouse could be subdivided into numerous portions, there are four primary biological divisions based on differences in populations and the concentrations of potential threats. These four portions are: The bi-State population in Nevada and California; the Columbia Basin population in Washington; and the Rocky Mountain and Great Basin portions of the range. We previously evaluated the status of the bi-State population and determined that listing is not warranted. We now consider the Columbia Basin population to be part of the Great Basin portion of the range. The range of the sage-grouse is the general geographical area within which the species is found at the time of this finding. Specifically, the current range of the sage-grouse covers 11 States (Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, Utah, South Dakota, and North Dakota), and two Canadian provinces (Alberta and Saskatchewan), and encompasses all the current populations of sage-grouse, with the exception of the bi-State sage-grouse Distinct Population Segment, and the intervening habitat (Figure 1, above). Analyzing the threats to the Rocky Mountain and Great Basin populations also satisfies the requirement of the Act to address populations and threats in significant portions of the sage-grouse's overall range.

We first evaluated whether potential threats to the sage-grouse might be geographically concentrated in any one portion of its range. We examined impacts to sage-grouse from fire, invasive plants, conifer encroachment, agricultural conversion, renewable- and nonrenewable-energy development, mining, infrastructure, fences, improper grazing, free-roaming equids, urban and exurban development, recreation, climate change, drought, recreational hunting, scientific and educational purposes, disease, predation, contaminants, military activities, small populations, the inadequacy of regulatory mechanisms, and cumulative effects. In our rangewide finding, we determined that impacts to the sage-grouse are found throughout its range. Although these potential threats occur throughout the current range, they are concentrated differently between eastern and western portions of the range. Additionally, there are differences in the composition and ecology of sagebrush habitats in the eastern versus the western portions of the range, and sage-grouse are variably distributed across the landscape from

east to west (see Habitat and Distribution section above). The type and focus of conservation efforts to reduce and ameliorate potential threats vary between eastern and western portions of the range due to the differences in concentration. Therefore, these differences in sagebrush habitats, the distribution of sage-grouse, the concentrations of potential threats, and conservation efforts suggest that eastern and western portions of the range could be significant and warrant additional analysis.

The eastern, or Rocky Mountain portion (MZs I, II, and VII), of the species' current range covers approximately half of the occupied range, contains approximately 49 percent of the sage-grouse estimated abundance, and generally contains sagebrush habitat that is higher in elevation and receives greater amounts of precipitation (Figure 1). The western or Great Basin (MZs III, IV, V, and VI) portion of the species' current range similarly covers about half of the occupied range and approximately 51 percent of the sage-grouse, but contains sagebrush habitat that is lower in elevation and receives less precipitation (Figure 1). Concentrations of potential threats differ between these two portions of the range, with nonrenewable energy development, agricultural conversion, and infrastructure more concentrated in the Rocky Mountain portion, while wildfire and invasive species are more concentrated in the Great Basin portion. The Great Basin portion of the range includes the sage-grouse populations in the Columbia Basin (MZ VI).

Because some potential threats are more concentrated in either the Rocky Mountain or Great Basin portions, we determine that the Rocky Mountain and Great Basin portions warrant further consideration as potential significant portions of the range. Next we evaluate whether the sage-grouse is threatened or endangered in either the Rocky Mountain or Great Basin portions of its current range.

The current range of the sage-grouse could theoretically be divided into an infinite number of portions. In the first step of our significant portion of the range analysis, we identified the Rocky Mountains and the Great Basin as portions that warrant further consideration. Both portions represent approximately half of the current range, and the entire sage-grouse population is distributed equally between both portions. As we discussed in the Bi-State Distinct Population Segment section of this document above, the Columbia Basin represents less than 1

percent of the species' occupied range less than 3 percent of the breeding habitat, and its loss would not result in a significant gap in the occupied range of the sage-grouse. Therefore, the Columbia Basin does not contribute to the overall viability of the species and does not meet the definition of "significant" under the SPR policy. We did not identify any other portions within these larger portions that warrant further consideration because the potential threats are not substantially concentrated within any areas other than the Rocky Mountain or Great Basin portions, that are particularly large, constitute a particularly high percentage of the species' range, or are likely to be particularly important for the representation, resilience, or redundancy of the species. Therefore, we conclude that any portions of the range within the Rocky Mountain and Great Basin portions that we have identified do not warrant further consideration as significant portions of the range.

Status of the Rocky Mountain Portion of the Current Range

In our 2010 finding, we were concerned with long-term declines in abundance trends for the Rocky Mountain MZs (MZs I, II, and VII), and we identified a number of threats likely contributing to those declines (75 FR 13910, March 23, 2010). The most important threats identified for the Rocky Mountain portion of the range were habitat loss and fragmentation from energy development, infrastructure, and agricultural conversion; disease—particularly WNV; loss of habitat from improper livestock management; and inadequacy of regulatory mechanisms limiting human-caused impacts. Of these threats, the most significant of these involved a combination of habitat loss and fragmentation from infrastructure and energy development, and inadequate regulatory mechanisms to address these impacts.

The potential threats from fire, invasive grasses, free-roaming equids, conifer encroachment, and urban and exurban development have only limited, localized impacts to sage-grouse in the Rocky Mountain portion of the range now and into the foreseeable future. In addition, our evaluation of the Rocky Mountain portion of the current range focuses primarily on those potential threats most likely to affect, individually or cumulatively, sage-grouse in the Rocky Mountains, which does not include urban and exurban development, recreation, climate change and drought, recreational hunting,

scientific and educational uses, contaminants, and military activity. Those threats that are likely to affect sage-grouse in the Rocky Mountains are summarized below. Full discussions of each of these potential threats can be found in Summary of Information Pertaining to the Five Factors (above).

Due to new regulatory mechanisms and conservation efforts, the potential threats identified in 2010 have been adequately ameliorated in the Rocky Mountain portion of the range. Historically, agricultural conversion reduced and fragmented sage-grouse habitats in the Rocky Mountain portion of the range, primarily in MZ I. However, the new cropland risk model (described above in the *Summary of Information for Agricultural Conversion*) indicates that future agricultural conversion is unlikely to have substantial impacts in MZ I of the Rocky Mountain portion of the current range, and future conversions to agriculture are unlikely to occur at greater rates or magnitudes outside of MZ I. Further the implemented regulatory mechanisms effectively reduce impacts from nonrenewable energy development, such that less than 17 percent of the sage-grouse population and 12 percent of the breeding habitat in the Rocky Mountain portion of the range could be exposed to nonrenewable energy development in the future.

We identified improper livestock management as a source of habitat loss and fragmentation in 2010. Since that time, rangeland-health standards in the Federal Plans, Wyoming and Montana State Plan requirements, and SGI practices of applying grazing systems, vegetating former rangeland with sagebrush and perennial grasses, and controlling invasive grasses, effectively ameliorate this threat to the sage-grouse in the Rocky Mountain portion of the range, now or in the future.

Renewable energy development has not occurred extensively within the Rocky Mountains, but potential exists, particularly for wind development. Infrastructure exists throughout the Rocky Mountains and will likely continue into the future. For each of these impacts, the regulatory mechanisms provided by Federal Plans, the Montana Plan, and the Wyoming Plan substantially reduce this potential impact by restricting new development in important sagebrush habitats. Coal mining, the primary kind of mining occurring in the Rocky Mountains, has generally declined since 2008. Regulatory mechanisms provided by the Federal Plans exclude new leasable (except coal) and saleable mineral

development on more than 14 million ha (35 million ac) of PHMA. Because of the effective regulatory mechanisms that protect important habitats, these types of development are not threats to sage-grouse within the Rocky Mountain portion of the range, now or in the future.

As described in the Summary of Information Pertaining to the Five Factors (above), we also evaluated the impacts of predation and disease and found that, although they present localized impacts, they were not likely to result in population-level effects. This remains true when reviewing the information for the Rocky Mountain portion of the range.

Conservation Efforts in the Rocky Mountain Portion of the Current Range

Since the 2010 finding, many parties have collaborated to develop comprehensive strategies that ameliorate the major potential threats, consistent with the COT Report. The Federal Plans and Wyoming and Montana Plans provide adequate regulatory mechanisms to reduce the threats of human-caused habitat disturbance on the most important sage-grouse habitats (as discussed in detail in the Changes Since the 2010 Finding, above). The Federal Plans designate PHMA, and the Wyoming and Montana Plans designate Core Areas, all of which correspond closely with the PACs identified in the COT Report. In the Rocky Mountain portion of the range, more than 67 percent of the sage-grouse breeding habitat distribution is protected as PHMA and more than 30 percent is protected as GHMA.

The Federal Plans address the primary potential threats that reduce and fragment sage-grouse habitats on BLM- and USFS-administered lands in the Rocky Mountain portion of the range, including infrastructure and energy development. All forms of development—from energy, to transmission lines, to recreation facilities and grazing structures—would be avoided in PHMA unless a further assessment found that the project would not adversely affect the sage-grouse. Consistent with COT guidance, a limited amount of development could occur in GHMAs, although additional conservation measures, such as lek buffers, seasonal and timing restrictions, and project-design features, will minimize potential effects in GHMA.

In conjunction with the Federal Plans, the Wyoming Plan incorporates stipulations and conservation measures, such as controlled surface use, seasonal and noise restrictions, consultation requirements, density of development

restrictions, and lek buffers to reduce impacts associated with energy development on all lands within Core Areas in Wyoming. The Montana Plan includes a regulatory mechanism similar to the Core Area Strategy to reduce impacts associated with energy development in Core Areas on State-owned lands and private lands when a State authorization is required. The Montana Plan also requires similar conservation measures to reduce impacts, such as seasonal and noise restrictions, density development restrictions, and lek buffers.

Finally, conservation efforts on private lands through SGI and CCAAs reduce potential threats in the Rocky Mountain portion of the range. SGI efforts with ranchers to address grazing systems and fences, to implement habitat restoration, and to provide conservation easements have protected sage-grouse habitat from further fragmentation; NRCS' commitment to adaptive management, partnerships, and flexibility in conservation approaches ensures continued and constantly improving conservation on private lands within sage-grouse habitat. In Wyoming, a completed umbrella CCAA covers important private lands in the range of the sage-grouse, and 30 private landowners have completed CCAAs in Wyoming under this programmatic CCAA. Collectively, there are 180,223 ha (445,343 ac) of private and State lands committed within the umbrella CCAA, 112,212 ha (277,282 ac) of which are located within sage-grouse Core Areas, and 8,235 ha (20,348 ac) are in connectivity areas.

By taking a landscape-level view that spans land ownership in the Rocky Mountain portion of the range, these conservation efforts have significantly reduced the potential threats to sage-grouse now and in the foreseeable future. Many of these conservation efforts are regulatory mechanisms on Federal lands that are managed consistently by BLM and USFS in the five Rocky Mountain States (MT, WY, CO, ND, and SD). Similar regulatory mechanisms are provided by Montana and Wyoming State Plans and Executive Orders to reduce potential impacts on non-Federal lands in those States. These regulatory mechanisms are finalized, are currently being implemented, and are likely to continue to be implemented for the next 20 to 30 years. In addition, SGI and private land owners have implemented conservation projects across the Rocky Mountain portion of the range, further contributing to sage-grouse conservation. The SGI has committed to continue this work for the next 3 years, ensuring private land

conservation will continue to be implemented through the authorization of the next Farm Bill (NRCS 2015a, p. 2). All of these conservation actions are consistent with the COT Report recommendations and scientific literature, which indicates they will effectively conserve sage-grouse.

Conclusion for the Rocky Mountain Portion of the Current Range

Based on Federal and State regulations and conservation efforts, the risk and exposure of the sage-grouse to the potential threats of nonrenewable-energy development, agricultural conversion, and habitat fragmentation from infrastructure and other development are significantly reduced. These conservation efforts are ameliorating the potential threats and decreased the amount and rate of development well below what was expected, and by minimizing and mitigating impacts to sage-grouse, have significantly addressed threats facing sage-grouse as described in the 2010 finding, the COT Report, and other published scientific findings. In the Rocky Mountain portion, some habitat loss associated with energy development, infrastructure, agricultural conversion, and urbanization will continue into the future.

Some sage-grouse populations may continue to decline in some parts of the Rocky Mountains. However, the existing and future effective regulatory mechanisms and conservation efforts in the Rocky Mountain portion of the range will protect the most important habitats and maintain relatively large, well-distributed, and interconnected sage-grouse populations across much of the eastern portion of its range. Since the 2010 finding, there has been an unprecedented and substantial proactive conservation effort to reduce potential habitat loss and fragmentation from infrastructure and energy development. More than 67 percent of the sage-grouse breeding habitat in the Rocky Mountains is protected by PHMA, where no development will occur, and more than 30 percent is protected by GHMA, where required conservation measures will avoid and reduce adverse effects. Therefore, we determined that, due to the combination of regulations on Federal lands and regulatory and voluntary measures on private lands that provide adequate avoidance and mitigation, these potential threats are effectively being reduced in the Rocky Mountain portion of the range.

Therefore, we conclude that sage-grouse in the Rocky Mountain portion of

the current range are not in danger of extinction or likely to become so within the foreseeable future, due to the existing effective conservation efforts implemented since 2010 and future conservation efforts. Sage-grouse will remain well-distributed and interconnected into the foreseeable future as these conservation efforts are implemented. Therefore, the sage-grouse is not threatened or endangered in the Rocky Mountain portion of its current range.

Status of the Great Basin Portion of the Current Range

In our 2010 finding, we identified long-term declines in sage-grouse abundance trends for the Great Basin MZs, and we identified a number of threats likely contributing to those declines (75 FR 13910, March 23, 2010). The most important threats identified in the 2010 finding for the Great Basin were: Wildfire, invasive plants, conifer invasion, habitat fragmentation, climate change, loss of habitat quality due to improper livestock and free-roaming equid grazing, and the inadequacy of regulatory mechanisms to address human-caused impacts such as energy and infrastructure development. Of these threats, the greatest concern in the Great Basin was habitat loss and fragmentation from wildfire and invasive plants. Currently, the primary potential threats to sage-grouse in the Great Basin include wildfire and its synergistic effects with invasive plants. We will also specifically summarize habitat loss and fragmentation due to conifer encroachment, mining, renewable energy, and infrastructure in the Great Basin. Our evaluation of the Great Basin portion of the current range focuses primarily on those potential impacts most likely to affect, individually or cumulatively, sage-grouse in the Great Basin and does not include urban and exurban development, recreation, predation, climate change and drought, recreational hunting, scientific and educational uses, contaminants, and military activity. Full discussions of each of these potential threats can be found in Summary of Information Pertaining to the Five Factors (above).

Wildfire and its synergistic relationship with invasive species, climate change and drought, improper grazing, and free-roaming equids was identified in the 2010 finding as the most serious threat to sage-grouse populations in the Great Basin. Wildfire is a natural and integral part of the Great Basin landscape, and will continue into the future. A recent study predicts that a 43 percent decline in Great Basin sage-

grouse populations could occur by 2044 if no additional management is implemented to address the wildfire and invasive plant cycle. If conservation measures reduce the area burned by at least 25 percent, the rate of population decline is likely to be reduced. Further, the study emphasizes the importance of implementing conservation actions in areas of moderate and high resistance and resiliency and containing high densities of sage-grouse. The FIAT Assessments and Secretarial Order conservation measures are consistent with this recommendation to prioritize implementation actions in places most likely to be effective and to provide the greatest benefit for sage-grouse. Therefore, we conclude the continued implementation of FIAT and the Secretarial Order will reduce the rate of decline in the Great Basin over the next 30 years.

Through the Federal Plans, the BLM and USFS have established land health standards that now consider and incorporate sage-grouse habitat needs. The Federal Plans restrict grazing in areas that are not meeting standards, and the agencies will manage free-roaming equid populations at levels that minimize impacts to the most important sage-grouse habitats. Voluntary conservation through SGI's invasive species removal programs, improved grazing practices, and the enhancement and protection of healthy rangeland conditions further improve habitat for sage-grouse in the Great Basin. Finally, State conservation efforts in Oregon have further reduced the impacts of wildfire, invasive plants, grazing, and free-roaming equids through regulatory mechanisms.

These and many other positive conservation activities described in this finding were not implemented, planned, or certain to occur when the 2010 warranted finding was completed, leading us to conclude that sage-grouse warranted protections of the Act. The regulatory mechanisms and commitments to manage wildfire and invasive plants will result in a substantial reduction of habitat lost to these impacts, such that sage-grouse populations will continue to be distributed and connected across the Great Basin. Therefore, because the potential impacts have been substantially reduced by effective regulatory mechanisms and the ongoing implementation of conservation efforts, wildfire and the associated synergistic effects from invasive species, climate change and drought, improper grazing, and free-roaming equids are not substantial threats to the sage-grouse

within the Great Basin portion of the range, now or in the future.

In addition to wildfire and its synergistic impacts, habitat loss from conifer encroachment has also been identified as a concern in the Great Basin. Conifers are a natural component of the sagebrush ecosystem, and, if not actively managed, are expected to continue to expand, resulting in additional loss of habitat in the Great Basin. However, Federal and State Plan vegetation objectives and on-the-ground removal of conifers through SGI and State efforts have reduced impacts of this potential threat. For the next 3 years, SGI has committed to continue this work, ensuring private land conservation will continue to be implemented (NRCS 2015a, p. 2; NRCS 2015b, p. 6). As a result of direction provided in State and Federal Plans and ongoing implementation of SGI, the rate of encroachment and habitat loss is reduced such that conifer encroachment is not a threat in the Great Basin portion of the range, now or in the future.

Development due to mining, renewable energy, and infrastructure continues to occur in the Great Basin. As discussed above (see *Mining*), mining potential is difficult to predict. The Federal Plans contain regulatory mechanisms to avoid and minimize potential impacts from mining in important sage-grouse habitat. Similarly, infrastructure and development of renewable energy is currently present across the Great Basin and will likely continue at some level, but regulatory mechanisms provided by Federal Plans reduce potential future development by eliminating or capping disturbance in important sagebrush habitat and by implementing project design features to minimize impacts (e.g., buffers, noise restrictions, etc.).

Conservation Efforts in the Great Basin Portion of the Current Range

Since the 2010 finding, many parties have collaborated to develop comprehensive strategies that would substantially ameliorate the major potential threats, consistent with the COT Report. Through Federal Plans, State Plans, and voluntary conservation on private lands through CCAA and SGI, the Great Basin is being actively managed for the benefit of sage-grouse.

The Federal Plans provide clear management regulations with measurable objectives to address invasive annual grasses, conifer encroachment, improper grazing, and free-roaming equids. They prioritize management in the most important habitat (PHMA), which encompasses approximately 60 percent of the

breeding habitat in the Great Basin. All forms of development—from energy, infrastructure, and grazing structures—would be avoided in PHMA unless further assessment found the project not to have any adverse effects on the species. Consistent with COT guidance, a limited amount of development could occur in GHMAs, which support 23 percent of the breeding habitat in the Great Basin (USFWS 2013, pp. 43–52). In those instances, additional measures such as lek buffers, seasonal and timing restrictions, and project design features will minimize potential indirect effects that could occur. A more comprehensive discussion on these measures and their expected effects is provided earlier in this finding (see Summary of Information Pertaining to the Five Factors, above).

The majority of sage-grouse habitat in the Great Basin occurs on Federal lands, making the Federal Plans' implementation most important for sage-grouse conservation in the Great Basin. However, States can help reduce potential threats through collaboration with Federal land managers and by promoting conservation outside Federal lands. To date, Oregon is the only State in the Great Basin that completed and implemented a plan that provides regulatory mechanisms. The Oregon Plan provides regulatory protections for sage-grouse habitat across all land ownerships, a coordinated mitigation system, wildfire management measures, and a development cap for Core Areas that is coordinated with the Federal Plans.

Threat reduction is also enhanced on private lands in the Great Basin through the SGI and associated Farm Bill programs. Throughout the western States, SGI has implemented targeted sage-grouse conservation practices on more than 4.4 million acres, and has allocated more than \$424 million in project funding. In the Great Basin portion of the Range, SGI efforts with ranchers to address grazing systems and fences, to implement habitat restoration, and to provide conservation easements have protected sage-grouse habitat from further fragmentation. The NRCS made funding available from 2010 through 2018 to fund and implement the SGI program (NRCS 2015a, p. 2, NRCS 2015b, p. 6). Since 2010, SGI has implemented action on more than 1,000 ranches. NRCS' commitment to adaptive management, partnerships, and flexibility in conservation approaches ensures continued and constantly improving conservation on private lands within sage-grouse habitat. Based on the track record of successfully implemented conservation actions

consistent with the COT Report recommendations and commitments to continue implementing the program, we conclude that the SGI program provides substantial conservation benefits to sage-grouse in the Great Basin, now and in the future.

The greatest amount of private lands conservation in the Great Basin has occurred in Oregon. In 2015, we completed a series of programmatic CCAAs for sage-grouse that potentially covers all private lands in the range in Oregon. In Oregon, more than 575,000 ha (1.4 million ac) of rangeland have been effectively conserved for sage-grouse through enrollment of private landowners in CCAAs. These programmatic agreements provide a framework for other landowners to easily enroll without a large amount of time and paperwork, making it likely that others will be enrolled in the near future.

This coordinated approach to conserve sage-grouse and sagebrush habitat has resulted in substantial reductions in all of the potential threats facing sage-grouse in the Great Basin in the foreseeable future. Many of these conservation efforts on Federal lands are consistent across the five States due to the management by BLM and USFS, while programs on non-Federal lands vary from State to State due to different regulatory, political, ecological, and economic circumstances in the respective States. Since 2010, many of the specific measures described in this finding are under way or are being finalized with actions to be implemented during the coming years. We have a high degree of certainty that the majority of the planned future actions will be implemented and will reduce the magnitude of potential threats facing the sage-grouse in the Great Basin.

Conclusion for the Great Basin Portion of the Current Range

Based on Federal, State, and private landowner efforts, the potential threats of wildfire (and associated, synergistic impacts from invasive plants, climate change and drought, improper grazing, and free-roaming equids), conifer encroachment, mining, and infrastructure have been reduced. Some habitat loss in the Great Basin portion associated with wildfire and invasive plants and conifer encroachment will continue into the future, and it is likely that sage-grouse populations will continue to decline in some parts of the Great Basin. However, we expect that the existing and future effective conservation efforts in the Great Basin portion of the range will reduce declines

and will protect the most important sage-grouse habitat, resulting in relatively large, well-distributed, and interconnected populations across much of the western portion of its range. Since the 2010 warranted finding, Federal, State, and local entities to identify specific needs of this species and to provide resources for the conservation and protection of the species and its habitat. Due to these conservation efforts, the species will remain well-distributed and interconnected into the foreseeable future as these measures are implemented. Therefore, the sage-grouse is not a threatened or endangered species in the Great Basin portion of its range.

Conclusion

Our review of the best available scientific and commercial information indicates that the sage-grouse is not in danger of extinction nor likely to become endangered within the foreseeable future throughout all of its range. Additionally, we determined that the sage-grouse is not in danger of extinction now or within the foreseeable future throughout either the Rocky Mountain or Great Basin portions of its range. Therefore, the sage-grouse is not in danger of extinction nor likely to become endangered within the foreseeable future throughout a significant portion of its range. Therefore, we find that listing the sage-grouse as an endangered or threatened species under the Act is not warranted at this time.

The completion of this status review is not the end of our commitment to sage-grouse conservation. Our determination today is based on the best scientific and commercial data currently available. That determination, however, cannot guarantee that the sage-grouse (or other sagebrush ecosystem species) will not in the future warrant listing under the Act. New threats may develop, management may change, or the species may not prove as resilient as we concluded based on the currently available science. Thus, although our best judgment today indicates that successful sage-grouse conservation will be achieved by continued implementation of the regulatory mechanisms and conservation efforts we relied on in our finding above, we and our partners must carefully monitor threats to the sage-grouse and its response to those threats. Therefore, we will work with our Federal and State partners to conduct a sage-grouse status review in 5 years. This status review will inform adaptive management and guide future research needs to ensure that conservation efforts continue to

benefit sage-grouse into the future. In the meantime, to ensure the long-term successes of this unprecedented conservation effort, we will continue to work with our partners to augment and improve current management within the sagebrush ecosystem. If at any time new information indicates that the provisions of the Act may be necessary to conserve sage-grouse, we can initiate listing procedures, including, if appropriate, emergency listing pursuant to section 4(b)(7) of the Act.

References

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Mountain-Prairie Regional Office (see **ADDRESSES**).

Author(s)

The primary author(s) of this notice are the staff members of the U.S. Fish and Wildlife Service.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2015.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1026

Amendments Relating to Small Creditors and Rural or Underserved Areas
Under the Truth in Lending Act (Regulation Z); Rules

BUREAU OF CONSUMER FINANCIAL PROTECTION**12 CFR Part 1026**

[Docket No. CFPB–2015–0004]

RIN 3170–AA43

Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)**AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending certain mortgage rules issued by the Bureau in 2013. This final rule revises the Bureau's regulatory definitions of small creditor, and rural and underserved areas, for purposes of certain special provisions and exemptions from various requirements provided to certain small creditors under the Bureau's mortgage rules.

DATES: This final rule is effective on January 1, 2016. For additional discussion regarding the effective date of the rule see part VI of the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Haywood, Paralegal Specialist; Nicholas Hluchyj, Senior Counsel, or Paul Ceja, Senior Counsel and Special Advisor, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:**I. Summary of the Final Rule**

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010).¹

¹ Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (January 2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013)

The Bureau has clarified and revised those rules over the past two years. The purpose of those updates was to address important questions raised by industry, consumer groups, or other stakeholders. The Bureau also indicated that it would revisit the Bureau's regulatory definitions of small creditor and rural and underserved areas, promulgated in those rules and related amendments, through study and possibly through additional rulemaking.

To that end, on January 29, 2015, the Bureau proposed several amendments to its 2013 Title XIV Final Rules to revise Regulation Z provisions and official interpretations relating to escrow requirements for higher-priced mortgage loans under the Bureau's January 2013 Escrows Final Rule and ability-to-repay/qualified mortgage requirements under the Bureau's January 2013 ATR Final Rule and May 2013 ATR Final Rule. The Bureau's proposal would also affect requirements under the Bureau's 2013 HOEPA Final Rule.² The proposed rule was published in the **Federal Register** on February 11, 2015. See *Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)*, 80 FR 7769 (Feb. 11, 2015).

This final rule adopts, with some additional clarifications and technical revisions, the Bureau's proposed rule. It reflects feedback received from stakeholders through this notice and comment rulemaking regarding the Bureau's definitions of small creditor, and rural and underserved areas, as those definitions relate to special provisions and certain exemptions to requirements provided to small creditors under the Bureau's 2013 Title XIV Final Rules and updates.

Specifically, the final rule makes the following changes with regard to the definitions of small creditor and rural and underserved areas as currently

(Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans, 78 FR 10367 (Feb. 13, 2013) (January 2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013).

² The January 2013 Interagency Appraisals Final Rule provides an exemption from the requirement to obtain a second appraisal for certain higher-priced mortgage loans if the loan is secured by a property in a "rural county." This final rule will not affect the scope of that exemption because it will not change the counties that are defined as "rural" under § 1026.35(b)(2)(iv)(A).

provided in the Bureau's mortgage rules:³

- Raises the loan origination limit for determining eligibility for small-creditor status from 500 originations of covered transactions secured by a first lien, to 2,000 such originations (referred to in this rule as "extensions of covered transactions"), and excludes originated loans held in portfolio by the creditor and its affiliates from that limit. The final rule also establishes a grace period from calendar year to calendar year to allow a creditor that exceeded the origination limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.

- Includes in the calculation of the \$2 billion asset limit for small-creditor status the assets of the creditor's affiliates that regularly extended covered transactions. The final rule also adds a grace period to the annual asset limit, to allow a creditor that exceeded the asset limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.

- Adjusts the time period used in determining whether a creditor is operating predominantly in rural or underserved areas from any of the three preceding calendar years to the preceding calendar year. As with the origination and asset limits for small-creditor status, the final rule adds a grace period to allow a creditor that fails to meet this threshold in the preceding calendar year, to continue operating, in certain circumstances, as if it had met this threshold with respect to transactions with applications received before April 1 of the current calendar year.

- Amends the current exemption under § 1026.35(b)(2)(iii)(D)(1) provided to small creditors that operate predominantly in rural or underserved areas from the requirement for the establishment of escrow accounts for higher-priced mortgage loans. The final rule ensures that creditors who established escrow accounts solely to comply with the current rule will be eligible for the exemption if they meet the expanded definitions of small creditors operating predominantly in rural or underserved areas under the final rule.

- Expands the definition of "rural" by adding census blocks that are not in an urban area as defined by the U.S. Census Bureau (Census Bureau) to the current county-based definition.

- Conforms the definition of "underserved" to the proposals discussed above. The substance of the "underserved" definition is not changed.

- Adds two new safe harbor provisions related to the rural or underserved definition for creditors that rely on automated tools provided: (1) On the Bureau's Web site to allow creditors to determine whether

³ See §§ 1026.35(b)(2)(iii)(A), (B), (C), and (D), and 1026.35(b)(2)(iv)(A) and (B) and commentary, cross-referenced in §§ 1026.43(e)(5) and (e)(6), 1026.43(f)(1) and (f)(2) and commentary; and § 1026.32(d)(1)(ii)(C).

properties are located in rural or underserved areas, or (2) on the Census Bureau's Web site to assess whether a particular property is located in an urban area according to the Census Bureau's definition. The final rule maintains the current safe harbor for lists of rural and underserved counties provided by the Bureau, with technical changes. The final rule also adds commentary clarifying the circumstances under which U.S. territories will be included on the lists.

- Extends the current two-year transition period, which allows certain small creditors to make balloon-payment qualified mortgages (§ 1026.43(e)(6)) and balloon-payment high-cost mortgages (§ 1026.32(d)(1)(ii)(C)), regardless of whether they operate predominantly in rural or underserved areas. The transition period will include covered transactions for which the application was received before April 1, 2016, rather than covered transactions consummated on or before January 10, 2016.

In addition to the changes discussed above to the definitions of small creditor and rural and underserved areas, this final rule is also making a technical correction to the commentary to § 1026.36(a). This non-substantive change is discussed in the section-by-section analysis of the supplementary information section below.

II. Background

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. In the Dodd-Frank Act, Congress established the Bureau and generally consolidated the rulemaking authority for Federal consumer financial laws, including the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act, in the Bureau.⁴ At the same time, Congress significantly amended the statutory requirements governing mortgage practices, with the intent to restrict the practices that contributed to and exacerbated the crisis.⁵

⁴ See, e.g., sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491 and 5511 (establishing and setting forth the purpose, objectives, and functions of the Bureau); section 1061 of the Dodd-Frank Act, 12 U.S.C. 5581 (consolidating certain rulemaking authority for Federal consumer financial laws in the Bureau); section 1100A of the Dodd-Frank Act (codified in scattered sections of 15 U.S.C.) (similarly consolidating certain rulemaking authority in the Bureau). *But see* Section 1029 of the Dodd-Frank Act, 12 U.S.C. 5519 (subject to certain exceptions, excluding from the Bureau's authority any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both).

⁵ See title XIV of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified in scattered sections of 12 U.S.C., 15 U.S.C., and 42 U.S.C.).

Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013 if the Bureau had not issued implementing regulations by that date.⁶ To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules (the 2013 Title XIV Final Rules) in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition. These final rules include the January 2013 ATR Final Rule, the January 2013 Escrows Final Rule, the 2013 HOEPA Final Rule, and the January 2013 Interagency Appraisals Final Rule. Most of the mortgage rules released in January 2013 became effective on January 10, 2014.

Concurrent with the January 2013 ATR Final Rule, on January 10, 2013, the Bureau issued the January 2013 ATR Proposal, which the Bureau adopted on May 29, 2013 in the May 2013 ATR Final Rule.⁷ The Bureau has issued additional corrections, revisions, and clarifications to the provisions adopted by the Bureau in the 2013 Title XIV Final Rules and the May 2013 ATR Final Rule over the past two years.⁸ This final rule concerns additional revisions to the 2013 Title XIV Final Rules related to provisions regarding small creditors and rural and underserved areas.

⁶ See section 1400(c) of the Dodd-Frank Act, 15 U.S.C. 1601 note.

⁷ 78 FR 6621 (Jan. 30, 2013); 78 FR 35429 (June 12, 2013) (providing a two-year transition period during which small creditors that do not operate predominantly in rural or underserved areas can offer balloon-payment qualified mortgages if they hold the loans in portfolio). In May 2013, the Bureau also finalized amendments to the January 2013 Escrows Final Rule. Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z), 78 FR 30739 (May 23, 2013) (May 2013 Escrows Final Rule).

⁸ See, e.g., 78 FR 44685 (July 24, 2013) (clarifying, among other things, which mortgages to consider in determining small servicer status and the application of the small servicer exemption with regard to servicer/affiliate and master servicer/subservicer relationships); 78 FR 45842 (July 30, 2013); 78 FR 60382 (Oct. 1, 2013) (revising, among other things, two exceptions available to small creditors operating predominantly in “rural” or “underserved” areas, pending the Bureau's reexamination of the underlying definitions); 78 FR 62993 (Oct. 23, 2013) (clarifying the specific disclosures that must be provided before counseling for high cost mortgages can occur and proper compliance regarding servicing requirements when a consumer is in bankruptcy or sends a cease communication request under the Fair Debt Collection Practice Act). In the fall of 2014, the Bureau also made further amendments to the 2013 mortgage rules related to nonprofit entities and fees provided a cure mechanism for the points and fees limit that applies to qualified mortgages. 79 FR 65300 (Nov. 3, 2014).

III. Summary of the Rulemaking Process

On January 29, 2015, the Bureau issued, and on February 11, 2015, published in the **Federal Register**, its proposed rule entitled “Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z).”⁹ The comment period closed on March 30, 2015. In response to the proposal, the Bureau received 90 comments from consumer groups, members of Congress, creditors, industry trade associations, and others. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The term “consumer financial protection function” is defined to include “all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.”¹⁰ Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.¹¹

A. TILA-Specific Statutory Grants of Authority

TILA as amended by the Dodd-Frank Act provides two specific statutory bases for the changes in the Bureau's final rule. TILA section 129D(c) authorizes the Bureau to exempt, by regulation, a creditor from the requirement (in section 129D(a)) that escrow accounts be established for higher-priced mortgage loans if the creditor operates predominantly in rural

⁹ 80 FR 7769 (February 11, 2015).

¹⁰ Dodd-Frank Act section 1061(a)(1)(A), 12 U.S.C. 5581(a)(1)(A).

¹¹ Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include the “enumerated consumer laws,” the provisions of title X of the Dodd-Frank Act, and the laws for which authorities are transferred under title X subtitles F and H of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining “enumerated consumer laws” to include TILA); Dodd-Frank section 1400(b), 12 U.S.C. 5481(12) note (defining “enumerated consumer laws” to include certain subtitles and provisions of Dodd-Frank Act title XIV).

or underserved areas, retains its mortgage loans in portfolio, does not exceed (together with all affiliates) a total annual mortgage loan origination limit set by the Bureau, and meets any asset size threshold, and any other criteria, the Bureau may establish. TILA section 129C(b)(2)(E) authorizes the Bureau to provide, by regulation, that certain balloon-payment mortgages originated by small creditors receive qualified mortgage status, even though qualified mortgages are otherwise prohibited from having balloon-payment features. The creditor qualifications under TILA section 129C(b)(2)(E)(iv) are essentially the same as those for the higher-priced mortgage loan escrow exemption, including operating predominantly in rural or underserved areas, together with all affiliates not exceeding a total annual mortgage loan origination limit set by the Bureau, retaining the balloon-payment loans in portfolio, and meeting any asset size threshold, and any other criteria, the Bureau may establish.

B. Other Rulemaking and Exception Authority

This final rule also relies on other rulemaking and exception authorities specifically granted to the Bureau by TILA and the Dodd-Frank Act, including the authorities discussed below.

Truth in Lending Act

As amended by the Dodd-Frank Act, section 105(a) of TILA authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. 15 U.S.C. 1604(a). Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.” TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is a purpose of TILA section 129C, as added by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive. 15 U.S.C. 1639b(a)(2).

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau’s section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain “additional requirements” that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. This amendment clarified the Bureau’s authority under TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a), which include effectuating all of TILA’s purposes. Therefore, the Bureau believes that its authority under TILA section 105(a) to make exceptions, adjustments, and additional provisions that the Bureau finds are necessary or proper to effectuate the purposes of TILA applies with respect to the purpose of section 129D. That purpose is to ensure that consumers understand and appreciate the full cost of homeownership. The purpose of TILA section 129D is also informed by the findings articulated in section 129B(a) that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible and affordable mortgage credit remains available to consumers. *See* 15 U.S.C. 1639b(a).

TILA section 129C(b)(3)(B)(i) provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; are necessary and appropriate to effectuate the purposes of the ability-to-repay and residential mortgage loan origination requirements; prevent circumvention or evasion thereof; or facilitate compliance with TILA sections 129B and 129C. 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) requires the Bureau to prescribe regulations to carry out such purposes. 15 U.S.C. 1639c(b)(3)(A).

TILA section 105(a) grants the Bureau authority to make adjustments and exceptions to the requirements of TILA for all transactions subject to TILA,

except with respect to the substantive provisions of TILA section 129 that apply to high-cost mortgages. With respect to the high-cost mortgage provisions of TILA section 129, TILA section 129(p), 15 U.S.C. 1639(p), as amended by the Dodd-Frank Act, grants the Bureau authority to create exemptions to the restrictions on high-cost mortgages and to expand the protections that apply to high-cost mortgages. Under TILA section 129(p)(1), the Bureau may exempt specific mortgage products or categories from any or all of the prohibitions specified in TILA section 129(c) through (i), if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protections. Among these referenced provisions of TILA is section 129(e), the prohibition on balloon payments for high-cost mortgages.

The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” 12 U.S.C. 5512(b)(1). TILA and title X and certain enumerated subtitles and provisions of title XIV of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to issue rules that carry out the purposes and objectives of TILA, title X of the Dodd-Frank Act, and certain enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and to prevent evasion of those laws.

V. Section-by-Section Analysis of the Proposed Rule

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2) Exemptions

35(b)(2)(iii)

Section 1026.35(b)(2)(iii) currently provides that an escrow account need not be established for a higher-priced mortgage loan by small creditors who operate predominantly in rural or underserved areas if four conditions identified in § 1026.35(b)(2)(iii)(A) through (D) are satisfied at the time of consummation.¹² Section

¹² Section 1026.35(b)(2)(v) excludes from the § 1026.35(b)(2)(iii) exception any first-lien higher-

1026.35(b)(2)(iii)(A) provides a test for determining whether a creditor operates predominantly in rural or underserved areas; § 1026.35(b)(2)(iii)(B) sets an origination limit for small creditor status; § 1026.35(b)(2)(iii)(C) sets an asset limit for small creditor status; and § 1026.35(b)(2)(iii)(D) does not allow an exemption from the escrow requirement for creditors with existing escrow accounts, with certain exceptions. The Bureau proposed to make amendments to all of these conditions and, as discussed below, is adopting these amendments with some clarifications in this final rule.

Because the predominantly-rural-or-underserved test and the origination and asset limits of § 1026.35(b)(2)(iii) are cross-referenced in the Bureau's January 2013 ATR Final Rule and its 2013 HOEPA Final Rule, and amendments to those rules, they also affect eligibility for special provisions and exemptions provided in those rules, including the following:

- A qualified mortgage definition for certain loans made and held in portfolio (small creditor portfolio loans), by small creditors regardless of whether they operate predominantly in rural or underserved areas. These loans are not subject to the 43 percent debt-to-income ratio limit (or to "appendix Q" requirements in determining the debt and income of consumers) that applies to general qualified mortgage loans under § 1026.43(e)(2) (§ 1026.43(e)(5)). A first-lien qualified mortgage under this category also provides a safe harbor from ability-to-repay claims, if the mortgage's annual percentage rate (APR) does not exceed the applicable Average Prime Offer Rate (APOR) by 3.5 or more percentage points. In contrast, general qualified mortgage loans under § 1026.43(e)(2) provide safe harbors if their APRs do not exceed the applicable APOR by 1.5 or more percentage points.¹³

- Two qualified mortgage definitions for small creditors making certain balloon-payment loans. One is a permanent definition for small creditors operating predominantly in rural or underserved areas. The other is a temporary definition for small creditors who do not operate predominantly in such areas. These definitions provide an exception from the limitation on balloon-payment features on general qualified

mortgage loans (§ 1026.43(e)(6) and (f)).¹⁴ These two qualified mortgage definitions are also subject to a higher APR threshold for defining a higher-priced covered transaction, allowing small creditors of such qualified mortgages to receive a safe harbor under the Bureau's ability-to-repay rule.

- An exception from the prohibition on balloon-payment features for certain high-cost mortgages (§ 1026.32(d)(1)(ii)(C))—also on a permanent basis for small creditors operating predominantly in rural or underserved areas and a temporary basis for small creditors who do not operate predominantly in such areas.¹⁵

The Bureau adopted these special provisions and exemptions for small creditors because of the important role that small creditors play in providing mortgage credit to consumers. The Bureau believes that many small creditors use a lending model based on maintaining ongoing relationships with their customers and often limit their lending activities to a single community. They therefore may have a more comprehensive understanding of the financial circumstances of their customers and of the economic and other circumstances of that community.¹⁶ The special provisions and exemptions facilitate the ability of small creditors that operate predominantly in rural or underserved areas, as well as small creditors that operate in areas that are neither rural nor underserved, to provide access to mortgage credit for consumers they serve.

35(b)(2)(iii)(A)

As discussed in detail below, the Bureau is adopting

¹⁴ Specifically these provisions allow: (1) On a permanent basis, balloon-payment qualified mortgage loans made and held in portfolio by certain small creditors operating predominantly in rural or underserved areas (§ 1026.43(f)); and (2) for a temporary two year transition period—from January 10, 2014 to January 10, 2016—balloon-payment qualified mortgages originated by small creditors even if they do not operate predominantly in rural or underserved areas (this period is being extended under this final rule to cover transactions with applications received before April 1, 2016—see the section-by-section analysis below on § 1026.43(e)(6)).

¹⁵ Specifically, this provision allows: (1) On a permanent basis, small creditors that operate predominantly in rural or underserved areas to originate high-cost loans with balloon-payment features; and (2) for loans made on or before January 10, 2016 (extended by this final rule to cover transactions with applications received before April 1, 2016), small creditors to originate high-cost mortgages with balloon-payment features even if they do not operate predominantly in rural or underserved areas, under certain conditions. See § 1026.32(d)(1)(ii)(C).

¹⁶ Lending activities of many creditors that currently qualify as small are generally limited to a single community. However, creditors that will qualify as small with the adoption of the changes in this final rule generally lend and have branches (in the case of depository institutions) in several communities and counties.

§ 1026.35(b)(2)(iii)(A) substantially as proposed, with certain minor changes to enhance clarity. Accordingly, this final rule restores the one-year lookback period for determining whether the creditor is operating predominantly in rural or underserved areas as originally adopted by the January 2013 Escrows Final Rule. This final rule also adopts the proposed grace period that allows a creditor making a higher-priced mortgage loan based on an application received before April 1 to rely on its transactions from either the preceding calendar year or the next-to-last calendar year to meet the condition in § 1026.35(b)(2)(iii)(A).

The Bureau's Proposal

The current test under § 1026.35(b)(2)(iii)(A) for determining whether a creditor operates predominantly in rural or underserved areas is that, during any of the three preceding calendar years, the creditor extended more than 50 percent of its total first-lien covered transactions, as defined by § 1026.43(b)(1),¹⁷ on properties that are located in counties that are either "rural" or "underserved" (the more than 50 percent test). The Bureau proposed to amend § 1026.35(b)(2)(iii)(A) and comment 35(b)(2)(iii)–1 to eliminate the three-year lookback period in § 1026.35(b)(2)(iii)(A) and to establish the preceding calendar year as the relevant time period for assessing whether the more than 50 percent test is satisfied as a general matter. The Bureau also proposed a grace period to allow otherwise eligible creditors whose first-lien covered transactions in the preceding year failed to meet the more than 50 percent test to continue to operate with the benefit of the exemption for applications received before April 1 of the current calendar year if their first-lien covered transactions during the next-to-last calendar year met the test.

The Bureau also proposed conforming and technical changes to the rule and commentary. Proposed comment 35(b)(2)(iii)–1.i was amended for consistency with the changes that the Bureau proposed to the regulation text in §§ 1026.35(b)(2)(iii)(A) and 1026.35(b)(2)(iv)(A), and to provide guidance on the one-year lookback and grace periods. The Bureau also proposed to remove from comment 35(b)(2)(iii)–1.i all discussion of the lists that the

¹⁷ "Covered transaction" is defined in § 1026.43(b)(1) to mean a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under § 1026.43(a).

priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the § 1026.35(b)(2)(iii) conditions.

¹³ Specifically, for purposes of determining whether a loan has a safe harbor with regard to TILA's ability-to-repay requirements (or instead is categorized as "higher-priced" with only a rebuttable presumption of compliance with those requirements), for first-lien covered transactions, the special qualified mortgage definitions in § 1026.43(e)(5), (e)(6) and (f) receive an APR threshold of the applicable APOR plus 3.5 percentage points, rather than plus 1.5 percentage points.

Bureau publishes of “rural” or “underserved” counties pursuant to § 1026.35(b)(2)(iv).

The Bureau invited comment on whether it should eliminate the three-year lookback period as proposed and whether it is appropriate to rely on the preceding calendar year in determining as a general matter whether the more than 50 percent test is met. The Bureau also sought feedback on whether it should provide a grace period to creditors that meet this test in one calendar year but fail to do so in the next calendar year and, if so, whether such a grace period should apply to all applications received before April 1 as proposed.

For the reasons discussed below, the Bureau is adopting § 1026.35(b)(2)(iii)(A) and the accompanying commentary as proposed, with minor technical revisions.

Comments

The Bureau received comments from national and state associations of credit unions, a national association of community banks, and state associations of banks on the proposal to use the preceding calendar year, rather than any of the three preceding calendar years, as the relevant time period for assessing whether the more than 50 percent test is satisfied and on the proposed April 1 grace period. No comments were received on the related proposed changes to the commentary.

Most of the commenters on the proposed lookback provision recommended that the Bureau maintain the three-year lookback. A national association of credit unions noted many credit unions develop their forward-looking strategies with a two- or three-year outlook and was concerned that the proposal will curtail a credit union's ability to do such planning. For the same reason, this commenter suggested extending the effective date of this rulemaking to January 1, 2017 if the three-year lookback is replaced with a one-year period. A national association and a state association of banks both noted some of their members operate close to the 50 percent threshold and that a three-year lookback would prevent these lenders from abruptly halting their loan originations should they come close to approaching the loan threshold or otherwise become concerned that they may not meet the more than 50 percent test in a given year. The state banking association recommended a six-month grace period if the Bureau adopts the one-year lookback period to allow community banks to make necessary product and

system adjustments and train staff. Other commenters noted generally that the three-year lookback would provide creditors greater flexibility than a one-year period would, but provided no specific details or examples.

The majority of commenters on the proposed April 1 grace period supported that provision, although a few commenters recommended extending the grace period to six months, and in one case, to one year. The commenters recommending an extension of the grace period generally cited the need for additional time to adjust systems and train staff.

Final Rule

The Bureau is finalizing § 1026.35(b)(2)(iii)(A) and its accompanying commentary generally as proposed but with minor changes to provide greater clarity.

The Bureau considered comments requesting the continuation of the three-year lookback but has not adopted this approach in the final rule. As originally adopted in the January 2013 Escrows Final Rule, § 1026.35(b)(2)(iii)(A) considered only the preceding year and established a one-year lookback period. The Bureau instituted the three-year lookback period to stabilize the escrow exemption during the period from 2013 to 2015 while the definitions were under review. 78 FR 60382, 60416 (Oct. 1, 2013). This change guaranteed eligibility for a creditor that was eligible during 2013 with respect to operating predominantly in rural or underserved areas and met the other applicable criteria through 2015. Stability in this specific period was a particular concern because during the definitional review the first year-to-year transition in the “rural” definition for purposes of this exemption was to coincide with the shift in the United States Department of Agriculture's Economic Research Service's (USDA-ERS) county Urban Influence Code (UIC) designations that occur once every decade.

Once the definitional review period ends, the Bureau believes that using a three-year lookback period on a permanent basis would allow creditors to maintain eligibility even if their first-lien covered transactions do not meet the more than 50 percent test in most calendar years. That result would be contrary to the goal of identifying creditors that focus their activity in rural or underserved areas.

Although the three-year lookback period provides creditors with certainty that they will be eligible for the exemption at least two years into the future, the Bureau does not believe that such extended notice will be necessary

once the revisions to the definitions are effective. As explained in the section-by-section analysis of § 1026.35(b)(2)(iv)(A), below, the areas that are rural under the definition would only change once or twice a decade.¹⁸ While the counties defined as underserved could change each year, such shifts are unlikely to affect many creditors' eligibility for the special provisions and exemptions because very few counties would be underserved but not rural under the Bureau's definitions. Furthermore, creditors can monitor the first-lien covered transactions that they originate throughout the year using the Bureau's automated tool and should generally be able to anticipate any change in their eligibility well before the end of the year. Any changes that would be made in the rural definition after each decennial census would be based on demographic shifts that have unfolded over the preceding decade and which may, in many instances, be evident to creditors serving those areas. The changes would be announced well before they become effective, allowing time for creditors to assess their status and make appropriate transitions. The Bureau therefore believes that the preceding calendar year is the appropriate time period to use as a general rule in assessing whether the more than 50 percent test is met.

The Bureau acknowledges that in some cases, a creditor could find out on or close to December 31st that it was not operating predominantly in rural or underserved areas during that calendar year. Such a creditor might have difficulty transitioning from balloon-payment loans to adjustable-rate mortgages and complying with the higher-priced mortgage loan escrow requirements by January 1 if eligibility for the special provisions and exemptions is based solely on transactions in the preceding calendar year. The Bureau therefore is adopting the proposed grace period that allows a creditor making a higher-priced mortgage loan based on an application received before April 1 to rely on its transactions from either the preceding calendar year or the next-to-last

¹⁸ As noted in the discussion of comment 35(b)(2)(iv)–2 below, the Census Bureau released its list of urban areas based on the 2010 decennial census in 2012, and the USDA-ERS released its UIC designations based on the 2010 decennial census in 2013. If the USDA-ERS continues to incorporate decennial census results into its UIC county designations in a different year than the Census Bureau finalizes its rural-urban classification, as in 2012 and 2013, the effects of each decennial census would be incorporated into the Bureau's proposed “rural” definition over the course of two years, which would afford additional transition time to some of the creditors affected by the changes.

calendar year to meet the more than 50 percent test in § 1026.35(b)(2)(iii)(A).

A creditor that is otherwise eligible and that met the more than 50 percent test in calendar year one but fails to meet it in calendar year two remains eligible with respect to applications received before April 1 of calendar year three. The Bureau considered comments requesting longer grace periods of six months or one year, but the Bureau is adopting this provision as proposed. Most of the comments received favored the grace period as proposed, and the Bureau believes that a grace period of this nature facilitates the transition of creditors that no longer operate predominantly in rural or underserved areas and properly balances the importance of the substantive consumer protections provided by the higher-priced mortgage loan escrows requirement, the ability-to-repay requirement, and the high-cost mortgage requirements with concerns that have been raised regarding their potential impact on access to credit.

35(b)(2)(iii)(B)

The Bureau is adopting § 1026.35(b)(2)(iii)(B) and the accompanying commentary, substantially as proposed, with certain technical changes and commentary additions to enhance clarity, as discussed in further detail below. Accordingly, this final rule raises the origination limit for small creditor status from 500 covered transactions secured by a first-lien originated by the creditor and its affiliates, to 2,000 such loans. The final rule also excludes originated loans held in portfolio by the creditor or its affiliates from the limit. The final rule also adds a grace period to allow an otherwise eligible creditor that exceeded the origination limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.

Background—Origination Limit

As part of its rulemakings implementing title XIV of the Dodd-Frank Act, in January 2013, the Bureau adopted an annual origination limit for small creditor status of 500 first-lien covered transactions in the preceding calendar year (§ 1026.35(b)(2)(iii)(B)).¹⁹ Specifically, the origination limit in § 1026.35 (b)(2)(iii)(B) provides that, during the preceding calendar year,

creditors, together with their affiliates, must have originated 500 or fewer covered transactions, as defined by § 1026.43(b)(1), secured by a first lien.

In adopting this limit the Bureau believed that an origination limit, in combination with other requirements, was the most accurate means of confining the special provisions and exemptions to the class of small creditors that focus primarily on a relationship-lending model, a business model the Bureau believed would best facilitate consumers' access to responsible, affordable credit.

However, prior to and after the effective dates of the 2013 Title XIV Final Rules, the Bureau heard repeated expressions of concern that the Bureau's definition of small creditor was under-inclusive and did not cover a significant number of institutions that met the rationale underlying the special provisions and exemptions. Accordingly, on May 6, 2014, in a Notice of Proposed Rulemaking with proposals addressing other elements of the 2013 Title XIV Final Rules, the Bureau also sought comment on the 500 total first-lien origination limit—including whether that limit is sufficient to serve the purposes of the small creditor designation.²⁰

In response to the Bureau's solicitation of comments regarding the origination limit in its May 6, 2014 proposal, industry commenters, including national and state associations of banks, and national and state associations of credit unions, generally supported an increase in the 500 loan origination limit. Consumer groups generally did not support an increase, absent clear evidence that the current limit was significantly harming consumers. These consumer-group commenters asserted that evidence of consumer harm does not exist.

The Bureau's Proposal

The Bureau's proposed rule reflected stakeholder feedback on the small creditor definition received during the period since the issuance of its 2013 Title XIV Final Rules. Specifically, the Bureau proposed to raise the origination limit in § 1026.35(b)(2)(iii)(B) from 500 covered transactions secured by a first-lien originated by the creditor and its affiliates to 2,000 such loans. The Bureau also proposed to exclude loans held in portfolio by the creditor or its affiliates from the limit, so that the limit would only apply to loans that were sold, assigned, or otherwise transferred

by the creditor or its affiliates to another person, or subject to a commitment to be acquired by another person. The Bureau also proposed to add a grace period from calendar year to calendar year to allow an otherwise eligible creditor that exceeded the origination limit in the preceding calendar year to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year if the creditor had not exceeded it in the calendar year before the preceding calendar year.

Proposed comment 35(b)(2)(iii)–1.ii made clear that a loan transferred by a creditor to its affiliate is a loan not retained in portfolio (it is a loan transferred to “another person”) and therefore is counted toward the 2,000 origination limit. The proposed comment also explained and added examples on applying the grace period to the origination limit.

In issuing the proposed rule, the Bureau stated its belief that an adjustment of the current origination limit as proposed, given feedback received on the origination limit up to that point, is justified. The Bureau stated that small creditors serve a particularly critical function for consumers in rural and underserved areas, especially when these creditors make portfolio loans for which there may be no secondary market. At the same time, the Bureau recognized that an expansion of the origination limit could undermine the Bureau's title XIV regulatory protections. The Bureau stated that it wanted to ensure that the origination limit is not set at a level that will allow larger creditors to take advantage of small-creditor status to avoid important regulatory requirements that protect consumers—regulatory requirements that those larger creditors, unlike many smaller creditors, have the capacity to implement effectively.

For the reasons discussed below, the Bureau is adopting § 1026.35(b)(2)(iii)(B), and the accompanying commentary, as proposed, with several technical revisions, and commentary additions and clarifications.

Comments

Comments on the Bureau's proposal to raise the origination limit were divided between industry stakeholders and consumer groups. Industry commenters generally expressed appreciation and support for the proposed rule changes, while consumer representatives and organizations opposed or expressed concern with the proposals.

¹⁹ For a more detailed discussion of the Board's and the Bureau's past rulemaking efforts with regard to the small creditor origination limit, see the proposed rule, 80 FR 7769, 7776–7781.

²⁰ Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z), 79 FR 25730 (May 6, 2014).

Increase limit to 2,000 loans. Industry commenters supported the proposed increase in the origination limit for small creditor status from 500 loans to 2,000 non-portfolio loans. Banks, and their national and state trade associations, were particularly supportive of the 2,000 origination limit. One national trade association stated, for example, that its internal analysis suggested that the Bureau approximated a good target through the proposed 2,000 origination limit. It stated further that from informal polling of its smaller community bank members, 1,000 loan originations per year is a common volume at banks of asset sizes below \$1 billion, and that many may originate more. A state banking association agreed, stating that the Bureau's proposal better aligned the origination limit with the asset limit. This commenter stated that the current rule limiting originations to 500 covered transactions for institutions with up to \$2 billion in assets does not reflect the business models of most community banks. A national association of credit unions, in expressing support for increasing the origination limit to 2,000 loans, stated that, because a large number of its members with assets under \$2 billion originate more than 500 first-lien mortgages, it had long sought an increase in the origination threshold. Another state banking association stated that the increased origination limit will qualify more institutions as small creditors and promote the availability of mortgage credit for their customers.

While national and state credit union trade association commenters were supportive of the Bureau's proposal to raise the limit, a number questioned how the Bureau arrived at 2,000 loans for the limit, and suggested the Bureau analyze increasing the proposed limit. One national association of credit unions, for example, encouraged the Bureau to provide impact analyses that demonstrate how communities, consumers, and creditors would be affected if the limit were raised to 2,500, 3,000, 3,500, or 4,000, as well as the proposed threshold of 2,000, so that stakeholders and the Bureau would have more informed comments regarding what the new limit should be. Some state associations of credit unions suggested that the Bureau raise the limit to 5,000 loans, stating that a threshold at that level is more in line with the reality of credit unions that continue to maintain the virtues of a small creditor, including an elevated level of service and personal attention to borrowers.

Some state associations of credit unions suggested that the Bureau allow institutions with default rates of, for

example, less than 1 percent of covered transactions in the previous calendar year to make up to 4,000 mortgage loans per year and still qualify for the small creditor exemption.

Consumer groups opposed or expressed concern regarding the proposed increase in the origination limit. Some cited a lack of an evidentiary basis to support the expansion of the origination limit, asserting that the Bureau did not provide any evidence that the current limit unreasonably constrains small creditors.

Several consumer organizations in a joint comment expressed concern about the expansion of the origination limit to 2,000 loans, with a specific focus on past practices and lack of regulatory oversight with regard to non-depository institutions. They stated that, in the past, the absence of oversight by federal financial regulators, when combined with inconsistent or weaker state oversight, created an environment where non-depository institutions, in particular, had improper incentives to push consumers into mortgage loans with problematic features. The joint commenters encouraged the Bureau to limit the increase of the origination limit to depository institutions exclusively.

Exclusion of portfolio loans from the limit. Industry commenters also supported the Bureau's proposal to exclude portfolio loans from the origination limit. A national association of banks stated that this exclusion is consistent with the rule's overall goals of ensuring safe lending while promoting credit accessibility. It stated that the success and livelihood of community banks are dependent upon repayment of their portfolio loans and that community banks carefully underwrite these loans based on knowledge of their communities and standards that meet local customer needs. It also noted the sound lending practices of "hometown banks" as demonstrated by their persistently low default and foreclosure rates, even through the recent mortgage crisis. These comments were echoed by several state banking associations.

An organization of state bank supervisors stated that the Bureau's proposal correctly acknowledges that portfolio lenders have strong incentives to consider a borrower's ability to repay a loan. It also stated that raising the small creditor origination limit from 500 to 2,000 loans, and more importantly, excluding loans originated and held in portfolio from that threshold, will provide effective and significant

regulatory relief for community bank portfolio lenders.

A coalition of mid-size banks stated that this aspect of the proposal rests on the understanding that a creditor retains the risk associated with its portfolio loans and therefore has a natural incentive to underwrite such loans deliberately and under conservative standards. It stated further that this incentive is magnified for small and mid-size banks, which have substantially lower capital cushions than their larger counterparts to absorb losses in connection with default. A state association of banks stated that the Bureau is moving in the "right direction" with many of its proposals, but recommended that the Bureau exclude from the origination limit loans transferred by a creditor to a wholly-owned subsidiary.

Grace period for transactions with applications received before April 1st of current calendar year. Industry commenters supported the Bureau's proposal to allow a creditor that exceeded the origination limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to transactions with applications received before April 1 of the current calendar year. Some commenters, however, suggested that the grace period be extended, e.g., to 6 months. These commenters expressed concern that the proposed grace period was too brief for small banks and credit unions to track their originations and to change their operations in a timely manner.

Final Rule

Increase of origination limit to 2,000 loans. As discussed above, the Bureau believes that small creditors serve a critical function for consumers in rural and underserved areas, especially when these creditors make portfolio loans for which there may be no secondary market and that larger creditors may not be willing to make. Industry comments on the current small creditor origination limit indicate that it may be restricting the ability of such creditors with relationship lending models to provide needed credit to qualified borrowers in rural and underserved areas. The intent of the small creditor test is to facilitate lending by those small creditors that provide responsible, affordable credit to consumers, and to enable consumers in rural and underserved areas to access creditors with a lending model, operations, and products that may meet their particular needs.

The Bureau has considered those industry comments that suggested raising the limit above 2,000 loans, or

raising the limit above 2,000 loans for institutions with lower default rates. The Bureau seeks to avoid setting the origination limit, however, at a level that will allow larger creditors to take advantage of small-creditor status. The Bureau's primary goal in setting the limit is to draw the appropriate line between small and large creditors, and to strike the right balance between preserving consumer access to credit and maintaining effective consumer protections. The Bureau believes that the 2,000 non-portfolio loan limit strikes that balance.

The Bureau is finalizing the origination limit as proposed, applying equally to depository institutions and non-depository institutions, as does the current rule. Excluding non-depository institutions from the changes to the origination limit, as suggested by some consumer groups, would require the Bureau to establish, and oversee, two different regulatory schemes for banks and non-banks. This introduction of complexity into the determination of small creditor status would subject similar regulated entities to different regulatory requirements, possibly creating creditor confusion regarding compliance, resulting in increased burden and compliance costs for such creditors. Moreover, the Dodd-Frank Act sets out as one of the objectives for the Bureau enforcing federal consumer financial law consistently without regard to charter type.²¹

Exclusion of portfolio loans from the limit. The Bureau's proposal to exclude loans held in portfolio by the creditor and its affiliates recognizes that the interests of small portfolio lenders are more likely to be aligned with the interests of consumers because small portfolio lenders retain the credit risk for loans held in portfolio. The Bureau has also recognized that many small creditors use a lending model based on maintaining ongoing relationships with their customers and therefore may have a more comprehensive understanding of the financial circumstances of their customers. The Bureau's exclusion of portfolio loans from the origination limit, therefore, is a recognition not only of the small creditor's community-based focus and commitment to relationship-based lending, but also of the inherent alignment of creditors' and consumers' interests associated with portfolio lending by smaller institutions. The Bureau is therefore adopting the

exclusion of portfolio loans from the origination limit as proposed.

The Bureau believes the final rule provides a bright-line approach for determining what is included in the 2,000-origination limit. The Bureau also believes that the bright-line nature of this rule would be undermined by the commenter's recommendation described above that the Bureau not count toward the limit loans transferred by the creditor to its wholly-owned subsidiary. A transfer of a loan by a creditor to a subsidiary, or other affiliate, is not a loan held in the creditor's portfolio. Rather, it is a loan that is sold, assigned, or otherwise transferred by the creditor to another legal entity in this particular situation (see § 1026.2(a)(22), the definition of "person" under Regulation Z). Making distinctions between wholly-owned subsidiaries and other affiliates for purposes of the origination limit would create compliance and oversight complications for creditors, their affiliates, and regulators, for example, because whether a subsidiary is "wholly-owned" could be a complicated analysis in some circumstances.

Grace period for transactions with applications received before April 1st of current calendar year. The Bureau is adopting its proposed grace period to allow a creditor that exceeded the origination limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to transactions with applications received before April 1 of the current calendar year. The Bureau has considered commenters' suggestions for a longer grace period but believes the grace period should provide sufficient time for creditors to make any needed adjustments to come into compliance with the Bureau's regulatory requirements upon exceeding the origination limit. Further, the focus of the grace period on transactions with applications received before April 1, rather than transactions consummated before April 1, will mean that creditors will be able to consummate as small creditors not only transactions that were pending in their pipeline at the beginning of the calendar year but also transactions well into the current calendar year, as long as the application for a transaction was received before April 1 of the current calendar year. For example, if a creditor received a loan application in mid-March of the current calendar year, it could consummate that loan transaction as a small creditor 60 or 90 days later, in mid-June or July of the current calendar year.

This final rule is also making several additional technical and clarifying

language changes to § 1026.35(b)(2)(iii)(B) from the proposed rule, for example, changing the phrase "originated . . . covered transactions" to "extended . . . covered transactions," to make the language of that section consistent with the terminology generally used in Regulation Z. In addition, this final rule makes several technical and clarifying amendments to comment 35(b)(2)(iii)-1.ii, including, for example, technical changes for purposes of consistency between the regulatory text at § 1026.35(b)(2)(iii)(B) and the commentary, and additional guidance regarding the definition of "affiliate." The comment states that, for purposes of § 1026.35(b)(2)(iii)(B), "affiliate" has the same meaning as in § 1026.32(b)(5), which defines "affiliate" as "any company that controls, is controlled by or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)." The commentary also sets out the definition of "control" under the Bank Holding Company Act.

The Bureau believes that this final rule sets the origination limit in an effective and responsible way. As discussed, the Bureau's intent in setting the origination limit is to include small creditors that can provide responsible, affordable credit to consumers and enable consumers, particularly those in rural and underserved areas, to access creditors with a lending model, operations, and products that may meet their particular needs. As further discussed in the section 1022(b) analysis in part VII below, the Bureau estimates that expanding the origination limit to 2,000 originations, and not including portfolio loans in that originations count, will increase the number of small creditors by 700, from approximately 9,700 to approximately 10,400. The Bureau believes that this increase will include creditors with the size and responsible lending models that fit the purpose of small-creditor status that the Bureau intends.

35(b)(2)(iii)(C)

As discussed in further detail below, the Bureau is adopting § 1026.35(b)(2)(iii)(C) and the accompanying commentary, substantially as proposed, with certain technical changes and commentary additions to enhance clarity. Accordingly, this final rule includes in the calculation of the asset limit for small-creditor status the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period. The final rule also adds a grace

²¹ See section 1021(b)(4) of the Dodd-Frank Act, 12 U.S.C. 5511(b)(4), requiring the Bureau to "to ensure that Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition." (emphasis added).

period from calendar year to calendar year to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.

The Bureau's Proposal

Currently, under § 1026.35(b)(2)(iii)(C), eligibility for small creditor status is limited to creditors with less than \$2 billion in assets (or other current yearly adjusted limit) at the end of the preceding calendar year.

The Bureau did not propose a change to the current \$2 billion asset limit in § 1026.35(b)(2)(iii)(C). The Bureau, however, did propose to amend § 1026.35(b)(2)(iii)(C) to include in the calculation of the \$2 billion asset limit the assets of the creditor's affiliates that originate covered transactions secured by a first lien. Proposed comment 35(b)(2)(iii)–1.iii provided that, for purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's "affiliate" as defined in § 1026.32(b)(5) that originates covered transactions as defined by § 1026.43(b)(1) secured by a first lien would be counted toward the asset limit.

In proposing this change, the Bureau noted that counting both the creditor's assets and the assets of the creditor's affiliates that originate mortgage loans would make the tests for determining small-creditor status consistent as between the asset limit in § 1026.35(b)(2)(iii)(C) and the origination limit in § 1026.35(b)(2)(iii)(B), which currently includes the originations of the creditor's affiliates in determining whether the limit has been exceeded. The Bureau stated that this added consistency between the two tests could facilitate creditor compliance with the special provisions and exemptions for small creditors, including those that operate predominantly in rural or underserved areas.

The Bureau also stated its belief, that given the proposed change to the origination limit to exclude the creditor's and its affiliate's portfolio loans from counting toward that limit, the proposed change to the asset limit is necessary to ensure that small-creditor status does not become a means for larger creditors, through the development of affiliate relationships, to evade important consumer protections.

The Bureau stated that it was interested in receiving comments on the

proposed change's potential impact on creditors and access to credit. The Bureau also sought comment on the potential for larger creditors to obtain small-creditor status without this change and the possible impact on consumers.

The Bureau also proposed to add a grace period to the \$2 billion asset limit in § 1026.35(b)(2)(iii)(C), similar to the grace period proposed by the Bureau for the origination limit. This proposed grace period allowed an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year. This proposed grace period was available to creditors that exceeded the asset limit in the preceding calendar year but had not exceeded it in the calendar year before the preceding calendar year. The Bureau stated that it proposed the grace period to provide consistency in requirements for creditors seeking and maintaining small-creditor status.

Proposed comment 35(b)(2)(iii)–1.iii explained that creditors meet the asset limit during calendar year 2016 if the creditors' total assets (which include, in addition to the creditors' assets, the assets of the creditors' affiliates that originate mortgage loans) are under the applicable asset limit on December 31, 2015. The proposed comment explained further that creditors that did not satisfy the applicable asset limit on December 31, 2015 satisfy the asset limit during 2016 if the application for the loan was received before April 1, 2016 and the creditors had total assets under the applicable asset limit on December 31, 2014. The proposed comment also added the threshold for calendar year 2015 to the 2013 and 2014 asset limits currently listed in the comment.

For the reasons discussed below, the Bureau is adopting § 1026.35(b)(2)(iii)(C), and the accompanying commentary as proposed, with several technical revisions, and commentary additions and clarifications.

Comments

Include the assets of the creditor's mortgage affiliates in the asset limit calculation. In general, consumer groups strongly supported the Bureau's proposal to include in the calculation of the asset limit for small creditor status the assets of the creditor's affiliates that originate mortgage loans, citing it as an important "anti-evasion" measure. Specifically, a joint comment from three consumer organizations stated that as a result of the current rule's exclusion of

affiliated assets in calculating the small creditor asset limit, very large financial institutions can create unlimited smaller affiliates and have each of them qualify as a small creditor under the rule. The comment stated further that this is a significant loophole that undermines the consumer protections created by the ability-to-repay rule and the accompanying qualified mortgage designation. Another consumer organization commenter stated that aggregating the loans for all affiliated lenders is an important anti-evasion device that preserves the "valuable" small creditor exemption, while preventing its abuse.

Industry commenters opposed the change. Some stated that if the Bureau adopted the proposal, it needed to increase the asset limit correspondingly. Several commenters, including a national association of banks, recommended an increase in the asset limit to \$10 billion. The proposal, these commenters asserted, effectively lowers the threshold limit for financial institutions with affiliates.

Credit union commenters were concerned with the impact of the proposal on the eligibility of credit unions for small creditor status. A particular concern was regarding those credit unions with affiliated credit union service organizations (CUSOs), with some credit union commenters suggesting that the Bureau exclude CUSOs from treatment as "affiliates" for purposes of the asset limit. In support of different treatment for CUSOs, a credit union trade association commenter distinguished CUSOs from other affiliates, stating that they are limited in scope and purpose. This commenter alternatively requested clarification on how to calculate the asset limit in the case of a CUSO that is owned by multiple credit unions, if the Bureau adopted the proposal. Some credit unions pointed to the Bank Holding Company Act, and the reference to that Act in the Regulation Z definition of "affiliate" that was cited in the proposed rule, as a basis for excluding CUSOs from the asset limit calculation, stating that the Act does not apply to credit unions.

A state association of banks recommended that the Bureau exclude from counting toward the asset limit loans originated by a creditor and/or its affiliates and held in portfolio—including loans held in portfolio by a wholly-owned subsidiary of either. This commenter stated that a "community-based institution should not lose 'small creditor' status simply because it is successful with its portfolio-based

strategy and crosses the \$2 billion” asset limit.

Add grace period for transactions with applications received before April 1st of current calendar year. Industry commenters supported the Bureau’s proposal to allow a creditor that exceeded the asset limit in the preceding calendar year to operate, in certain circumstances, as a small creditor with respect to transactions with applications received before April 1 of the current calendar year. As with the grace period for the origination limit, however, some commenters suggested that the grace period be extended, *e.g.*, to 6 months.

Final Rule

Include the assets of the creditor’s mortgage affiliates in the asset limit calculation. The Bureau believes this change is an important anti-evasion measure that would limit the ability of larger entities to structure arrangements such that one or more affiliates can enjoy the benefits of small creditor status. This change would also make the asset limit calculation more consistent with the origination limit calculation, which currently includes the originations of the creditor’s affiliates.

Accordingly, the Bureau is finalizing § 1026.35(b)(2)(iii)(C) as proposed but with several technical revisions. The final rule changes from the proposed rule the phrase “the creditor and its affiliates that originate covered transactions” to “the creditor and its affiliates that regularly extended covered transactions” in § 1026.35(b)(2)(iii)(C) to make the language of that section more consistent with the terminology generally used in Regulation Z. This change also provides greater clarity that, as stated in the proposed rule,²² only the assets of the creditor’s affiliates that originate covered transactions, and not the assets of other affiliates of the creditor, count toward the limit. The change also indicates that there is a difference between how the covered transactions of affiliates are counted for purposes of the originations limit and how the assets of affiliates are counted for purposes of the asset limit. The originations limit requires a creditor to count each affiliate’s first-lien covered transactions that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person. For purposes of the asset limit, a creditor counts only the assets of those affiliates that regularly extended first-lien

covered transactions and not the assets of other affiliates. This difference prevents the assets of an affiliate that does not regularly extend covered transactions from having a significant impact on the asset limit for a creditor.

To provide additional guidance, the final rule also makes several additions and clarifications to comment 35(b)(2)(iii)–1.iii. Comment 35(b)(2)(iii)–1.iii.A states that only the assets of a creditor’s “affiliate” (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. Comment 35(b)(2)(iii)–1.iii.A also refers to comment 35(b)(2)(iii)–1.ii.C, which discusses the definition of affiliate under 1026.32(b)(5) and the definition of control under the Bank Holding Company Act referenced in that section. Comment 35(b)(2)(iii)–1.iii.B states that only the assets of creditors’ affiliates that regularly extended first-lien covered transactions during the applicable period for determining whether the creditor met the asset limit are included in calculating the creditor’s assets. Comment 35(b)(2)(iii)–1.iii.B then discusses the meaning of “regularly extended,” which is based on the number of times a person extends consumer credit for purposes of the definition of “creditor” in § 1026.2(a)(17), and provides examples on this point. Consistent with § 1026.2(a)(17)(v), because covered transactions are “transactions secured by a dwelling,” an affiliate “regularly extended” covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Comment 35(b)(2)(iii)–1.iii.C states that if multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an “affiliate,” as defined in § 1026.32(b)(5), of the co-owner creditor. Comment 35(b)(2)(iii)–1.iii.C also states that if the co-owner creditor and the company are affiliates, the co-owner creditor counts all of the company’s assets toward the asset limit, regardless of the co-owner creditor’s ownership share. The

comment also notes that because the co-owner and the company are mutual affiliates, the company also would count all of the co-owner’s assets towards its own asset limit.

While credit unions in their comments expressed concern about the impact of the proposal on credit unions affiliated with CUSOs, under the proposal only the assets of affiliates that regularly extended covered transactions are counted toward the creditor’s asset limit. As adopted under the Bureau’s final rule, therefore, only the assets of CUSOs that meet the definition of affiliate in Regulation Z (meeting the “control” test under the Bank Holding Company Act) and that regularly extend covered transactions during the applicable period will be counted toward the asset limit. The Bureau is not excluding CUSOs from possible treatment as affiliates because it remains concerned that a credit union could, under the current asset limit calculation, enter into a relationship with a CUSO or CUSOs to create a large entity that would be eligible for the special provisions and exemptions accorded small creditor status. The Bureau also notes that § 1026.32(b)(5) and its definition of “affiliate” references the Bank Holding Company Act only for the purposes of how control is determined under that Act, which is applicable to the determination of affiliate under Regulation Z regardless of the applicability of the Act to credit unions.

As noted, the Bureau did not propose to change the current \$2 billion asset limit. However, as discussed, some commenters suggested that the Bureau increase that limit to correspond with the Bureau’s proposed inclusion of the assets of a creditor’s affiliates in the asset limit calculation, with several commenters suggesting an increase to \$10 billion. The Bureau established the current \$2 billion asset limit based on its belief that an asset limit is important to preclude a very large creditor with relatively modest mortgage operations from taking advantage of provisions designed for much smaller creditors with much different characteristics and incentives and that lack the scale to make compliance less burdensome. The Bureau believes institutions that fall under the \$2 billion asset limit are more likely to be engaged in relationship-based community lending than larger institutions, with such small entities having a more in-depth understanding of the economic and other circumstances of their customers and community. The Bureau believes that allowing entities of up to \$10 billion in size to take advantage of the exemptions

²² 80 FR 7769, 7781 (February 11, 2015).

and special provisions accorded to small creditors is inconsistent with the purposes of the special provisions and exemptions.

The Bureau did not propose to exclude from the asset limit loans originated by a creditor or its affiliates and held in portfolio, or loans held in portfolio by a wholly-owned subsidiary of either. Given the final rule's exclusion of portfolio loans from the origination limit, also excluding portfolio loans from the asset limit could potentially allow a large creditor with significantly more than \$2 billion in assets due to the size of its loan portfolio, or the size of its affiliate's loan portfolio, to take advantage of the special provisions and exemptions designed for smaller creditors. Such a change would run counter to the Bureau's intent in establishing an asset limit and the Bureau's intent to limit the ability of creditors who become large creditors through the development of affiliate relationships to circumvent consumer protections by obtaining small creditor status.

Add grace period for transactions with applications received before April 1st of current calendar year: The Bureau is finalizing as proposed the addition of a grace period for the determination of the asset limit. It allows a creditor that exceeded the asset limit in the preceding calendar year, but that did not exceed it in the year before the preceding calendar year, to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year. The Bureau has considered comments suggesting a longer grace period but, as with the grace period for the origination limit, believes the grace period for the asset limit as proposed should provide the time for creditors to make any needed adjustments to come into compliance with the Bureau's regulatory requirements upon exceeding the asset limit in the previous year.

35(b)(2)(iii)(D)

As discussed in detail below, the Bureau is adopting § 1026.35(b)(2)(iii)(D) substantially as proposed, with a minor change to enhance clarity. Accordingly, this final rule substitutes January 1, 2016 for January 1, 2014 where it appears in § 1026.35(b)(2)(iii)(D)(1) and its commentary. This change prevents creditors from losing eligibility for the escrow exemption because of escrow accounts they established pursuant to requirements in effect before the effective date of this rule.

The Bureau's Proposal

In general, § 1026.35(b)(2)(iii)(D) prohibits any creditor from availing itself of the exemption from escrow requirements in § 1026.35(b)(2)(iii) if the creditor maintains escrow accounts for any extension of consumer credit secured by real property or a dwelling that it or its affiliate currently services. However, § 1026.35(b)(2)(iii)(D) currently also provides that a creditor may qualify for the exemption if such escrow accounts were established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014 or were established after consummation as an accommodation for distressed consumers.²³ In light of the proposed expansion of the "small" and "rural" definitions in §§ 1026.35(b)(2)(iii)(B) and 1026.35(b)(2)(iv)(A), the Bureau proposed to substitute January 1, 2016 for January 1, 2014 where it appears in § 1026.35(b)(2)(iii)(D)(1) and comment 35(b)(2)(iii)(D)(1)–1. This change was proposed to prevent any creditors that are currently ineligible for the escrow exemption, but that would qualify if the proposed definitional changes were adopted, from losing eligibility for the escrow exemption because of escrow accounts they established for first-lien higher-priced mortgage loans pursuant to requirements in the current rule.

The Bureau solicited comment on the Bureau's proposed amendments to § 1026.35(b)(2)(iii)(D)(1) and comment 35(b)(2)(iii)(D)(1)–1, and specifically the exclusion of escrow accounts established on or after April 1, 2010 and before January 1, 2016 from the limitation in § 1026.35(b)(2)(iii)(D). In particular, the Bureau sought comment on the need for the proposed changes and the impact on consumers of extending the exemption to the escrow requirements in § 1026.35(b)(1).

The Bureau is finalizing § 1026.35(b)(2)(iii)(D)(1) and comment 35(b)(2)(iii)(D)(1)–1 generally as proposed but with a minor change to conform the regulatory and commentary language.

Comments

The commenters on this subject, including a national association of credit unions and state associations of banks and credit unions, supported the provision to disregard escrow accounts that were maintained during a period a

creditor was not exempt from the escrow requirement.

Final Rule

The Bureau has considered the comments received on this provision and is finalizing § 1026.35(b)(2)(iii)(D)(1) and comment 35(b)(2)(iii)(D)(1)–1 generally as proposed but with a minor change to include in the regulation the same language currently in the comment stating that the exemption applies to loans "for which the application was received" on or after April 1, 2010, and before January 1, 2016.

The Bureau does not believe that creditors that maintain escrow accounts they were required to set up before the effective date of this rule should lose the exemption simply because they were required by applicable regulations to establish escrow accounts before January 1, 2016. As the Bureau discussed in the Supplementary Information to the January 2013 Escrows Final Rule and again in finalizing amendments to the January 2013 Escrows Final Rule made in the September 2013 Final Rule, the Bureau believes creditors should not be penalized for compliance with the current regulation.²⁴ This final rule makes creditors eligible for the exemption provided under § 1026.35(b)(2)(iii) if they otherwise meet the requirements of § 1026.35(b)(2)(iii) and they do not establish new escrow accounts for transactions for which they receive applications on or after January 1, 2016, other than those described in § 1026.35(b)(2)(iii)(D)(2).

A small number of commenters recommended additional exemption provisions, including exempting from the escrow requirement all loans held in portfolio if the APR does not exceed APOR by 3.5 percentage points or more. The Bureau notes, however, that the proposal did not address additional exemptions and thus such exemptions are outside the scope of this rulemaking.

35(b)(2)(iv)(A)

As discussed in detail below, the Bureau is adopting § 1026.35(b)(2)(iv)(A) substantially as proposed, amending the current definition of "rural," with certain minor changes to enhance clarity. Accordingly, this final rule adds census blocks that are not in an urban area as defined by the U.S. Census Bureau to the current county-based definition in

²³ Comment 35(b)(2)(iii)(D)(1)–1 clarifies that the date ranges provided in § 1026.35(b)(2)(iii)(D)(1) apply to transactions for which creditors received applications on or after April 1, 2010, and before January 1, 2014.

²⁴ January 2013 Escrows Final Rule, 78 FR 4725, 4739 (Jan. 22, 2013); *see also* September 2013 Final Rule, 78 FR 60382, 60416 (Oct. 01, 2013).

§ 1026.35(b)(2)(iv)(A) and broadens the definition of rural to apply to “an area” rather than “a county.”

The Bureau's Proposal

Section 1026.35(b)(2)(iv)(A) currently defines a county as “rural” during a calendar year if it is neither in a metropolitan statistical area (MSA) nor in a micropolitan statistical area that is adjacent to an MSA, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable UICs, established by the USDA-ERS.

The current rule further provides that a creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “rural” for a particular calendar year. The Bureau proposed to expand the “rural” definition in

§ 1026.35(b)(2)(iv)(A) to capture additional areas classified as “rural” by the Census Bureau, without affecting the status of any counties that would be deemed rural under the current rule. For technical reasons, the Bureau also proposed to move the discussion of the safe harbor list of counties provided by the Bureau that is currently in § 1026.35(b)(2)(iv)(A) and comment 35(b)(2)(iv)(A)–1 to new § 1026.35(b)(2)(iv)(C) and proposed comment 35(b)(2)(iv)(A)–1.iii, which are discussed below.²⁵

The proposal added to the definition of “rural” those census blocks that are not designated as “urban” by the Census Bureau in the urban-rural classification it completes after each decennial census to the county-based definition in § 1026.35(b)(2)(iv)(A). To implement this change, proposed § 1026.35(b)(2)(iv)(A) provided that an area is rural during a calendar year if it is (1) a county that meets the Bureau's current rural definition, or (2) a census block that is not in an urban area, as defined by the Census Bureau using the latest decennial census of the United States.

The Bureau also proposed revisions to comment 35(b)(2)(iv)–1 that: (1) Conform to the changes made to § 1026.35(b)(2)(iv); (2) add a cross-reference to comment 35(b)(2)(iii)–1; and (3) make technical changes for clarity. The Bureau further proposed to update the example provided in comment 35(b)(2)(iv)–2.i to reflect the Bureau's proposal to add rural census blocks to the definition of rural area. Proposed comment 35(b)(2)(iv)–2.i

explains that an area is considered “rural” for a given calendar year based on the most recent available UIC designations by the USDA-ERS and the most recent available delineations of urban areas by the Census Bureau that are available at the beginning of the calendar year. As the proposed comment noted, these designations and delineations are updated by the USDA-ERS and the Census Bureau respectively once every ten years. The comment provides an illustrative example.

The Bureau solicited comment on whether it should add a second prong to the rural definition based on the Census Bureau's urban-rural classification and, if so, whether it should make any modifications to the Census Bureau's classification in doing so. Although the Bureau proposed to maintain the current county-based test as part of the new definition, the Bureau also solicited comment on whether the counties included in the current definition should be expanded, contracted, eliminated, or maintained as is. The Bureau also requested feedback on any alternative approaches to defining “rural” areas in § 1026.35(b)(2)(iv)(A) that commenters believe might be preferable to the Bureau's proposal.

For the reasons discussed below, the Bureau is adopting § 1026.35(b)(2)(iv)(A) and the accompanying commentary as proposed, with minor technical revisions.

Comments

Creditor commenters, including national and state associations of banks and credit unions and individual banks and credit unions, as well as non-creditor commenters, including national associations of home builders, realtors, and banking supervisors, generally supported the expanded definition of “rural.” For example, a national banking association stated that the Census Bureau's urban-rural classification appeared to be the most suitable for the purposes and objectives of the regulations, and a regional association of credit unions referred to the proposed definition as a “common sense approach” that it urged the Bureau to adopt. Some of the commenters supporting the proposed change also noted the need to have an effective automated tool for determining whether a covered transaction is made in an area that is rural because of the difficulties inherent in considering millions of census blocks. These concerns are addressed below in the discussion of the Bureau's automated tool.

Other commenters, generally consumer groups, noted that the current definition has not been in place long enough for the Bureau to discern its effects and questioned whether data supported the proposed changes. These commenters recommended caution before adopting any changes because consumers may be harmed by a broader definition. They also recommended narrowly tailoring any changes to the definition to prevent non-rural lenders from taking advantage of the special provisions and exemptions. These commenters and a few others also argued that high-cost mortgages should not be eligible for qualified mortgage status under any circumstances.

A few commenters also recommended alternative definitions. A state association of banks and a state association of credit unions recommended only excluding “urbanized areas” of 50,000 or more from the definition of rural. A national organization representing banking supervisors and one representing real estate brokers and agents both recommended the Bureau establish an application process under which a person who lives or does business in a state may apply to have an area designated as a rural area. A national nonprofit organization that supports affordable housing efforts in rural areas noted that a reliance on Census Bureau classifications for rural areas may allow rural area determinations for lending activity that is actually suburban in nature, which may have the unintended consequence of diverting credit away from truly rural communities and consumers. This commenter recommended using a sub-county designation of rural and small-town areas which incorporates measures of housing density and commuting at the Census tract level.

Final Rule

The Bureau is finalizing § 1026.35(b)(2)(iv)(A) generally as proposed with minor changes in the associated commentary to provide greater clarity and consistency with other changes made in this final rule.²⁶ In developing the proposal, the Bureau

²⁶ The addition of a census block prong in § 1026.35(b)(2)(iv)(A)'s “rural” definition does not affect the scope of the exemption from a requirement to obtain a second appraisal for certain higher-priced mortgage loans adopted by the January 2013 Interagency Appraisals Final Rule, as that exemption applies to credit transactions made by a creditor in a “rural county” as defined in § 1026.35(b)(2)(iv)(A). This definition of “rural county” is retained in § 1026.35(b)(2)(iv)(A) as § 1026.35(b)(2)(iv)(A)(1) and the reference to comment 35(b)(2)(iv)–1 in comment 35(c)(4)(vii)(H) is retained in comment 35(b)(2)(iv)–1.iii.A.

²⁵ This proposed move was consistent with a similar move that the Bureau proposed with respect to the safe harbor discussion that currently appears with the “underserved” definition in § 1026.35(b)(2)(iv)(B).

considered a variety of possible approaches that could be used to identify areas that are smaller than counties and that may be rural in nature, and the Bureau considered the alternative definitions commenters recommended. Of these, the Bureau believes that the urban-rural classification completed by the Census Bureau every ten years is the most suitable for the Bureau's current purposes. This classification is done at the level of the census block, which is the smallest geographic area for which the Census Bureau collects and tabulates decennial census data. While there are only about 3,000 counties in the United States, there are approximately 11 million census blocks.²⁷ The Census Bureau delineates census blocks as "urban" or "rural" based on each decennial census and most recently released its list of urban areas based on the 2010 Census in 2012. For the 2010 Census, an urban area consists of "a densely settled core of census tracts and/or census blocks that meet minimum population density requirements, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core."²⁸ The Census Bureau identifies two types of urban areas: "urbanized areas" of 50,000 or more people, and "urban clusters" of at least 2,500 and less than 50,000 people. Under the Census Bureau's classification, "rural" encompasses all population, housing, and territory not included within either type of urban area.

The definition of "rural" in this final rule maintains the bright-line, easy-to-apply county-based test from the current definition, while also bringing into the definition rural pockets within counties that are non-rural under the current rule.²⁹ Because the Census Bureau's

classification is done at the census block level, it provides much more granularity than any county-based metric. To prepare the rural-urban classification, the Census Bureau uses measures based primarily on population counts and residential population density, but also considers a variety of criteria that account for nonresidential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape.³⁰ Since the 1950 Census, the Census Bureau has reviewed and revised these criteria as necessary for each decennial census. The Census Bureau completes its rural-urban classification every ten years based on the results of the decennial census, on roughly the same schedule that the USDA-ERS uses in updating its UIC designations, which should provide a relatively stable but up-to-date measure.

The Bureau believes that use of the Census Bureau's classifications provides consistency, certainty, stability, and objectivity to the "rural" definition. The Census Bureau's classifications generally change only every ten years and, once established, provide a bright-line test that is not subject to discretionary judgments and manipulation, which could result under some commenters' more complex classification procedures, including those to establish an application process to have an area designated as a rural area. Used in conjunction with automated address search tools, as discussed more fully below, the Census Bureau's classifications allow the use of an easy-to-apply test, as originally provided under the county-based definition, to continue, thereby avoiding regulatory and administrative complexity.

35(b)(2)(iv)(B)

As discussed below, the Bureau is adopting § 1026.35(b)(2)(iv)(B) and (C) and comments 35(b)(2)(iv)–1, 35(b)(2)(iv)–1.iii, and 35(b)(2)(iv)–2.ii substantially as proposed, with certain minor changes to enhance clarity. Accordingly, this final rule makes minor technical and conforming changes to the definition of "underserved" and the regulation text and commentary discussed below.

The Bureau's Proposal

Section 1026.35(b)(2)(iv)(B) defines a county as "underserved" during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. It further provides that a creditor may rely as a safe harbor on the list of rural or underserved counties published by the Bureau to determine whether a county qualifies as "underserved" for a particular calendar year.³¹

For technical reasons, the Bureau proposed to move the discussion of the safe harbor county lists provided by the Bureau from § 1026.35(b)(2)(iv)(B) and comment 35(b)(2)(iv)–1 to § 1026.35(b)(2)(iv)(C) and comment 35(b)(2)(iv)–1.iii.A.³² The Bureau also proposed other technical changes to § 1026.35(b)(2)(iv)(B) and comments 35(b)(2)(iv)–1 and 35(b)(2)(iv)–2.ii and proposed to add a reference in comment 35(b)(2)(iv)–2.ii to the new grace period under § 1026.35(b)(2)(iii)(A). The Bureau did not propose a substantive change to the definition of underserved.

Comments

The Bureau did not receive comments regarding the proposed technical and conforming changes to § 1026.35(b)(2)(iv)(B), § 1026.35(b)(2)(iv)(C), comments 35(b)(2)(iv)–1, 35(b)(2)(iv)–2.ii, and 35(b)(2)(iv)–1.iii.A. Although the Bureau did not solicit comment regarding the definition of "underserved," the Bureau received four comments suggesting the Bureau consider an alternative definition of "underserved." These commenters suggested that the Bureau's definition of "underserved" is under-inclusive. These commenters recommended that the Bureau consider expanding or changing the meaning of "underserved" to include the consideration of socioeconomic factors to determine underserved status. Specifically, they recommended that underserved areas include low- and moderate-income communities with limited credit options.

²⁷ Census Bureau, *2010 Census Tallies of Census Tracts, Block Groups & Blocks*, <https://www.census.gov/geo/maps-data/data/tallies/tractblock.html>.

²⁸ Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, <https://www.census.gov/geo/reference/ua/urban-rural-2010.html>. To qualify as an urban area, the territory identified must encompass at least 2,500 people, of which at least 1,500 must reside outside institutional group quarters such as correctional facilities, group homes for juveniles, and mental (psychiatric) hospitals.

²⁹ For example, Culpeper County, Virginia is part of the Washington-Arlington-Alexandria, DC-VA-MD-WV MSA and does not currently qualify as "rural" under existing § 1026.35(b)(2)(iv)(A). Because the Census Bureau defined some census blocks within Culpeper County as rural in its most recent rural-urban classification, under this final rule, those portions of the county qualify as rural

under § 1026.35(b)(2)(iv)(A) until the next Census Bureau rural-urban classification.

³⁰ See *Qualifying Urban Areas for the 2010 Census*, 77 FR 18652 (March 27, 2012); *Urban Area Criteria for the 2010 Census*, 76 FR 53030 (Aug. 24, 2011); *Proposed Urban Area Criteria for the 2010 Census*, 75 FR 52174 (Aug. 24, 2010).

³¹ The rural and rural or underserved safe harbor lists are published on the Bureau's Web site on the regulatory guidance page at <http://www.consumerfinance.gov/guidance/>.

³² This proposed move is consistent with a similar move that the Bureau proposed with respect to the safe harbor discussion that currently appears with the "rural" definition in § 1026.35(b)(2)(iv)(A).

Final Rule

For the reasons discussed below the Bureau is not substantively changing the definition of “underserved” in this final rule. The Bureau is adopting substantially as proposed the technical and conforming changes to § 1026.35(b)(2)(iv)(B) and comments 35(b)(2)(iv)–1 and 35(b)(2)(iv)–2.ii. In addition, the Bureau is adopting substantially as proposed § 1026.35(b)(2)(iv)(C) and comment 35(b)(2)(iv)–1.iii.A.

As stated in the preamble to the proposed rule the current definition of “underserved” appropriately identifies areas where the withdrawal of a creditor from the market could leave no meaningful competition within that market. The designation of an area as “underserved” under the Bureau’s rules is intended to identify communities that have few creditors and, thus, may be subject to access to credit issues. The Bureau’s definition focuses on whether there is access to credit by looking at the number of creditors competing for mortgage business in an area. The economic and demographic-based definitions suggested by commenters would introduce factors unrelated to competition for consumers’ mortgage business.

The changes to the “rural” definition discussed above expand the term “rural or underserved” for purposes of the exemption to the escrow requirement for higher-priced mortgage loans in § 1026.35(b)(2)(iii), the allowance for balloon-payment qualified mortgages in § 1026.43(f), and the exemption from the balloon-payment prohibition on high-cost mortgages in § 1026.32(d)(1)(ii)(C). Because these provisions reference “underserved” only in the alternative with “rural” (“rural or underserved”), the Bureau believes that the expansion of the “rural” definition in this final rule addresses concerns that have been raised by commenters about the overall coverage of “rural or underserved.”³³

The Bureau also notes that it did not propose or seek comment on substantive revisions to the definition of “underserved,” and that such changes to that definition are outside the scope of this rulemaking.

The Bureau notes that comment 35(b)(2)(iv)–1.ii refers to several current HMDA provisions. The Bureau’s HMDA rulemaking proposed to modify the referenced provisions.³⁴ The Bureau expects to issue a notice in the future

making conforming changes to comment 35(b)(2)(iv)–1.ii, should such change be necessary after issuance of the HMDA final rule.

35(b)(2)(iv)(C)

As discussed in detail below, the Bureau is adopting the revisions related to the safe harbors § 1026.35(b)(2)(iv)(A) and (B) and § 1026.35(b)(2)(iv)(C)(1), (2) and (3) and comment 35(b)(2)(iv)–1, 35(b)(2)(iv)–1.iii.A, .B, and .C substantially as proposed, with certain minor changes to enhance clarity. Accordingly, this final rule adds two new safe harbor tools and makes minor conforming changes to the regulation text and commentary discussed below.

The Bureau’s Proposal

Section 1026.35(b)(2)(iv)(A) and (B) and comment 35(b)(2)(iv)–1 currently provide that a creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “rural” or “underserved” for a particular calendar year.³⁵ As noted above, the Bureau proposed to move the discussion of these county lists to § 1026.35(b)(2)(iv)(C)(1) and comment 35(b)(2)(iv)–1.iii.A. To facilitate compliance under the expanded definition of “rural,” the Bureau also proposed to add two additional safe harbors in proposed §§ 1026.35(b)(2)(iv)(C)(2) and (3), for an automated address search tool on the Census Bureau’s Web site and an automated tool that may be provided on the Bureau’s Web site.

The Bureau proposed technical changes to the safe harbor provision relating to its county lists and also proposed to publish its county lists in the **Federal Register**. Proposed comment 35(b)(2)(iv)–1.iii.A also stated that, to the extent that U.S. territories are treated by the Census Bureau as counties and are neither MSAs nor micropolitan statistical areas adjacent to MSAs, such territories will be included on these lists as rural areas in their entirety.

Because the proposed changes to § 1026.35(b)(2)(iv) created the possibility that some counties would include both rural and non-rural areas, the Bureau also adjusted the discussion of the county lists in proposed comment 35(b)(2)(iv)–1.iii.A. to § 1026.35(b)(2)(iv)(C)(1) to make it clear that the lists would not include counties that are partially rural and partially non-rural. The Bureau does not believe it

would be practical to publish lists of the census blocks that would qualify as rural under proposed

§ 1026.35(b)(2)(iv)(A)(2) because there are approximately 11 million census blocks in the United States.

To assist creditors in implementing the proposed “rural” definition, the Bureau proposed to develop and maintain on its Web site a tool that allows creditors to enter property addresses, both individually and in batches, to determine whether a property is located in a “rural or underserved” area for the relevant calendar years. The Bureau stated in the preamble to the proposed rule that it did not anticipate that the Bureau’s automated tool would be available before the proposed effective date of the final rule, but it proposed that such a tool could provide a safe harbor if and when it becomes available.

Specifically, proposed § 1026.35(b)(2)(iv)(C)(2) provided that a property shall be deemed to be in an area that is “rural or underserved” in a particular calendar year if the property is designated as rural or underserved for that calendar year by any automated tool that the Bureau provides on its Web site.

In the preamble to the proposed rule, the Bureau noted that, until any automated tool that the Bureau may develop becomes available, the Bureau anticipated that creditors would use resources provided by the Census Bureau to determine whether proposed § 1026.35(b)(2)(iv)(A)(2), the new second prong of the proposed rural definition, is satisfied. The Bureau noted that the Census Bureau publishes maps, lists, and other reference materials on its Web site.³⁶ The Bureau also discussed how the Census Bureau currently provides on its Web site an automated address search tool that allows users to enter a property address to obtain census information about the property, including a designation that the property is in an urban area if that is the case.³⁷ The Bureau proposed that this automated tool or any similar automated address search tool provided

³⁶ Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, available at <https://www.census.gov/geo/reference/ua/urban-rural-2010.html>.

³⁷ See generally Census Bureau, *Frequently Asked Questions: How can I determine if my address is urban or rural?*, available at <https://ask.census.gov/faq.php?id=5000&faqId=6405> (The 2010 Urban Areas can be viewed using Reference maps and the TIGERweb interactive web mapping system; See also Census Bureau, *American FactFinder* available at <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?ref=addr&refresh=t> (providing a link to an address search function that allows users to find Census data by entering a street address)).

³³ As discussed in the section 1022(b) analysis in Part VII below, the Bureau estimates that the number of rural small creditors will increase from approximately 2,400 to approximately 4,100.

³⁴ 79 FR 51732 (Aug. 29, 2014).

³⁵ A historical record of each year’s lists is available at: <http://www.consumerfinance.gov/guidance/#ruralunderserved>.

by the Census Bureau could be relied on as a safe harbor. Specifically, proposed § 1026.35(b)(2)(iv)(C)(3) provided a safe harbor for a property not designated as located in an urban area as defined by the most recent delineation of urban areas announced by the Census Bureau through any automated address search tool that the Census Bureau provides on its public Web site for that purpose. Proposed comments 35(b)(2)(iv)–1.iii.B and .C discussed the safe harbors related to these online tools. Proposed comment 35(b)(2)(iv)–1.iii.C clarified the calendar years for which the Census Bureau’s automated address search tool can be used by noting that, for any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a “rural” area if the search results provided for the property by any such tool available on the Census Bureau’s public Web site do not designate the property as being in an urban area. This is consistent with proposed comment 35(b)(2)(iv)–2.i, which explains that an area is considered “rural” for a given calendar year based on the most recent available UIC designations by the USDA–ERS and the most recent available delineations of urban areas by the Census Bureau that are available at the beginning of the calendar year.

The Bureau solicited comment on whether Regulation Z should provide a safe harbor for automated tools of this nature. The Bureau also requested feedback relating to how it could make the automated tool it is considering developing most useful to industry and other stakeholders as they implement the rural and underserved definitions.

Comments

The Bureau did not receive comments regarding the publication of the county lists to the **Federal Register**; clarification regarding the determination of “rural or underserved” status of U.S. territories; or the changes to proposed comment 35(b)(2)(iv)–1.iii.A. to conform to the proposed changes to § 1026.35(b)(2)(iv). The comments received focused on the proposed safe harbor tools. Most comments were in support of the Bureau’s proposed automated tool. Many commenters suggested the Bureau’s proposed automated tool with a batch feature is necessary for compliance if the Bureau finalizes the definition of “rural” as proposed because small creditors do not have the capacity (or they need more time) to develop tools to integrate the new census block typology. One state banking association commenter suggested that the Bureau delay the

effective date of the rule until the Bureau’s proposed automated tool is available because identifying “rural” areas under the proposed definition of “rural” would be difficult for small institutions and presents a compliance risk that these institutions may not be willing to take. A national banking association and several state banking associations recommended an extension of the two year transition period, under § 1026.43(e)(6), allowing small creditors to issue balloon-payment qualified mortgages and high-cost mortgages regardless of whether they operate predominantly in rural or underserved areas, until banks can access the Bureau’s automated tool. These commenters asserted that if the transition period is not extended until an automated tool is available, many small institutions would be incapable of ensuring compliance and may curtail or eliminate consumer mortgage financing.

The Bureau also received several comments about the current usability of the Census Bureau’s automated address search tool. These commenters stated that the Census Bureau’s automated address search tool is not efficient for business use. One commenter criticized the accuracy and usability of the Census Bureau’s automated address search tool but did not provide examples of inaccuracies. The commenter suggested that the Bureau use housing density and commuter information on a census tract level to define rural areas because a scheme based on the census tract level is more accurate. The commenter believed the Bureau’s proposed automated tool would only add to the complexity of the proposed census block scheme used to determine “rural” status.

The Bureau received one comment addressing the technical and conforming changes to the provisions discussing the safe harbors. The commenter was concerned about the change in language in § 1026.35(b)(2)(iv)(A) and (B) that states, “a creditor *may* rely as a safe harbor on * * *

to the conforming change in proposed § 1026.35(b)(2)(iv)(C) that states, “[a] property *shall* be deemed to be in an area that is “rural” or “underserved” in a particular calendar year” The commenter believed the Bureau’s use of the word *shall* makes the use of the safe harbor tools mandatory.

Final Rule

The Bureau is adopting these provisions substantially as proposed, moving the discussion of the safe harbor lists in § 1026.35(b)(2)(iv)(A) and (B) and comment 35(b)(2)(iv)–1 to

§ 1026.35(b)(2)(iv)(C)(1) and comment 35(b)(2)(iv)–1.iii.A. The Bureau is revising § 1026.35(b)(2)(iv)(C)(1) and comment 35(b)(2)(iv)–1.iii.A to clarify that counties are rural or underserved under the Bureau’s definitions although they may contain census blocks that are designated by the Census Bureau as urban. This revision provides greater clarity on the effect of the list of rural or underserved counties, which is that a property in a listed county is deemed to be in a rural area even if the property is located in a census block that the Census Bureau designates as urban. The Bureau is also finalizing as proposed the addition of the two new safe harbor tool provisions in § 1026.35(b)(2)(iv)(C)(2) and (3), and new comments 35(b)(2)(iv)–1.iii.B and .C, with minor changes to provide greater clarity.

The Bureau is clarifying new comment 35(b)(2)(iv)–1.iii.B and .C, to facilitate compliance. For both the Bureau’s and the Census Bureau’s automated tools, the comments state that a printout or electronic copy from an automated tool designating a particular property as being in a rural or underserved area may be used as “evidence of compliance” that a property is in a rural or underserved area for purposes of the Regulation Z record retention requirements in § 1026.25. The Bureau is also adding new comment 35(b)(2)(iv)–1.iii.D to clarify that a property is deemed to be in a rural or underserved area if that designation is provided by any one of the safe harbors, even if that designation is not provided by any of the other safe harbors, and regarding proof of compliance without the use of the enumerated safe harbor tools in § 1026.35(b)(2)(iv)(C)(1) through (3). New comment 35(b)(2)(iv)–1.iii.D states that the enumerated safe harbor tools are not the exclusive means by which a creditor can demonstrate that a property is in a “rural or underserved” area as defined in § 1026.35(b)(2)(iv)(A) and (B). The comment states however, that creditors are required to retain “evidence of compliance” in accordance with § 1026.25, including determinations of whether a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B).

The Bureau considered the comment regarding the availability of the Bureau’s proposed automated tool by the proposed effective date, the concern that small institutions could not benefit from the expanded definition of “rural” because they do not have the capacity to determine the rural status of a property under the new definition of “rural,” and the suggestion that small institutions would not be willing to risk

a compliance breach by trying to determine rural status without the Bureau's proposed automated tool. The Bureau also considered the comments recommending an extension of the two year transition period, under § 1026.43(e)(6), until creditors can access the Bureau's automated tool. The Bureau expects that its automated tool will be available by the effective date of this final rule, which should address the concerns of these commenters. Further, the Bureau intends to provide guidance to industry stakeholders through implementation materials on how to access and use the Bureau's automated tool. In addition, creditors may use the Census Bureau's automated tool, or other means³⁸ besides the designated safe harbor tools, to determine the "rural" status of a property as long as the creditor retains "evidence of compliance" in accordance with § 1026.25 of whether a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B). See comment 35(b)(2)(iv)–1.iii.B, .C, and .D discussed above.

The Bureau also considered the commenters concerns about the Census Bureau's automated address search tool and their requests that the Bureau make available its automated tool before the effective date of this rule. As noted above, the Bureau expects its automated tool will be ready by the effective date of this rule, which should address the usability concerns about the Census Bureau's automated address search tool. Creditors are encouraged to use the Bureau's automated tool, which will have a user-friendly interface and a batch upload feature. One commenter questioned the use of the Census Bureau's automated address search tool and suggested the Bureau adopt a rural classification scheme based on the use of census tracts and factors such as housing density and commuting. The Bureau believes such a system would increase administrative burden and complexity and reduce the objectivity achieved by a definition of rural based on census blocks. Accordingly, the Bureau is not adopting such a classification scheme.

Finally, one commenter believed the use of the word "shall" in § 1026.35(b)(2)(iv)(C) makes the use of the safe harbor tools mandatory. Creditors are not required to use the safe harbor tools. "Shall" is used in

§ 1026.35(b)(2)(iv)(C) to convey that a creditor who uses one or both of the tools receives a conclusive presumption of compliance with the Bureau's definition of "rural or underserved." Using the word *may* in this context would cause uncertainty with regard to the effect of the safe harbor tool's designation with respect to a particular property.

Section 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions

The commentary to § 1026.36(a) discusses the meaning of the term "loan originator." The Bureau did not propose changes to this commentary. However, the Bureau discovered a technical error in comment 36(a)–1.i.A.3. This comment contains a reference to comment "36(a)4.i." The correct format for this reference is "36(a)–4.i." Thus, the Bureau is adopting a technical amendment to comment 36(a)–1.i.A.3 to revise the incorrect format. No substantive change is intended.

Section 1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(e) Qualified Mortgages

43(e)(5) Qualified Mortgage Defined—Small Creditor Portfolio Loans

As discussed in detail below, the Bureau is adopting comments 43(e)(5)–4 and 43(e)(5)–8 substantially as proposed, with certain minor changes to enhance clarity. Accordingly, this final rule makes minor technical and conforming changes to this commentary to § 1026.43(e)(5) discussed below.

The Bureau's Proposal

Section 1026.43(e)(5) defines a category of qualified mortgages originated by certain small creditors that enjoy special treatment under the ability-to-repay rules. These mortgages must be originated by creditors that meet the origination limit and asset limit in § 1026.35(b)(2)(iii)(B) and (C), and the creditors must hold the loans in portfolio for at least three years after consummation, with certain exceptions. Such a small creditor portfolio loan can be a qualified mortgage even if the borrower's total debt-to-income ratio exceeds the 43 percent debt-to-income ratio limit that otherwise applies to general qualified mortgage loans under § 1026.43(e)(2). Qualified mortgages originated by small creditors are entitled to a safe harbor under the Bureau's ability-to-repay rule if the loan's APR does not exceed the applicable APOR by 3.5 or more percentage points—in contrast to the general qualified

mortgage safe harbor which covers loans with APRs that do not exceed the applicable APOR by 1.5 or more percentage points.

The Bureau proposed several changes to the commentary to § 1026.43(e)(5) to conform to the Bureau's proposed changes to the origination limit and the asset limit in § 1026.35(b)(2)(iii)(B) and (C). Proposed comment 43(e)(5)–4 regarding creditor qualifications provides that to be eligible to make a qualified mortgage under § 1026.43(e)(5) the creditor has to satisfy the requirements of § 1026.35(b)(2)(iii)(B) and (C), including the Bureau's proposed changes to the origination limit and the asset limit, respectively, and the addition of the grace periods. The Bureau proposed to revise comment 43(e)(5)–8, regarding the transfer of a qualified mortgage to another qualifying creditor prior to three years after consummation, to conform to the proposed origination limit and asset limit in § 1026.35(b)(2)(iii)(B) and (C).

Final Rule

The Bureau did not receive comments regarding the conforming changes to comments 43(e)(5)–4 and 43(e)(5)–8. The Bureau is finalizing as proposed, with minor technical revisions to provide greater clarity, comments 43(e)(5)–4 and 43(e)(5)–8.

43(e)(6) Qualified Mortgage Defined—Temporary Balloon-Payment Qualified Mortgage Rules

43(e)(6)(ii)

As discussed in detail below, the Bureau is adopting § 1026.43(e)(6)(ii) as proposed. Accordingly, this final rule extends the temporary balloon-payment qualified mortgage provision to apply to covered transactions for which applications are received before April 1, 2016.

The Bureau's Proposal

Section 1026.43(e)(6) provides for a temporary balloon-payment qualified mortgage that requires all of the same criteria to be satisfied as the balloon-payment qualified mortgage definition in § 1026.43(f) except the requirement that the creditor extend more than 50 percent of its total first-lien covered transactions in counties that are "rural" or "underserved." Pursuant to § 1026.43(e)(6)(ii), this temporary provision currently applies only to covered transactions consummated on or before January 10, 2016 (the sunset date). The Bureau proposed to change § 1026.43(e)(6)(ii) to provide that the temporary provision applies to covered transactions for which the application was received before April 1, 2016. The

³⁸ As discussed above, creditors may use Census Bureau maps, lists, and other reference materials to demonstrate compliance with § 1026.35(b)(d)(iv)(A), but alternative methods do not have the benefit of a safe harbor and a creditor must retain "evidence of compliance" in accordance with § 1025.25.

change was proposed to give small creditors more time to understand how any changes that the Bureau may make to the rural definition and lookback period will affect their status, if at all, and to make any required changes to their business practices.³⁹ This proposed change to § 1026.43(e)(6)(ii) would have also affected the HOEPA balloon-loan provisions because the Bureau had extended the exception to the general prohibition on balloon features for high-cost mortgages under § 1026.32(d)(1)(ii)(C) to allow small creditors, regardless of whether they operate predominantly in “rural” or “underserved” areas, to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under §§ 1026.43(e)(6) or 1026.43(f). The Bureau solicited comment on whether it should change the sunset date in § 1026.43(e)(6)(ii) and whether § 1026.43(e)(6)(ii) should use the date the application was received or the consummation date in applying the sunset date. For the reasons discussed below, the Bureau is adopting § 1026.43(e)(6)(ii) as proposed.

Comments

Creditors, including national and state banking associations, individual banks, and national and state associations of credit unions, generally appreciated the proposed extension to cover applications received before April 1, 2016. However, these commenters recommended that either the provision should be extended indefinitely or, if not made permanent, extended for a longer period than proposed. Suggested extensions ranged from until the Bureau’s automated tool is operational to as much as two additional years.

A comment from a state association of credit unions stated this provision should be extended indefinitely until such time as the Bureau has fully studied the benefits that loans with balloon payments provide to consumers and the impact on consumers if they were unable to obtain this type of loan. A national association of banks recommended a one-year extension to allow further study of the issue, and individual banks and credit unions stated a one-year extension would help them transition from balloon loans to adjustable-rate mortgage lending programs. A national banking organization and several state banking associations urged that the sunset be

delayed until banks can access an official automated tool to identify rural areas, because without such an automated tool many small institutions would be incapable of ensuring compliance with the definitions, and may curtail or eliminate consumer mortgage financing.

Final Rule

The Bureau has considered the comments submitted on this provision and is finalizing § 1026.43(e)(6)(ii) as proposed. As stated in the May 2013 ATR Final Rule, the Bureau established a temporary provision because “the Bureau believes it is appropriate to use the two-year transition period to consider whether it can develop more accurate or precise definitions of rural and underserved. However, the Bureau believes that Congress made a deliberate policy choice in the Dodd-Frank Act not to extend qualified mortgage status to balloon-payment products outside of such [rural] areas.” 78 FR 35429, 35490 (June 12, 2013). The rule as amended here will permit creditors to continue to make balloon-payment qualified mortgages beyond April 1, 2016 as long as the application for the transaction is received before that date, and provides additional time beyond the original and expected sunset date for creditors to make necessary adjustments. With respect to the commenters that recommended an extension until an automated tool is available, as discussed above, the Bureau expects to have such an automated tool in place and operational upon the effective date of this final rule.

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

As discussed below, the Bureau is adopting comments 43(f)(1)(vi)–1, 43(f)(1)(vi)–1.i.A and .B, and 43(f)(2)(ii)–1 substantially as proposed, with certain minor changes to enhance clarity. Accordingly, this final rule makes minor technical and conforming changes to the commentary discussed below.

The Bureau’s Proposal

Section 1026.43(f)(1) provides an exemption to the general prohibition on qualified mortgages having balloon-payment features under § 1026.43(e)(2)(C) if the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(A), (B), and (C) and other criteria are met. Pursuant to § 1026.43(f)(2), a qualified mortgage made under this section (a “balloon-payment qualified mortgage”) immediately loses its qualified mortgage status upon transfer in the first three years after consummation, with certain

exceptions. The Bureau proposed to revise comments 43(f)(1)(vi)–1 and 43(f)(2)(ii)–1 to reflect the proposed revisions that are described in the section-by-section analysis of § 1026.35 above, including the new grace periods and expanded tests that the Bureau proposed in § 1026.35(b)(2)(iii)(A), (B), and (C), the broader rural definition that the Bureau proposed in § 1026.35(b)(2)(iv)(A), and the safe harbor provisions that the Bureau proposed in § 1026.35(b)(2)(iv)(C). Proposed comment 43(f)(1)(vi)–1.i.A and .B also included updated examples to reflect these changes in the regulation text.

In lieu of listing out the asset limits for every year in comment 43(f)(1)(vi)–1.iii, as the asset limit is adjusted for inflation each year, the Bureau also proposed to include a cross-reference in that comment indicating that the Bureau publishes notice of the new asset limit each year by amending comment 35(b)(2)(iii)–1.iii. The Bureau also proposed technical changes to comments 43(f)(1)(vi)–1, 43(f)(2)–2, and 43(f)(2)(ii)–1.

Final Rule

The Bureau did not receive comments that addressed the proposed revisions to comments 43(f)(1)(vi)–1, 43(f)(2)(ii)–1 and proposed comment 43(f)(1)(vi)–1.i.A and .B. The Bureau is finalizing as proposed, with minor technical revisions to provide greater clarity, the aforementioned comments.

VI. Effective Date

As discussed in detail below, the Bureau is adopting the effective date for this final rule as proposed. The amendments in this final rule are effective January 1, 2016.

The Bureau’s Proposal

The Bureau proposed that all of the changes in its proposed rule take effect on January 1, 2016. Specifically, the Bureau proposed that its proposed amendments to § 1026.35(b)(2)(iii)(A), (B), (C), and (D) and its commentary, to § 1026.35(b)(2)(iv)(A), (B), and (C) and its commentary, to § 1026.43(e)(6), and to the commentary to §§ 1026.43(e)(5) and 1026.43(f)(1) and (f)(2), take effect for covered transactions consummated on or after January 1, 2016. The Bureau stated that it believed that this proposed effective date provided a date that is consistent with the end of the calendar year determinations required to be made with regard to the applicability of the special provisions and exemptions that apply to small creditors under the Bureau’s regulations, as amended by the Bureau’s proposal, and would therefore

³⁹ Qualified mortgages consummated under § 1026.43(e)(6) based on applications received before April 1, 2016 would retain their qualified mortgage status after that date, as long as the other requirements of § 1026.43(e)(6) are met.

facilitate compliance by creditors. The Bureau requested comment on whether the proposed effective date is appropriate, or whether the Bureau should adopt an alternative effective date.

Comments

A community bank trade association commenter and several credit union commenters recommended that the final rule provide an earlier optional effective date—specifically, on publication of the final rule—so that banks eligible for small creditor and small creditor rural status under the expanded definitions in the rule could take earlier advantage of the special provisions and exemptions that would become available to them. One commenter suggested that, in addition to its suggestion for an optional effective date on publication, the mandatory compliance date for purposes of compliance with the final rule changes should be January 1, 2016. It stated that mandatory compliance should not be earlier for any banks that currently satisfy the requirements for small creditor status, but may not after the final rule takes effect.

One state banking association commenter suggested that the Bureau delay the effective date of the rule until the Bureau's proposed automated tool to assist creditors in determining whether a property securing a mortgage is in a rural or underserved area is available. This commenter asserted that identifying "rural" areas under the Bureau's proposed definition of "rural" is difficult for small institutions and that it presents a compliance risk that these institutions may not be willing to take.

Final Rule

After considering the comments received on the effective date, the Bureau is finalizing the rule as proposed, with the amendments in the final rule taking effect for covered transactions consummated on or after January 1, 2016. The increased origination limit and the expanded definition of rural in this final rule, for example, apply only to covered transactions consummated on or after that date. The Bureau continues to believe that a January 1, 2016 effective date is the appropriate effective date for the final rule changes as it is consistent with the end of the calendar year determinations required to be made in order to determine a creditor's eligibility for small creditor and small creditor rural or underserved ("small rural creditor") status and for the April 1 grace period. The January 1, 2016 effective date will therefore make

determinations of small creditor and small rural creditor status easier going forward for creditors. It should also facilitate supervision of regulated entities for purposes of determination of compliance with the Bureau's rules, *i.e.*, whether a creditor was in fact small or small/rural/underserved and eligible for the special provisions and exemptions available to such creditors.

An optional and mandatory effective date for the final rule changes, as suggested by some commenters, may create implementation and supervisory compliance oversight complications for the Bureau and other federal regulatory agencies—complications that may not be justified by any advantages that may be obtained by creditors seeking to operate as small or small rural creditors for the few remaining months of 2015. The Bureau believes that the January 1, 2016 effective date provides a bright line approach that will facilitate creditor compliance and avoid complexity in regulatory oversight.

The commenter seeking a delay in the effective date of the rule until the Bureau's automated tool is available may have been based on the Bureau's statement in the proposed rule that it did not expect the proposed automated tool to be available by the effective date of the final rule. The Bureau now believes however that its automated tool will be available by the effective date of the final rule, which should address the concerns of this commenter.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.⁴⁰ The Bureau has consulted, or offered to consult with, the prudential regulators, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, the U.S. Department of the Treasury, the U.S. Department of Veterans Affairs, and the U.S. Securities and Exchange Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau has also consulted

⁴⁰ Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

with the Census Bureau on § 1026.35(b)(2)(iv)(A)(2) and (C)(3).

As discussed in greater detail elsewhere throughout this Supplementary Information, the Bureau finalizes several amendments to the Bureau's Regulation Z and official interpretations relating to escrow requirements for higher-priced mortgage loans under the Bureau's January 2013 Escrows Final Rule and ability-to-repay/qualified mortgage requirements under the Bureau's January 2013 ATR Final Rule and May 2013 ATR Final Rule. Since publication of the 2013 Title XIV Final Rules, the Bureau has received extensive feedback on the definitions of "small creditor" and "rural and underserved areas" with many commenters criticizing the Bureau for defining "rural" and "underserved" too narrowly and urging the Bureau to consider alternative definitions. This final rule reflects feedback from stakeholders regarding the Bureau's definitions of small creditor and rural and underserved areas as those definitions relate to special provisions and certain exemptions provided to small creditors under the Bureau's aforementioned rules.

The discussion below considers the benefits, costs, and impacts of the following key provisions of the final rule (final provisions):

- Raising the loan origination limit for determining eligibility for small-creditor status;
- An expansion of the definition of "rural area" to include (1) a county that meets the current definition of rural county or (2) a census block that is not in an urban area as defined by the Census Bureau; and
- An extension of the temporary two-year transition period that allows certain small creditors to make balloon-payment qualified mortgages and balloon-payment high cost mortgages regardless of whether they operate predominantly in rural or underserved areas.

With respect to these provisions, the discussion considers costs and benefits to consumers and costs and benefits to covered persons. The discussion also addresses certain alternative provisions that were considered by the Bureau in the development of the proposed and of the final rule.

The Bureau has chosen to evaluate the benefits, costs, and impacts of the final rule against the current state of the world.⁴¹ That is, the Bureau's analysis below considers the benefits, costs, and impacts of the final provisions relative to the current regulatory regime, as set forth primarily in the January 2013 ATR

⁴¹ In particular, the Bureau compares the impacts of the final provisions against the state of the world after January 2016 if the final provisions do not come into effect.

Final Rule, the May 2013 ATR Final Rule, and the January 2013 Escrows Final Rule.⁴² The baseline considers economic attributes of the relevant market and the existing regulatory structure.

The Bureau has relied on a variety of data sources to consider the potential benefits, costs and impacts of the final provisions, including the public comment record of various Board and Bureau rules.⁴³ However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of the rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the final rule.

The primary source of data used in this analysis is 2013 data collected under HMDA. The empirical analysis also uses data from the 4th quarter 2013 bank and thrift Call Reports,⁴⁴ and the 4th quarter 2013 credit union Call Reports from the NCUA, to identify financial institutions and their characteristics. Unless otherwise specified, the numbers provided include appropriate projections made to account for any missing information, for example, any institutions that do not report under HMDA. The Bureau also utilized the data from the Bureau's Consumer Credit Panel.⁴⁵

⁴² The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

⁴³ The quantitative estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under HMDA, the Bureau has matched HMDA data to Call Report data and National Mortgage Licensing System data and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA Call Report. The Bureau has projected originations of higher-priced mortgage loans in a similar fashion for depositories that do not report under HMDA. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings, and geographic presence.

⁴⁴ Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Reports, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see http://www2.fdic.gov/call_tfr_rpts/.

⁴⁵ The Consumer Credit Panel is a longitudinal, nationally representative sample of approximately 5 million deidentified credit records from one of the nationwide consumer reporting agencies. The sample provides tradeline-level information for all of the tradelines associated with each credit report record each month, including a commercially-available credit score. This information was used

Especially in light of some of the comments received by the Bureau that were discussed in the section-by-section analysis, it is worth emphasizing that the Bureau analyzes data from all creditors, both the ones that report under HMDA and the ones that do not, with the exception of non-depository institutions that do not report under HMDA. For HMDA reporters, the Bureau uses the data reported. For HMDA non-reporters, the Bureau uses projections based on the match of the Call Report data with HMDA.

The final provisions expand the number of institutions that are eligible to originate certain types of qualified mortgages and to take advantage of certain special provisions under the January 2013 ATR Final Rule, the May 2013 ATR Final Rule, the January 2013 Escrows Final Rule, and the 2013 HOEPA Final Rule.⁴⁶ The first set of special provisions is tailored to creditors deemed as small (small creditors) without regard to the location of their originations. Small creditors can originate qualified mortgages without regard to the bright-line debt-to-income ratio limit that is otherwise required to meet the Bureau's general qualified mortgage requirements (small creditor portfolio special provision). Qualified mortgages originated by small creditors are entitled to a safe harbor with an APR that is more than 1.5 percentage points over APOR, as long as these loans have an APR of less than 3.5 percentage points over APOR (small creditor portfolio QM special provision).

The second set of special provisions applies only to small creditors that operate predominantly in rural or underserved areas (rural small creditors). Rural small creditors can originate qualified mortgages with balloon-payment features, as long as these loans are kept in portfolio (rural qualified mortgage balloon-payment special provision) and other requirements are met.⁴⁷ These qualified

for the analysis of how consumers' credit scores differ depending on the size of the financial institution originating the consumers' mortgage loans.

⁴⁶ As explained in the section-by-section analysis above, the exception to the general prohibition on balloon-payment features for high-cost mortgages in the 2013 HOEPA Final Rule is also affected by the final provisions. However, the Bureau believes that the effect of the final rule on the rural balloon-payment provision in the 2013 HOEPA Final Rule is relatively small, in terms of both the consumers and covered persons affected, and thus the Bureau does not discuss this effect of the final rule in this 1022(b) analysis.

⁴⁷ As discussed in the section-by-section analysis, there is also a temporary two-year provision that allows small creditors, regardless of whether they operate predominantly in rural or underserved areas, to originate qualified mortgage balloon-

mortgages with balloon-payment features are entitled to a safe harbor as long as these loans have an APR of less than 3.5 percentage points over APOR. Also, rural small creditors are generally allowed to originate higher-priced mortgage loans without setting up an escrow account for property taxes and insurance (rural higher-priced mortgage loan escrow special provision).

Among other things, the final provisions expand the number of small creditors by changing the origination limit on the number of loans that a small creditor could have originated annually together with its affiliates from no more than 500 to no more than 2,000. The final rule's origination limit also counts only loans not held in portfolio by the creditor and its affiliates that originate covered transactions secured by first liens toward that limit. Similar to the currently effective provisions, the final provisions include a requirement that creditors have less than \$2 billion in total assets (adjusted annually), but under the final rule this threshold applies to the creditor's assets combined with the assets of the creditor's affiliates that originate covered transactions secured by first liens rather than just the creditor's own assets.⁴⁸

Based on 2013 data, the Bureau estimates that the number of small creditors will increase from approximately 9,700 to approximately 10,400 (out of the 11,150 creditors in the United States that the Bureau estimates are engaged in mortgage lending). In 2013, the approximately 700 additional creditors originated about 720,000 loans (roughly 10 percent of the overall residential mortgage market), of which about 175,000 were kept in portfolio. Of these 175,000 portfolio loans, the Bureau estimates that about 15,000 were portfolio higher-priced mortgage loans and 88 percent of those had an APR between 1.5 and 3.5 percentage points over APOR.⁴⁹

The final provisions also expand the areas deemed rural for the purposes of

payment loans and high-cost mortgages with balloon-payment features. This final rule extends the end-date for that temporary provision.

⁴⁸ All the numbers below are presented considering the affiliates' assets to the extent that the affiliates' assets are aggregated in the Call Reports, thus the number of newly exempted institutions and the number of loans that they originated could be slightly different from what the Bureau is reporting. The Bureau does not believe that aggregating assets of affiliates that originate covered transactions secured by first liens for the purposes of the \$2 billion asset prong results in many, if any, creditors that are considered small under the currently effective rule, but will not be considered small under the final rule.

⁴⁹ The percentage of loans with an APR that was 1.5 to 3.5 percentage points over APOR is based exclusively on HMDA data.

the rural small creditor special provisions described above. Currently, areas deemed rural are counties that are neither in an MSA nor in a micropolitan statistical area that is adjacent to an MSA. In addition to the current definition, the final provisions also count as rural areas census blocks that are deemed rural by the Census Bureau.⁵⁰ Based on 2013 data, the Bureau estimates that the number of rural small creditors will increase from about 2,400 to about 4,100.⁵¹ The additional 1,700 creditors originated about 220,000 loans, out of which 120,000 are estimated to be portfolio loans and about 26,000 of those are estimated to be higher-priced mortgage loans. The Bureau is not able to estimate currently what percentage of these 120,000 portfolio loans are balloon-payment loans.

B. Potential Benefits and Costs to Consumers and Covered Persons Consumer Benefits

Consumer benefit from the final provisions is a potential expansion in access to credit. Access to credit concerns meant to be addressed by the rural small creditor provisions and the small creditor provisions are interrelated, thus the Bureau discusses them jointly in this subsection.⁵²

⁵⁰ As discussed further above, census blocks deemed rural are census blocks that are not in an urban area (*i.e.*, neither in an urbanized area nor in an urban cluster) as defined by the Census Bureau.

⁵¹ The Bureau used data from several sources to estimate whether a given creditor would be considered rural in 2013 according to both the current state of the world and if the final rule were already effective. The Bureau used HMDA data for the creditors that report to the dataset. Since creditors only have to report the census tract of the property's location, the Bureau assumed that a property in a particular census tract has the same chance of being rural as the percentage of that tract's population that lives in rural census blocks (this information is available from the Census Bureau). For the depository institutions that did not report under HMDA, the Bureau is aware of the location of the creditors' branches. The Bureau assumed that mortgage lending is spread equally across a creditor's branches. The Bureau also assumed that if a branch is in a given county, then the same proportion of loans in this branch originated to consumers living in rural or underserved areas as the percentage of population living in rural or underserved areas in that county. Note that the 4,100 includes creditors that do not qualify as small but for the final rule. However, out of the 700 creditors that do not qualify as small but for the final rule, only around 10 percent will qualify as rural even when the final provisions expanding rural areas are effective.

⁵² Note that there is a difference in the current effect of the rules: currently, the creditors that are small, but not rural, enjoy the same special provisions as rural small creditors under the January 2013 ATR Final Rule and the May 2013 ATR Final Rule due to a temporary two-year provision in the May 2013 ATR Final Rule. This temporary provision is discussed in the section-by-section analysis above.

In general, most consumer protection regulations have two effects on consumers. Regulations restrict particular practices, or require firms to provide additional services, in order to make consumers better off. However, restricting firms' practices or requiring additional services might result in firms increasing their prices or discontinuing certain product offerings, potentially resulting in reduced access to credit.

The aforementioned small and rural small creditor special provisions were included in the January 2013 ATR Final Rule and the January 2013 Escrows Final Rule (along with the May 2013 ATR Final Rule) in order to alleviate potential access to credit concerns. Note that some of these provisions were Congressionally mandated. The final provisions expand the number of financial institutions that qualify for these special provisions. Accordingly, there are two effects on consumers that originate their mortgage loans with the creditors that are exempted by the final provisions: a potential benefit from an increase in access to credit and a potential cost from reduction of certain consumer protections.

As noted above, the potential benefit of the final provisions for consumers is a potential increase in access to credit. The magnitude of this potential increase depends on whether, but for the provisions in the final rule affecting rural small creditors: (1) Financial institutions that are covered by the final provisions stop or curtail originating mortgage loans in particular market segments or increase the price of credit in those market segments in numbers sufficient to have an adverse impact on those market segments, (2) the financial institutions that remain in those market segments do not provide a sufficient quantum of mortgage loan origination at the non-increased price, and (3) there is not significant new entry into the market segments left by the departing institutions. If, but for the final rule, all three of these scenarios are realized, then the final rule increases access to credit.

Analogously, the magnitude of this potential increase in access to credit depends on whether, in the absence of the provisions in the final rule affecting small creditors and escrow accounts:⁵³ (1) Financial institutions that are covered by the final provisions have already stopped or curtailed originating mortgage loans in particular market

segments or increased the price of credit in those market segments in numbers sufficient to have an adverse impact on those market segments, (2) the financial institutions that remained in those market segments do not provide a sufficient quantum of mortgage loan origination at the non-increased price, and (3) there has not been a significant new entry into the market segments left by the departed institutions. If, but for the final rule, all three of these scenarios are realized, then the final rule increases access to credit.

The Bureau received comments suggesting that access to credit will indeed be curtailed but for the final provisions (or is already curtailed, but could be increased after these provisions become effective). These comments are discussed in the section-by-section analysis. The evidence provided in these comments appears to be largely anecdotal. The Bureau's data do not refute the commenters' assertions; however, the Bureau does not have the direct evidence to estimate the degree to which the final provisions would increase access to credit.

In a series of analyses, the Bureau did not find specific evidence that the final provisions would increase access to credit when analyzing data on various consumers' characteristics (credit scores,⁵⁴ loan amounts relative to income,⁵⁵ availability of smaller amount loans,⁵⁶ and pricing⁵⁷), collateral

⁵⁴ Using the Bureau's Consumer Credit Panel for 2013, the Bureau analyzed borrowers' credit score distributions at creditors with various yearly origination counts. There was no significant difference between the creditors that qualify as small due to the final rule and larger creditors, including both the median credit scores and the lower tails of the distribution (for example, the 10th percentile of FICO scores).

⁵⁵ A relationship lender might help consumers by, potentially, originating loans with a higher DTI ratio because, for example, the relationship lender is aware that the consumer is at a high DTI only temporarily. Using HMDA data, and analyzing the loan-to-income ratio as a proxy for DTI (since both variables are available in HMDA), shows that the median consumer of a small creditor has a loan-to-income ratio of 2.3. The figure is the same for larger creditors.

⁵⁶ A commenter suggested that smaller creditors might be originating more loans for smaller amounts (the commenter suggested a threshold of \$40,000). According to the Bureau's analysis, while it might be true that smaller creditors make a disproportionate number of smaller amount loans, the majority of the smaller loans are made by larger creditors, and a sizable portion of smaller loans are made by creditors that already enjoy the special provisions under the currently effective rules.

⁵⁷ Instead of extending more credit, relationship lenders might be extending cheaper credit if they believe that their consumers are, effectively, less risky. In that case, given similar credit-risk profiles, the Bureau could expect that smaller creditors provide cheaper loans. However, higher-priced mortgage loans comprise on average 8.3 percent of the portfolio of creditors that are deemed small due

⁵³ Note the difference in baselines: currently, due to the temporary two-year provision discussed in the section-by-section, all the small creditors are eligible for the special provisions that apply to rural small creditors, except for the provisions in the January 2013 Escrows Final Rule.

(census tracts with portfolio-only lending⁵⁸), and competition (number of creditors active in a county, even assuming that all the creditors that are small,⁵⁹ or small and rural, due to the final rule would exit if the final rule did not become effective).

However, the Bureau's data are not complete and do not permit the Bureau to analyze various relevant hypotheses. For example, one possible theory that the Bureau's data do not confirm or negate is that there might be a lack of access to credit due to the particular idiosyncrasies of a property despite the fact that other properties in the same census tract are eligible for government-sponsored entity (GSE) backing. These idiosyncrasies could include, for instance, the absence of a septic tank on the property or the availability of running water only on some properties in that census tract.

Note that the presence of competition raises an important point related to some of the industry comments provided to the Bureau. While many commenters asserted access to credit issues, the implicit proof was that some smaller financial institutions could be originating fewer loans. However, even if true, that could simply mean that the same consumer would get a loan from a larger creditor instead. The Bureau's analysis of the data implies that this is at least a possibility.⁶⁰

to the final rule and 22.2 percent of the portfolio of creditors that are deemed small and rural due to the final rule. In comparison, the figure for larger creditors is 4.0 percent.

⁵⁸ If the area nearby a property is sparsely populated, a lack of comparable properties for appraisal can be a concern. In 2013, there were about 400 tracts where the only HMDA-reported loans originated were portfolio loans (out of the roughly 73,000 tracts in HMDA). About 200 of these tracts had more than one loan originated in 2013. These 400 tracts had fewer than 1,000 loans between them; of these loans, about 400 were made by creditors that originate over 5,000 loans a year and about 300 were made by creditors that made fewer than 500 loans a year.

⁵⁹ The Bureau analyzed HMDA 2013 county-level data. For purposes of the statistics here and below, "counties" is used to refer to counties and county equivalents. The Bureau considered counties where there are currently at most five creditors operating, and at least one of these creditors would qualify as small only due to the final rule. The Bureau's analysis shows that there are only a few counties like this, both for the purposes of the small creditor special provisions and for the purposes of the rural small creditor special provisions.

The cutoff of five competitors is arguably enough to ensure a sufficient amount of competition for a close-to-homogenous product. However, the Bureau does not mean to imply that, for example, first-lien covered transactions in a county constitute a market in the antitrust sense.

⁶⁰ To the extent that the effect of the already effective rules might shed light on this topic, the January 2013 Escrows Final Rule has a special provision allowing rural small creditors to originate higher-priced mortgage loans without providing an escrow account. Available evidence indicates that,

Similarly, many commenters raised concerns that smaller financial institutions lack the economies of scale necessary for effective compliance and implementation of, for example, adjustable-rate mortgage disclosures or escrows. While this might be true, to the extent that outsourcing and contracting have not alleviated this issue, this is only a concern to consumers to the extent that larger creditors would not originate these loans. In other words, the lack of economies of scale is a concern to consumers only to the extent that the market is less competitive than it will otherwise be when the final provisions become effective.

Consumer Costs

The potential cost to consumers of the final provisions is the reduction of certain consumer protections as compared to the baseline established by the January 2013 ATR Final Rule, the May 2013 ATR Final Rule, and the January 2013 Escrows Final Rule. These consumer protections include a consumer's private cause of action against a creditor for violating the general ability-to-repay requirements and the requirement that every higher-priced mortgage loan have an associated escrow account for the payment of property taxes and insurance for five years.

In addition, under the January 2013 ATR Final Rule, after January 10, 2016, creditors that do not meet the definition of "small" and "rural or underserved" will not be able to claim qualified mortgage status for any newly-originated balloon-payment loans. Classifying a loan as a qualified mortgage when it would not have been a qualified mortgage otherwise (based on the small creditor portfolio special provision or the rural qualified mortgage balloon-payment special provision) or making a loan a safe harbor qualified mortgage loan when it would have otherwise been a rebuttable presumption qualified mortgage (based on the small creditor portfolio QM special provision) makes it more difficult for consumers to sue their creditor successfully for failing to properly evaluate the consumers' ability to repay while originating the loans.

after the rule went into effect in June 2013, rural small creditors were just as likely to begin originating higher-priced mortgage loans as other creditors. Moreover, the counties where rural small creditors that started originating loans operate did not experience an increase in access to credit. See Alexei Alexandrov & Xiaoling Ang, *Identifying a Suitable Control Group Based on Microeconomic Theory: The Case of Escrows in the Subprime Market*, SSRN working paper (Dec. 30, 2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2462128.

A creditor may have an incentive to originate loans without considering ability to repay to the full extent. As the Bureau noted in the January 2013 ATR Final Rule, there are at least three reasons why these incentives exist. First, the creditor might re-sell the loan to the secondary market or might have at least a portion of the default risk insured by a third party. In this case, the creditor does not have the privately optimal incentive to verify ability to repay. The December 2014 Credit Risk Retention Final Rule's requirement of "skin in the game" is designed to ameliorate this issue.⁶¹ Second, the loan officer might not have the right incentive to verify a consumer's ability to repay due to internal organization issues: The loan officer might be benefiting from the creditor's eventual profit due to the loan only proximately and, potentially, the loan officer might have a suboptimal compensation scheme (for example, compensating simply based on the volume originated). Third, the creditor is unlikely to consider a consumer's private costs of foreclosure and the negative externality arising from the foreclosure process.⁶² In particular, since the Great Depression, balloon-payment loans have been seen by economists and consumer advocates as raising particular risks of foreclosure.⁶³ The provision of a private cause of action solves, to an extent, this negative externality issue.

Counting only the loans that are not kept in portfolio towards the origination limit ensures that a small creditor can always originate more portfolio loans without being concerned with the possibility of crossing the origination limit. The fact that a creditor keeps the loan in portfolio gives the creditor more incentives not to originate a loan that a consumer would not be able to repay: It potentially deals with the "skin in the game" issue described above.

However, a creditor keeping a loan in portfolio does not fully ensure that the creditor will only originate loans that

⁶¹ 79 FR 77602 (Dec. 24, 2014).

⁶² See John Y. Campbell et al., *Consumer Financial Protection*, 25(1) Journal of Economic Perspectives 91, 96 (2011). "[A] rationale for government mortgage policy is a public interest in reducing the incidence of foreclosures, which, as we mentioned, reduce not only the value of foreclosed properties, but also the prices of neighboring properties [. . .]. The negative effect on the neighborhood is an externality that will not be taken into account by private lenders even if their foreclosure decisions are privately optimal."

⁶³ *Id.* "In the late 1920s, the dominant mortgage form was a short-term balloon loan that required frequent refinancing. Low house prices and reduced bank lending capacity in the early 1930s prevented many homeowners from refinancing, causing a wave of foreclosures that exacerbated the Depression."

consumers are able to repay. First, as noted above, “the negative effect on the neighborhood is an externality that will not be taken into account by private lenders even if their foreclosure decisions are privately optimal.”⁶⁴ Second, it is important to note that a loan can be in portfolio (and thus eligible for special provisions provided by the final rule), yet fully or almost fully insured by a third party. In these cases, the creditor does not bear the risk for these loans even though the loan is in portfolio: There is no or little “skin in the game.”⁶⁵ Finally, the loan officer might not be compensated optimally, although advocates of relationship lending suggest that smaller creditors do not suffer from the internal organization problems described above to the same extent as larger creditors.

Escrow accounts protect consumers from a financial shock (sometimes unexpected, especially for first-time buyers) of having to pay the first lump-sum property tax bill all at once, possibly soon after spending much of the household’s savings on the down payment and closing costs. Recent research argues that postponing that payment by nine months (which an escrow account approximates by spreading payments over time) decreases the probability of an early payment default by 3 to 4 percent.⁶⁶ As noted in the January 2013 Escrows Final Rule, costs to consumers of not having escrow accounts also include the inconvenience of paying several bills instead of one; the lack of a budgeting device to enable consumers not to incur a major expense later on; and the possibility of underestimating the overall cost of maintaining a residence.

The extent of the potential cost to consumers depends on whether, but for the final provisions expanding the special provisions of the January 2013 ATR Final Rule and May 2013 ATR Final Rule: (1) Creditors that qualify for special provisions solely due to the final provisions have incentives to originate loans that do not consider consumers’ ability to repay despite these loans being in the creditors’ portfolios; (2) consumers of these creditors who proved unable to repay are unable to secure effective loss mitigation options from the creditors that would leave

consumers as well off as they would have been without getting a loan that they proved to be unable to repay; and (3) absent the final provisions, these creditors would have stronger incentives to consider consumers’ ability to repay or the consumers would elect to sue their local lender, would succeed in obtaining counsel to represent them, and would prevail in such suits. The Bureau does not possess evidence to confirm or deny whether these conditions are satisfied. Anecdotal evidence suggests that smaller lenders’ loans performed better than larger lenders’ loans through the crisis.

Similarly, the extent of the potential cost to consumers from expanding the special provisions of the January 2013 Escrows Final Rule depends on whether but for the final provisions: (1) The creditors that are exempted solely due to the final provisions would not provide escrow accounts for five years despite these loans being in the creditors’ portfolios; (2) consumers of these creditors who experienced a shock due to the first-time lump-sum payment and proved to be unable to repay were unable to secure effective loss mitigation options from the creditors that would leave the consumers as well off as they otherwise would have been with an escrow account; and (3) consumers of these creditors actually experience such shocks.

As noted above, the Bureau estimates that the about 1,700 creditors that will be small and rural under the final provisions, but not under the currently effective rule, originated about 220,000 loans and 120,000 portfolio loans in 2013. Out of those 120,000 portfolio loans, 26,000 were portfolio higher-priced mortgage loans. The Bureau does not possess a good estimate of what percentage of these 120,000 portfolio loans are balloon-payment loans. Assuming HPML lending continued at the same level among these creditors, about 26,000 loans would lose the mandatory escrow protections; however, many of these creditors might extend escrow protections despite not being subject to a requirement to do so.

The Bureau believes that the approximately 700 creditors that will be small under the final provisions, but not under the currently effective rule, originated 720,000 loans, including 175,000 portfolio loans, in 2013. Out of those 175,000 portfolio loans the Bureau estimates that about 15,000 were portfolio higher-priced mortgage loans and 88 percent of those had an APR between 1.5 and 3.5 percentage points

over APOR.⁶⁷ The Bureau believes that about 13,000 loans would be deemed safe harbor qualified mortgages due to the final provisions. The Bureau does not possess a good estimate of what percentage of these 175,000 portfolio loans would not have been qualified mortgages but for the small creditor special provision.

Covered Person Benefits and Costs

The creditors that will enjoy the special provisions experience benefits roughly symmetric to the protections that consumers lose. In particular, creditors that will qualify as rural small creditors will be able to originate qualified mortgage balloon-payment portfolio loans and pass the risk onto consumers, and small creditors could originate portfolio loans that would not be qualified mortgages or safe harbor qualified mortgages otherwise, resulting in a reduced probability of a successful lawsuit.⁶⁸ Additionally, rural small creditors could reduce accounting and compliance costs of providing escrow accounts. To be eligible for these benefits, the firms might need to spend a nominal amount on checking whether they qualify for the special provision.

Some of these firm benefits could be passed through to consumers in terms of lower prices or better service. Economic theory suggests that the pass-through rate should be higher the more competitive markets are, all else being equal.⁶⁹ However, a market being competitive would suggest lesser access to credit concerns. The Bureau does not possess the data required to estimate the applicable pass-through rates, and will

⁶⁷ The percentage of loans with an APR that was 1.5 to 3.5 percentage points over APOR is based exclusively on HMDA data.

⁶⁸ There are two types of risk that creditors avoid by originating, for example, a succession of five-year balloon loans as opposed to a 30-year fixed rate loan. The first type of risk is the interest rate risk: Cost of funds may increase and the fixed rate will be too cheap, in a sense, for current market conditions. This type of risk is almost fully hedged by choosing an appropriate index for a 5/5 adjustable-rate mortgage. The second type of risk is the risk of the deterioration of the consumer’s idiosyncratic conditions. For example, if the consumer’s credit profile deteriorates or the consumer loses their job, their fixed rate will be too cheap for that consumer’s current conditions. Arguably, creditors can project this risk better than individual consumers and are the lowest cost-avoiders, especially if one assumes that moral hazard is not a major concern in this situation (that consumers are not more likely to lose a job simply because they know that their mortgage is a 30-year loan as opposed to a 5-year balloon loan).

⁶⁹ See Alexei Alexandrov & Sergei Koulayev, *Using the Economics of the Pass Through in Proving Antitrust Injury in Robinson-Patman Cases*, SSRN working paper (Jan. 26, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2555952.

⁶⁴ *Id.* at 96.

⁶⁵ Note that if the third party is, for example, the FHA, then the loan would currently be a qualified mortgage regardless of this final rule.

⁶⁶ See Nathan B. Anderson & Jane Dokko, *Liquidity Problems and Early Payment Default Among Subprime Mortgages*, Federal Reserve’s Finance and Economics Discussion Series, available at <http://www.federalreserve.gov/pubs/feds/2011/201109/201109pap.pdf>.

therefore not discuss the pass-through possibilities further.

The benefit of originating balloon-payment loans to the firms is cheaper risk management. Consumers might not realize the riskiness involved in balloon-payment loans, encouraging the creditor to pass on the risk to consumers. The Bureau does not possess a good estimate of what percentage of these creditors' portfolio loans are balloon-payment loans.

The Bureau believes that an additional 1,700 creditors will qualify as small and rural due to the final provisions. These creditors will not have to provide consumers with escrow accounts when originating higher-priced mortgage loans; however, the Bureau believes that about 1,300 of the 1,700 creditors already originate higher-priced mortgage loans, thus these savings might be small (or none) for these firms since these firms currently have to provide escrow accounts. Note, that the marginal costs of providing an escrow account are small, if not negative: For various reasons, a creditor that has an escrow system established generally prefers consumers to establish an escrow account even if one is not required by government regulations.

Approximately 700 creditors will be deemed as small due to the final provisions. These creditors originated approximately 175,000 portfolio loans in 2013, out of which about 13,000 loans would be deemed safe harbor qualified mortgages due to the final provisions. The Bureau does not possess sufficient data to estimate what percentage of these loans would be qualified mortgages solely due to the final provisions. Loans being deemed qualified mortgages or safe harbor qualified mortgages imply a reduced risk of losing consumer-initiated ability-to-repay litigation. The Bureau previously estimated that this risk accounts for, at most, 0.1 percent of the loan amount.

Note that all 700 creditors are currently not eligible for the small creditor special provision, and thus any sunk costs necessary to transition to originating non-qualified mortgage loans have already been incurred, except for those creditors that have decided not to originate any non-qualified mortgage loans.

To be eligible for these benefits, the creditors might need to spend a nominal amount on checking whether they qualify for the special provisions. Since the final provisions are expanding special provisions and extending qualified mortgage status, covered persons will not experience any costs other than, potentially, a nominal

amount to check whether they qualify for the exemptions or extensions of qualified mortgage status.

Temporary Balloon-Payment Qualified Mortgage Period—Benefits and Costs to Consumers and Covered Persons

The Bureau is providing an extension of the two-year temporary special provision that effectively deemed all small creditors rural for the purposes of the rural qualified mortgage balloon-payment special provision. This temporary special provision, allowing these creditors to make qualified mortgage balloon-payment loans, is applicable (for transactions with mortgage applications received in the first three months of 2016) to any creditor that is currently small even if they do not operate predominantly in rural or underserved areas. The Bureau estimates that there are about 5,700 such creditors, and that they originated about 430,000 loans, out of which about 220,000 were portfolio loans in 2013. Note, that only the transactions with applications received in the first quarter of 2016 are eligible for this special provision. The Bureau does not possess a good estimate of what percentage of these portfolio loans are balloon-payment loans.

The benefits and costs to consumers and to covered persons are identical to the ones discussed above during the discussion of the rural balloon-payment qualified mortgage special provision. Note that various property idiosyncrasies that might make access to credit an issue in rural areas are less likely for the consumers of these 5,700 creditors since they do not operate predominantly in rural areas, even as defined by the final rule.

The Bureau is also finalizing an annual grace period for creditors that stop qualifying as either small creditors or small and rural creditors.⁷⁰ Given the finalized origination limit, the Bureau believes that the number of these transitions is likely to be low from year-to-year: The number of the creditors that are close to the threshold of small is minimal in comparison to the total number qualified (approximately 10,400

small creditors and approximately 4,100 rural small creditors) and rural areas change only after each decennial Census. Thus the Bureau does not estimate the effect of this provision in this 1022(b)(2) analysis.

C. Impact on Covered Persons With No More Than \$10 Billion in Assets

The only covered persons affected by the final provisions are those with no more than \$10 billion in assets. The effect on these covered persons is described above.

D. Impact on Access to Credit

The Bureau does not believe that there will be an adverse impact on access to credit resulting from the final provisions. Moreover, as described above, the Bureau received comments strongly suggesting that there will be an expansion of access to credit.

E. Impact on Rural Areas

The rural small creditor final provisions affect only creditors operating predominantly in rural or underserved areas, as defined according to the definition that the Bureau is proposing. These creditors predominantly originate loans to consumers that live in rural areas, thus the vast majority of the up to 120,000 consumers that will be affected by these provisions live in rural areas. The effect of these final provisions is described above.

The creditors that will qualify as small due to the final provisions are about as well represented in rural as in non-rural areas, thus there will be no disproportionate effect on rural areas.⁷¹

F. Discussion of Significant Alternatives

Instead of proposing (and finalizing) that a property is in a rural area if the property is either in one of the counties currently designated as rural by the Bureau or if the property is not in an urban area as designated by the Census Bureau, the Bureau considered proposing that a property is in a rural area only if the property is not in an urban area as designated by the Census Bureau. The effective difference between the two definitions is that under the finalized definition areas designated as urban areas by the Census Bureau that are located in counties currently designated as rural by the Bureau would be classified as rural, but these urban areas would not be classified as rural under the alternative.

For example, Wise County in Virginia (population of about 40,000, density of

⁷⁰ Currently, creditors qualify as operating predominantly in rural or underserved areas based on a three-year lookback period: A creditor is considered as operating predominantly in rural or underserved areas as long as the creditor operated predominantly in rural or underserved areas in any of the three preceding years. Thus, this final provision could potentially deem a creditor that would be rural in January 2016 not rural. However, the Bureau believes that this possibility will not actually occur or, in other words, any small creditor that was operating in predominantly rural or underserved areas in any of the preceding three years according to the current definition qualifies as rural small under the final rule.

⁷¹ If anything, these creditors are overrepresented in non-rural counties.

about 100 people per square mile) is currently designated as a rural area by the Bureau. Under the proposed (and finalized) definition the whole county remains rural. However, under the alternative definition, some census blocks in that county, including most of the census blocks that comprise the town of Wise, Virginia (population of about 3,000, density of about 1,000 people per square mile) would stop being classified as rural areas. A similar example is Gillespie County in Texas (population of about 25,000, density of about 25 people per square mile), which is rural under the current definition and under the proposed (and finalized) definition. Most of the city of Fredericksburg (population of about 11,000, density of about 1,500 people per square mile) in Gillespie County would not be considered rural under the alternative. Overall, about 22 percent of the U.S. population lives in areas that are deemed as rural under the final provisions. About 19 percent of the U.S. population lives in census blocks that are not in an urban area according to the Census Bureau.

In comparison to this alternative, the final provisions allow several hundred small creditors to continue to enjoy the special provisions for creditors operating predominantly in rural or underserved areas. Under the alternative, these creditors would have to incur the cost of adapting to originating mortgages without enjoying the provisions that they currently enjoy. Moreover, under the alternative, compliance might become more burdensome for the remaining creditors that would have qualified as rural small creditors even if the final rule were not to become effective: They would not be able to simply check a list of rural counties (as they do now), since parts of these counties would cease to be rural. These costs, both the cost of adaptation for some creditors and the cost of more complicated compliance for others, are likely fixed, and economic theory suggests that these creditors would not pass these costs on to consumers.

Other consumer benefits and costs and covered persons benefits and costs of these several hundred small creditors ceasing to qualify as rural are similar to the ones described above for the final provisions in general.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small

businesses, small governmental units, and small nonprofit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.⁷² The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.⁷³

In the Proposed Rule, the Bureau concluded that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis was therefore not required. This final rule adopts the Proposed Rule substantially as proposed. Therefore, a final regulatory flexibility analysis is not required.

The final rule does not have a significant economic impact on any small entities.⁷⁴ As noted in the Section 1022(b)(2) Analysis, above, the Bureau does not expect that the final rule will impose costs on covered persons, including small entities. All methods of compliance under current law remain available to small entities when these provisions become effective. Thus, a small entity that is in compliance with current law will not need to take any additional action under the final rule.

Certification

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements before implementation. The collections of

⁷² 5 U.S.C. 601 *et seq.*

⁷³ 5 U.S.C. 609.

⁷⁴ It is theoretically possible that a creditor qualifies as small under the current definition, but fails to qualify as small due to the final rule provision including in the calculation of the asset limit for small-creditor status the assets of the creditor's affiliates that originate mortgage loans. The Bureau is unaware of any such creditors.

information related to Regulation Z have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule does not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Savings associations, Recordkeeping requirements, Reporting, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Section 1026.35 is amended by revising paragraphs (b)(2)(iii)(A) through (D)(1) and (b)(2)(iv)(A) and (B) and adding paragraph (b)(2)(iv)(C) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by first liens on properties that are located in areas that are either “rural” or “underserved,” as

set forth in paragraph (b)(2)(iv) of this section;

(B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person;

(C) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions, as defined by § 1026.43(b)(1), secured by first liens, together, had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)–1.iii for the applicable threshold); and

(D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

(1) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before January 1, 2016; or

* * * * *

(iv) * * *

(A) An area is “rural” during a calendar year if it is:

(1) A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture’s Economic Research Service (USDA–ERS); or

(2) A census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States.

(B) An area is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens on properties in the county five or more times.

(C) A property shall be deemed to be in an area that is rural or underserved in a particular calendar year if the property is:

(1) Located in a county that appears on the lists published by the Bureau of counties that are rural or underserved, as defined by § 1026.35(b)(2)(iv)(A)(1) or § 1026.35(b)(2)(iv)(B), for that calendar year,

(2) Designated as rural or underserved for that calendar year by any automated tool that the Bureau provides on its public Web site, or

(3) Not designated as located in an urban area, as defined by the most recent delineation of urban areas announced by the Census Bureau, by any automated address search tool that the U.S. Census Bureau provides on its public Web site for that purpose and that specifically indicates the urban or rural designations of properties.

* * * * *

■ 3. Section 1026.43 is amended by revising paragraph (e)(6) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(e) * * *

(6) *Qualified mortgage defined—temporary balloon-payment qualified mortgage rules.*

(i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (f) of this section other than the requirements of paragraph (f)(1)(vi); and

(B) For which the creditor satisfies the requirements stated in § 1026.35(b)(2)(iii)(B) and (C).

(ii) The provisions of this paragraph (e)(6) apply only to covered transactions for which the application was received before April 1, 2016.

■ 4. In Supplement I to Part 1026—Official Interpretations:

■ A. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*:

■ i. Under *Paragraph 35(b)(2)(iii)*, paragraphs 1 introductory text and 1.i through iii are revised.

■ ii. Under *Paragraph 35(b)(2)(iii)(D)(1)*, paragraph 1 is revised.

■ iii. Under *Paragraph 35(b)(2)(iv)*, paragraphs 1 and 2 are revised.

■ B. Under *Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling*, subheading 36(a) *Definitions*, paragraph 1.i.A.3 is revised.

■ C. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*:

■ i. Under *Paragraph 43(e)(5)*, paragraphs 4 and 8 are revised.

■ ii. Under *Paragraph 43(f)(1)(vi)*, paragraph 1 is revised.

■ iii. Under *Paragraph 43(f)(2)*, paragraph 2 is revised.

■ iv. Under *Paragraph 43(f)(2)(ii)*, paragraph 1 is revised.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow accounts.

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, more than 50 percent of the creditor’s total first-lien covered transactions, as defined in § 1026.43(b)(1), are secured by properties located in areas that are either “rural” or “underserved,” as set forth in § 1026.35(b)(2)(iv).

A. In general, whether this condition (the more than 50 percent test) is satisfied depends on the creditor’s activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the more than 50 percent test based on its activity during the next-to-last calendar year. This provides creditors with a grace

period if their activity meets the more than 50 percent test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the more than 50 percent test for any higher-priced mortgage loan consummated during a calendar year if a majority of its first-lien covered transactions in the preceding calendar year are secured by properties located in rural or underserved areas. If the creditor's transactions in the preceding calendar year do not meet the more than 50 percent test, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and a majority of the creditor's first-lien covered transactions during the next-to-last calendar year are secured by properties located in rural or underserved areas. The following examples are illustrative:

1. Assume that a creditor extended 180 first-lien covered transactions during 2016 and that 91 of these are secured by properties located in rural or underserved areas. Because a majority of the creditor's first-lien covered transactions during 2016 are secured by properties located in rural or underserved areas, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor extended 180 first-lien covered transactions during 2016, including 90 transactions secured by properties that are located in rural or underserved areas. Assume further that the same creditor extended 200 first-lien covered transactions during 2015, including 101 transactions secured by properties that are located in rural or underserved areas. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the majority of the creditor's first-lien covered transactions during 2016 are not secured by properties that are located in rural or underserved areas, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the majority of the creditor's first-lien covered transactions in 2015 are secured

by properties that are located in areas that were rural or underserved.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to "another person" includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as "affiliate" is defined in § 1026.32(b)(5), are counted toward the threshold in this section. "Affiliate" is defined in § 1026.32(b)(5) as "any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)." Under the Bank Holding Company Act, a

company has control over a bank or another company if it "directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company"; it "controls in any manner the election of a majority of the directors or trustees of the bank or company"; or the Federal Reserve Board "determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company." 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's "affiliate" (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See comment 35(b)(2)(iii)-1.ii.C for discussion of definition of "affiliate."*

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of "regularly extended" is based on the number of times a person extends consumer credit for purposes of the definition of "creditor" in § 1026.2(a)(17). Because covered transactions are "transactions secured by a dwelling," consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that

affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an “affiliate,” as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, “as set forth in the Bank Holding Company Act.” If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of the definition of “affiliate.”

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the \$2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the

Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For historical purposes:

1. For calendar year 2013, the asset threshold was \$2,000,000,000. Creditors that had total assets of less than \$2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was \$2,028,000,000. Creditors that had total assets of less than \$2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was \$2,060,000,000. Creditors that had total assets of less than \$2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

* * * * *

Paragraph 35(b)(2)(iii)(D)(1)

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before January 1, 2016, are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after January 1, 2016, creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(2), do not qualify for the exemption provided under § 1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before January 1, 2016, still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions for which they received applications on or after January 1, 2016, other than those described in § 1026.35(b)(2)(iii)(D)(2), and they otherwise qualify under § 1026.35(b)(2)(iii).

* * * * *

Paragraph 35(b)(2)(iv)

1. *Requirements for “rural” or “underserved” status.* An area is considered to be “rural” or “underserved” during a calendar year for purposes of § 1026.35(b)(2)(iii)(A) if it satisfies either the definition for “rural” or the definition for “underserved” in § 1026.35(b)(2)(iv). A creditor's extensions of covered transactions, as defined by § 1026.43(b)(1), secured by first liens on properties located in such areas are considered in determining whether the creditor satisfies the condition in § 1026.35(b)(2)(iii)(A). *See* comment 35(b)(2)(iii)–1.

i. Under § 1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. Metropolitan statistical areas and micropolitan statistical areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). For purposes of § 1026.35(b)(2)(iv)(A)(1), “adjacent” has the meaning applied by the USDA–ERS in determining a county's UIC; as so applied, “adjacent” entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a “rural” area if the USDA–ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA–ERS Web site at <http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx>. A county for which there is no currently applicable UIC (because the county has been created since the USDA–ERS last categorized counties) is a rural area only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under § 1026.35(b)(2)(iv)(B), an area is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens, five or more times on properties in the county. Specifically, a

county is an “underserved” area if, in the applicable calendar year’s public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions, with HMDA geocoding that places the properties in that county. For purposes of this determination, because only covered transactions are counted, all first-lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as “Not owner-occupied” (HMDA code 2), the property type is reported as “Multifamily” (HMDA code 3), the applicant’s or co-applicant’s race is reported as “Not applicable” (HMDA code 7), or the applicant’s or co-applicant’s sex is reported as “Not applicable” (HMDA code 4). The most recent HMDA data are available at <http://www.ffiec.gov/hmda>.

iii. A. Each calendar year, the Bureau applies the “underserved” area test and the “rural” area test to each county in the United States. If a county satisfies either test, the Bureau will include the county on a published list of counties that are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(1) or § 1026.35(b)(2)(iv)(B) for a particular calendar year, even if the county contains census blocks that are designated by the Census Bureau as urban. To facilitate compliance with appraisal requirements in § 1026.35(c), the Bureau also creates a list of those counties that are rural under the Bureau’s definition without regard to whether the counties are underserved. To the extent that U.S. territories are treated by the Census Bureau as counties and are neither metropolitan statistical areas nor micropolitan statistical areas adjacent to metropolitan statistical areas, such territories will be included on these lists as rural areas in their entirety. The Bureau will post on its public Web site the applicable lists for each calendar year by the end of that year and publish such lists in the **Federal Register**, to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on its published lists of counties that are rural or underserved under the Bureau’s definitions for a particular year is deemed to qualify as a rural or underserved area for that calendar year for purposes of § 1026.35(b)(2)(iv), even if the county contains census blocks that are designated by the Census Bureau as urban. A property located in such a listed county is deemed to be located in a rural or underserved area, even if the

census block in which the property is located is designated as urban.

B. A property is deemed to be in a rural or underserved area according to the definitions in § 1026.35(b)(2)(iv) during a particular calendar year if it is identified as such by an automated tool provided on the Bureau’s public Web site. A printout or electronic copy from the automated tool provided on the Bureau’s public Web site designating a particular property as being in a rural or underserved area may be used as “evidence of compliance” that a property is in a rural or underserved area, as defined in § 1026.35(b)(2)(iv)(A) and (B), for purposes of the record retention requirements in § 1026.25.

C. The U.S. Census Bureau may provide on its public Web site an automated address search tool that specifically indicates if a property is located in an urban area for purposes of the Census Bureau’s most recent delineation of urban areas. For any calendar year that began after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a rural area if the search results provided for the property by any such automated address search tool available on the Census Bureau’s public Web site do not designate the property as being in an urban area. A printout or electronic copy from such an automated address search tool available on the Census Bureau’s public Web site designating a particular property as not being in an urban area may be used as “evidence of compliance” that the property is in a rural area, as defined in § 1026.35(b)(2)(iv)(A), for purposes of the record retention requirements in § 1026.25.

D. For a given calendar year, a property qualifies for a safe harbor if any of the enumerated safe harbors affirms that the property is in a rural or underserved area or not in an urban area. For example, the Census Bureau’s automated address search tool may indicate a property is in an urban area, but the Bureau’s rural or underserved counties list indicates the property is in a rural or underserved county. The property in this example is in a rural or underserved area because it qualifies under the safe harbor for the rural or underserved counties list. The lists of counties published by the Bureau, the automated tool on its public Web site, and the automated address search tool available on the Census Bureau’s public Web site, are not the exclusive means by which a creditor can demonstrate that a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B). However, creditors are required

to retain “evidence of compliance” in accordance with § 1026.25, including determinations of whether a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B).

2. *Examples.* i. An area is considered “rural” for a given calendar year based on the most recent available UIC designations by the USDA–ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA–ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first-lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the **Federal Register** in 2012, *see* U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census*, 77 FR 18652 (Mar. 27, 2012). To determine whether County Y is rural under the Bureau’s definition during calendar year 2017, the creditor can use USDA–ERS’s 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau’s 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a “rural” area for purposes of § 1026.35(b)(2)(iv)(A).

ii. A county is considered an “underserved” area for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first-lien covered transactions in County Y during calendar year 2016, and the most recent HMDA data are for calendar year 2015, published in the third quarter of 2016. The creditor will use the 2015 HMDA data to determine “underserved” area status for County Y in calendar year 2016 for the purposes of qualifying for the “rural or underserved” exemption for any higher-priced mortgage loans consummated in calendar year 2017 or for any higher-priced mortgage loan consummated during 2018 for which the application was received before April 1, 2018.

* * * * *

Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions.

1. * * *
- i. * * *
- A. * * *

3. Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics, filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)–4.i through .iv with respect to application-related administrative and clerical tasks and comment 36(a)–1.v with respect to third-party advisors.

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

Paragraph 43(e)(5).

* * * * *

4. *Creditor qualifications.* To be eligible to make qualified mortgages under § 1026.43(e)(5), a creditor must satisfy the requirements stated in § 1026.35(b)(2)(iii)(B) and (C). Section 1026.35(b)(2)(iii)(B) requires that, during the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person. Section 1026.35(b)(2)(iii)(C) requires that, as of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended, during the applicable period, covered transactions, as defined by § 1026.43(b)(1), secured by first liens, together, had total assets of less than \$2

billion, adjusted annually by the Bureau for inflation.

* * * * *

8. *Transfer to another qualifying creditor.* Under § 1026.43(e)(5)(ii)(B), a qualified mortgage under § 1026.43(e)(5) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(e)(5)(i)(D). That section requires that a creditor together with all its affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than \$2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A qualified mortgage under § 1026.43(e)(5) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

* * * * *

43(f) Balloon-payment qualified mortgages made by certain creditors.

43(f)(1) Exemption.

* * * * *

Paragraph 43(f)(1)(vi).

1. *Creditor qualifications.* Under § 1026.43(f)(1)(vi), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy three criteria that are also required under § 1026.35(b)(2)(iii)(A), (B) and (C), which require:

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended over 50 percent of its total first-lien covered transactions, as defined in § 1026.43(b)(1), on properties that are located in areas that are designated either “rural” or “underserved,” as defined in § 1026.35(b)(2)(iv), to satisfy the requirement of § 1026.35(b)(2)(iii)(A). Pursuant to § 1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan

statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. An area is considered to be underserved during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(1) or § 1026.35(b)(2)(iv)(B) and publishes on its public Web site lists of those counties to assist creditors in determining whether they meet the criterion at § 1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau's public Web site to determine whether specific properties are located in areas that qualify as “rural” or “underserved” according to the definitions in § 1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public Web site an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as “rural” according to the definitions in § 1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau's public Web site do not identify the property as being in an urban area.

B. For example, if a creditor extended 100 first-lien covered transactions during 2016 and 90 first-lien covered transactions during 2017, the creditor meets this element of the exception for any transaction consummated during 2018 if at least 46 of its 2017 first-lien covered transactions are secured by properties that are located in one or more counties on the Bureau's lists for 2017 or are located in one or more census blocks that are not in an urban area, as defined by the Census Bureau.

C. Alternatively, if the creditor's 2017 transactions do not meet the over 50 percent test (see comment 43(f)(1)(vi)–1.i), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the

application before April 1, 2018, if at least 51 of its 2016 first-lien covered transactions are secured by properties that are located in one or more counties on the Bureau's lists for 2016 or are located in one or more census blocks that are not in an urban area.

ii. During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor together with its affiliates extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, to satisfy the requirement of § 1026.35(b)(2)(iii)(B).

iii. As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that do not exceed the applicable asset threshold established by the Bureau, to satisfy the requirement of § 1026.35(b)(2)(iii)(C). The Bureau publishes notice of the asset threshold each year by amending comment 35(b)(2)(iii)–1.iii.

43(f)(2) Post-consummation transfer of balloon-payment qualified mortgage.

* * * * *

2. *Application to subsequent transferees.* The exceptions contained in § 1026.43(f)(2) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a qualified mortgage under § 1026.43(f)(1). Six months after consummation, Creditor A sells the qualified mortgage to Creditor B pursuant to § 1026.43(f)(2)(ii) and the loan retains its qualified mortgage status because Creditor B complies with the conditions relating to operating in rural or underserved areas, asset size, and number of transactions. If Creditor B sells the qualified mortgage, it will lose its qualified mortgage status under § 1026.43(f)(1) unless the sale qualifies for one of the § 1026.43(f)(2) exceptions for sales three or more years after consummation, to another qualifying institution, as required by supervisory action, or pursuant to a merger or acquisition.

* * * * *

Paragraph 43(f)(2)(ii).

1. *Transfer to another qualifying creditor.* Under § 1026.43(f)(2)(ii), a balloon-payment qualified mortgage under § 1026.43(f)(1) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(f)(1)(vi). That

section requires that a creditor: (1) Extended over 50 percent of its total first-lien covered transactions, as defined in § 1026.43(b)(1), on properties located in rural or underserved areas; (2) together with all affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and (3) have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than \$2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A balloon-payment qualified mortgage under § 1026.43(f)(1) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

* * * * *

Dated: September 21, 2015.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2015–24362 Filed 10–1–15; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Two Foreign Macaw Species; Final Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R9-ES-2011-0101; 450 003 0115]

RIN 1018-AY33

Endangered and Threatened Wildlife and Plants; Two Foreign Macaw Species**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*) as endangered under the Endangered Species Act of 1973, as amended (ESA). These species are both endemic to Central and South America. Despite conservation efforts, these species' populations are in decline, primarily due to habitat loss, fragmentation, and degradation; small population size; poaching; and regulatory mechanisms that are inadequate to ameliorate these threats throughout their ranges.

DATES: This rule becomes effective November 2, 2015.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov> and comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041; telephone 703-358-2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Executive Summary****I. Purpose of the Regulatory Action**

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the Endangered Species Act of 1973, as amended (ESA or Act; 16 U.S.C. 1531 *et seq.*). As part of a court-approved settlement

agreement, the Service agreed to submit a determination as to whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*) to the **Federal Register** by June 30, 2012. On July 6, 2012, the Service published a proposed rule (77 FR 40172) to add the military macaw and great green macaw as endangered species to the Federal List of Endangered and Threatened Wildlife. This final rule completes the listing process for these species.

II. Summary of the Major Provisions of the Regulatory Action

We are listing the military macaw (*Ara militaris*) and the great green macaw (*Ara ambiguus*) as endangered species under the Act. We are finalizing this action primarily because of the effects of poaching, habitat loss, fragmentation, and degradation on their populations; their small and declining population sizes; and inadequate regulatory mechanisms to ameliorate the threats to the species throughout their ranges.

In this final rule, we used public comments and peer review to inform our final determination, as required under the Act. When we published the proposed rule on July 6, 2012 (77 FR 40172), we opened a 60-day comment period on the proposed listing for these species. During the comment period, we sought comments from independent specialists (peer reviewers) on the specific assumptions and conclusions in our listing proposal to ensure that the designation of these species as endangered is based on scientifically sound data, assumptions, and analyses. In addition, we sought comments from interested parties and the public. We considered all comments and information received during the comment period. In this final rule, we present and respond to peer reviewer and public comments. This rule finalizes the protections proposed for these two foreign bird species as endangered species, following careful consideration of all comments we received during the public comment period.

III. Costs and Benefits

Section 4(b)(1)(A) of the ESA 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." Further, this action is not a "significant" regulatory action under Executive Order

12866. Therefore, we have not analyzed its costs or benefits.

Background

Section 4(b)(3)(B) of the ESA (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition ("12-month finding"). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the ESA 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**.

In this document, we announce that listing these two species as endangered species is warranted, and we are adding these two species to the Federal List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations.

Petition History

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species under the ESA. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species.

In our 90-day finding on this petition, we announced the initiation of a status review to list as endangered or threatened under the ESA the following 12 parrot species: Blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-

cheeked parakeet (*Brotoyeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). We initiated the status review to determine if listing each of the 12 species is warranted, and initiated a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The public comment period closed on September 14, 2009.

On July 21, 2010, a settlement agreement was approved by the Court (CV-10-357, D. DC), in which the Service agreed to submit to the **Federal Register** by July 29, 2011, September 30, 2011, and November 30, 2011, determinations whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no less than 4 of the petitioned species on each date.

On August 9, 2011, the Service published in the **Federal Register** a 12-month status review finding for the crimson shining parrot (a finding that listing was not warranted) and a proposed rule for the following three parrot species: Philippine cockatoo, white cockatoo, and yellow-crested cockatoo (76 FR 49202).

On October 6, 2011, we published a 12-month status review finding for the red-crowned parrot (76 FR 62016); on October 11, 2011, we published a 12-month status review and proposed rule for the yellow-billed parrot (76 FR 62740); and on October 12, 2011, we published a 12-month status review for the blue-headed macaw and grey-cheeked parakeet (76 FR 63480).

On September 16, 2011, an extension to the settlement agreement was approved by the Court (CV-10-357, D. DC), in which the Service agreed to submit a determination for the remaining four petitioned species to the **Federal Register** by June 30, 2012.

On July 6, 2012, the Service published in the **Federal Register** a 12-month status review finding and proposed rule for the four following parrot species: Great green macaw and the military macaw (77 FR 40172), hyacinth macaw (77 FR 39965), and the scarlet macaw (77 FR 40222).

Upon publication in the **Federal Register** on July 6, 2012, of the 12-month status review finding and proposed rule for these species (77 FR 40172), we initiated a 60-day public

comment period, which ended on September 4, 2012. Following publication of the proposed rule, we implemented the Service's peer review process and during the 60-day comment period, solicited scientific and commercial information on the species from all interested parties.

Previous Federal Actions

In our proposed rule, published July 6, 2012 (77 FR 40172), we announced that listing the military macaw and the great green macaw as endangered was warranted, and we issued a proposed rule to add these two species to the Federal List of Endangered and Threatened Wildlife. The comment period ended on September 4, 2012; we received 59 comments from the public.

In response to requests received during the public comment period, we reopened another public comment period on February 21, 2013, which ended on April 22, 2013 (78 FR 12011). During the second comment period (see <http://www.regulations.gov>, docket number FWS-R9-ES-2011-0101), we received 25 more comments on these two macaw species and on the hyacinth macaw; however, only one submission provided substantive information. All comments, including names and addresses of commenters, have become part of the administrative record and are available at <http://www.regulations.gov>, docket numbers FWS-R9-ES-2011-0101 and FWS-R9-ES-2012-0013.

Summary of Comments and Recommendations

We base this finding on a review of the best scientific and commercial information available, including all information received during the public comment period. In the September 4, 2012, proposed rule, we requested that all interested parties submit information that might contribute to development of a final rule. On February 21, 2013, we reopened the public comment period where we again requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and organizations and invited them to comment on the proposed listings. We received comments from four individuals; one of which was from a peer reviewer.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer provided information on military macaw population surveys confirming the presence of 100 macaws in the Tehuacan-Cuicatlan Biosphere Reserve in Mexico.

Our Response: We have reviewed the additional literature and incorporated the new information into our finding. Although the new information has been incorporated into the final rule, the new survey provided did not change our finding that the military macaw meets the definition of an endangered species. The species' overall population remains small and fragmented despite additional macaws being observed in this one location, and the species is still at risk of extinction due to habitat loss, poaching, and small population size.

Public Comments

(2) *Comment:* Several commenters expressed concerns about the potential impact the listings might have on their business.

Our Response: We acknowledge that there may be impacts to different entities involved in captive breeding of great green and military macaws. However, Section 4(b)(1)(A) requires listing decisions to be based solely on the best scientific and commercial data available, as it relates to the five listing factors in section 4(a)(1) of the Act. Therefore, the Service did not consider the impacts on business in its listing determination.

(3) *Comment:* Some commenters suggest that the Service is using outdated information when making the determination for the rule.

Our Response: The Service is required by the Act to make determinations solely on the basis of the best scientific and commercial data available. We based the proposed rule on all the information we received following the initiation of the 12-month status review for the military and great green macaw, as well as all of the information we found while conducting our own research. The information we use depends on field research and our ability to acquire that information. At the time of the publishing of the proposed rule, the information we compiled was considered the best available information. After publishing the proposed rule, emerging information on the great green and military macaw became available. We reviewed that information, as well as additional information submitted by the public, including more recent information and studies from a species expert and conservation organizations within the great green and military macaw's range countries. Non-English literature was professionally translated, analyzed, and is cited in this document. The information we received and subsequently reviewed did not change any of our findings, but rather further supported our conclusions. That

information has been incorporated into this final rule.

(4) *Comment:* Some commenters, while not opposed to the listing of the species, asked for a special rule under section 4(d) of the Act (also called a “4(d) rule”) that would allow ownership and interstate trade of the species to occur without obtaining a permit under the Act.

Our response: Ownership of a listed species is not prohibited by the Act and, therefore, does not require a permit. Because we determined that listing the great green and military macaws as endangered species under the Act is appropriate, we are not able to develop a 4(d) rule for this species. Section 4(d) of the Act allows the Service to develop a special rule to apply the prohibitions of section 9 or to provide measures that are necessary and advisable to provide for the conservation of threatened species only. A special rule cannot be promulgated for a species that is listed as endangered under the Act. The sale; offer for sale; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity is prohibited. That said, not all interstate trade is prohibited under the ESA. Interstate transfer of animals that are not for sale, offered for sale, or in the course of a commercial activity is not prohibited.

We thank all the commenters for their interest in the conservation of this species and thank those commenters who provided information for our consideration in making this listing determination. Under section 4(b) of the Act, the Service is required to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species. When we published our proposed rule, we opened a public comment period during which we requested any additional information on the great green and military macaw. In making this listing determination, we reviewed the best available scientific and commercial information, contacted species experts, and searched for the most current information on these species with due diligence. Therefore, we have obtained and considered the “best scientific and commercial data available” in our listing determination. After careful consideration, we conclude that these species meet the definition of an endangered species under the Act.

Species Information for the Military Macaw

Taxonomy

The military macaw (*Ara militaris*, Linnaeus 1766) is in the Psittacidae family and is also known as “guacamaya verde,” “parava,” and “ravine parrot.” Three subspecies of military macaw have been proposed and are recognized by some: *Ara militaris bolivianus* (Reichenow 1908), *Ara militaris mexicanus* (Ridgway 1915), and *Ara militaris militaris* (Linnaeus 1766). Avibase, a database of all birds of the world maintained by Bird Studies Canada, and the Integrated Taxonomic Information System (ITIS) both recognize subspecies (<http://www.itis.gov> and <http://avibase.bsc-eoc.org/avibase.jsp>, accessed August 30, 2011). The range of *A. m. bolivianus* is thought to be in Bolivia and northwestern Argentina. The range of *A. m. mexicanus* is thought to be restricted to Mexico.

Because it is a strong flyer (it has been observed traveling up to 20 kilometers (km) (12 miles [mi]) per day) and it is a semi-migratory species, the physical similarities suggest that seemingly isolated populations may be in contact (Juniper and Parr 1998, p. 423), and, therefore, their populations may be exchanging genetic material.

For the purpose of this rule, we are addressing the military macaw at the species level. Therefore, we are listing the military macaw species as an endangered species, which includes all subspecies.

Description

The military macaw is an extremely vocal species; it is described as being very noisy and is known to shriek (Birdlife International (BLI) 2011, p. 1). It is a large macaw (70 centimeters or 27.5 inches in length) and is vibrant in color. It has dark lime-green feathers mixed with blue flight feathers that are olive-colored underneath. Its forehead is red, and it has a bare white facial area and a black bill. Its lower back is blue; its tail is red and blue. The southernmost population in Bolivia, which extends into Argentina, exhibits reddish brown on their throats and cheeks (Juniper and Parr 1998, p. 423). This species is often confused with the great green macaw (*Ara ambiguus*). The great green macaw is very similar in appearance to the military macaw, but the military macaw has more prominent blue tinge on its hind neck, is smaller, and has darker plumage. These two species are separated geographically.

Habitat and Life History

Military macaws nest in tree cavities and cliffs. Cliff-nesting parrots, such as the military macaw, also nest colonially (in groups) (Bonilla-Ruz et al. 2007a, pp. 730–731). Cliff cavities located in ravines used by this species have been documented 25 and 30 meters (m) (82 to 98 feet (ft)) above ground (Arcos-Torres and Solano-Ugalde 2008, p. 71). Tree cavities used by this species have been observed to be 18 m (60 ft) above ground and are approximately 75 cm (29.5 inches) deep (Baker 1958, p. 98). This species has also been observed to use secondary cavities, such as abandoned woodpecker holes, particularly in dead pine trees (Strewe and Navarro 2004, p. 50). Military macaws alternate nesting and foraging areas based on food availability (Bonilla-Ruz 2006, p. 1). Nesting appears to be synchronous with the peak fruiting season, which occurs during April and May (Huatatoca pers. comm. in Arcos-Torres and Solano-Ugalde 2008, p. 70). The military macaw is a social species that congregates in small flocks and is often observed in mated pairs. Its clutch size is usually two to three eggs. They begin reproducing between 3 and 4 years of age (Mexican National Commission for Protected Areas [CONANP] 2006 in Bonilla-Ruz 2006, p. 2). Colonial nesting is believed to be due to the lack of suitable disbursed nest sites, which may also explain why they are concentrated in certain sites (Salinas-Melgoza et al. 2009, p. 306).

This species prefers the lower montane wet forests of the Andes. It inhabits remaining fragmented forested area in the Neotropics. However, in the northernmost part of its range, in Mexico, it is associated with seasonally dry, semi-deciduous tropical forest, deciduous tropical forest, and slopes of pine-oak forest (Bonilla-Ruz et al. 2007b, pp. 45–47; Rivera-Ortiz et al. 2006, p. 26).

The military macaw is a seasonal migrant, based on food and nutrient availability. In some areas, it has been observed at clay licks to obtain sodium and possibly other minerals, which is a common activity in some parrot species (Lee 2010, p. 58). Its diet varies seasonally. Some of the plant species it was observed feeding on include (Rivera-Ortiz et al. 2013, p. 1211; Carillo et al. 2013, p. 46; Huellega 2011, p. 9; Moschione 2007, in Navarro et al., 2008, p. 2; Contreras-González et al. 2006, p. 387; Renton 2004, p. 12; Juniper and Parr 1998, p. 422):

Brosimum alicastrum (capomo, Maya nut, ramón),

Bunchosia montana (no common name (ncn)),
Bursera aptera (ncn),
Bursera schlechtendalii (ncn),
Carya illinoensis (nuez de castilla),
Cedrela species (cedar fruit),
Ceiba aescutifolia (Pochote), *Ceiba pentandra* (ceiba),
Couepia polyandra (zapotillo),
Cyrtocarpa procera (Chupandilla),
Encyclia lancifolia (orchid, ncn),
Ficus species (fig),
Guaiacum coulteri (soap bush),
Hura crepitans (ochoo, arbol del diablo, acacu, monkey's dinner-bell, habillo, ceiba de leche, sand-box tree, possum wood, dynamite tree, ceiba blanca, assacu, posentri),
Hura polyandra (arbol del diablo, habillo, haba, jabillo, tetereta),
Ipomoea arborescens (palo santo, palo blanco, tree morning glory),
Juglans mollis (nogal),
Lonchocarpus rugosus (palo arco),
Lysiloma divaricata (ncn),
Lysiloma microphylla (palo corral),
Mangifera indica (mango),
Melia azedarach (Chinaberry tree),
Neobuxbaumia tetetzo (cardon, higos de teteche, tetetzo),
Orbignea guacoyula (palm),
Pinus ayacahuite (pinabete),
Pinus engelmannii (pino real),
Pinus durangensis (pino alazán),
Plumeria rubra (Frangipani),

Quercus affinis (encinos),
Quercus castanea (encinos),
Quercus crassifolia (encinos),
Spondias mombin (ciruelo),
Tecoma stans (yellow trumpetbush),
Tillandsia grandis (ncn), and
Tillandsia makoyana (ncn).

Seeds were found to be 39 percent of this species' diet. They have also been observed feeding on bromeliad stems (species unknown) and cacti (species unknown). In the northern part of its range in Mexico, military macaws have been observed in desert habitat, although they tend to have lower reproductive success in this habitat type (Rivera-Ortiz et al. 2008, p. 261). In desert habitat, which is suboptimal, it has been observed consuming some flowers (species unidentified). Despite the low seasonal abundance of food, deserts offer some refuge from poaching due to the inhospitable dry climate, which can act as a deterrent to poachers (Rivera-Ortiz et al. 2008, p. 261). In addition, macaws tend to nest at very high locations, which can make it difficult for poachers to reach them.

Range, Observations, and Population Estimates

The military macaw is distributed in highly fragmented, small populations in Mexico and South America, with a distribution gap in Central America (BLI

2014a, pp. 1–2; Rivera-Ortiz 2013, p. 1,201; Juárez et al 2012, pp. 6–7). Its range extends from northern Mexico southward into Ecuador, Peru, Colombia, Venezuela, Bolivia, and the southern tip of Argentina (see Figure 1 for an approximation of its range and distribution). The species has been described as patchily distributed throughout the eastern foothills of the Andes Mountains (Snyder et al. 2000, p. 125). It occurs in altitudes up to 1,600 m (5,249 ft) (Strewe and Navarro 2004, p. 50; Snyder et al. 2000, pp. 102, 124–125). Although it has a large distribution (276,000 km² (106,564 mi²)), its populations are localized.

Its population is estimated to be 6,667–13,333 mature individuals (BLI 2014, pp. 1–2; Rivera-Ortiz et al. 2013, p. 1,201). Most areas where this species occurs are now estimated to have fewer than 100 individuals. However, in 2004, other populations in Colombia and Mexico were estimated to be 100–200 individuals (Flórez and Sierra 2004, p. 3). This species may have occurred in Guatemala in the past, but it is no longer found there (Gardner 1972 in Snyder et al. 2000, p. 125). Overall, its populations are fragmented and becoming more isolated (Rivera-Ortiz 2008, p. 256).

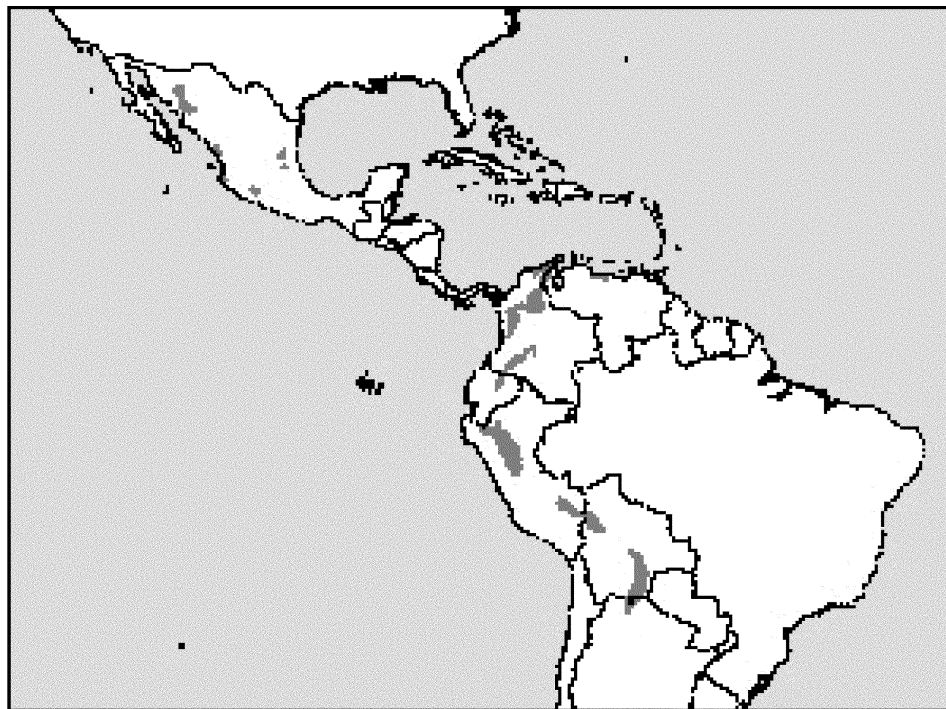


Figure 1. Distribution of *Ara militaris*. Courtesy of BirdLife International (2011).

The species inhabits tropical, semi-deciduous forests along the Pacific and Atlantic slopes through Central and South America. The best available information indicates there are reasonably healthy but small populations in El Cielo and Sierra Gorda Biosphere Reserves (Sierra meaning mountain range) in Mexico, Madidi and Amboró National Parks, Pilón Lajas Biosphere Reserve and Apolobamba National Integrated Management Area in Bolivia, and Manu Biosphere Reserve and Bahuaja Sonene National Park in Peru, and a small but stable remnant population in Tehuacan-Cuicatlan Biosphere Reserve, Oaxaca, Mexico (Lowry 2014, p. 3; Hosner et al. 2009, p. 222; Arizmendi 2008, p. 3; Rivera-Ortiz 2008, p. 256). The population from Tehuacan-Cuicatlan Biosphere Reserve, Oaxaca is about 100 macaws (Bonilla et al. 2007a, p. 731).

Argentina

Argentina is the southernmost part of this species' range, and the species was never thought to have been abundant there (Navarro et al. 2008, p. 1). In fact, this species was initially thought to be extirpated (locally extinct) in Argentina, but surveys have found small populations in at least two locations in the northern province of Salta (Grilli et al. 2013, p. 235; Juarez et al. 2012, pp. 7–8). There are anecdotal reports of this species crossing the Itá River (Navarro et al. 2008, p. 3), which borders Bolivia and Argentina. Between 2005 and 2007, approximately 100 individuals were observed in the Salta Province. These areas include: Finca Itaguazuti, and the Acambuco Provincial Flora and Fauna Reserve (8,266 hectares [ha] or 20,426 acres [ac]) in the Tartagal Mountains and which borders Bolivia (BLI 2014; Navarro et al. 2008, pp. 1, 4; Coconier et al. 2007, p. 59). In 2008, flocks of between 4 and 40 individuals of this species were observed in three ravines in the Salta Province. These locations were the Agua Fresca (Cool Water) Ravine north of Campo Cauzuti, El Limón Ravine (which had the largest population), and the Caraparí River Ravine. These are believed to be established populations, rather than flocks crossing over from Bolivia (Navarro et al. 2008, pp. 1, 4).

Bolivia

In Bolivia, the military macaw is regularly observed in five national parks: Tambopata National Reserve, Pilón Lajas Biosphere Reserve, Madidi National Park, Apolobamba National Integrated Management Area, and Amboró National Park (Hennessey 2011, pers. comm.). This species exists in the

Andean foothills in Bolivia in forested areas extending from the northern Tambopata National Reserve to the southern Pilón Lajas Reserve (Hennessey et al. 2003, pp. 319, 329). These parks are in the general vicinity of the border of southern Peru and northern Bolivia (Hosner et al. 2009, p. 222; Navarro et al. 2008, p. 2; Hennessey et al. 2003, p. 322). They are part of the Greater Madidi-Tambopata Landscape (GMTL) (also known as "Parque Nacional Madidi"). Within the GMTL, there are thought to be reasonably healthy populations of this species in the Apolobamba National Integrated Management Area, Amboró and Madidi National Parks, and Pilón Lajas Biosphere Reserve (Hennessey 2011 pers. comm.; Hosner et al. 2009, p. 225). The Greater Madidi-Tambopata Landscape is 110,074 km² (42,500 mi²) in size, and encompasses one of the largest areas of intact montane forest in the tropical Andes (WCS 2009, p. 2). This area is a high conservation priority due to its large number of endemic bird species. Pilón Lajas consists of primary evergreen tropical lowland forest, foothill forest, and lower montane forest. Pilón Lajas was recognized as a Biosphere Reserve and Indigenous Territory by the Bolivian Government in 1992; however, it did not have any actual protections in place until 1994 (Hennessey et al. 2003, p. 319).

In 2008, this species was observed at Serranía Sadiri in Madidi National Park, La Paz Department, Bolivia (Hosner et al. 2009, p. 225). Serranía Sadiri is found just inside Madidi National Park. Here, flocks of between 2 and 36 individuals have been observed (Hosner et al. 2009, p. 228). The Pilón Lajas Biosphere Reserve is primarily in La Paz Department, but slightly overlaps into the Beni Department. Here, this species is described as uncommon (Hennessey 2003, p. 329). It was observed in Parapetiguasu-Taremakua, and Parapetiguasu-Uruwigua in Santa Cruz, Cordillera Province, and at Altamachi and Madidi in Cochabamba, Ayopaya Province (MacLeod 2009, pp. 42–43). In summary, within Bolivia, there are many small populations of this species in areas that provide suitable habitat for this species (primarily large forest patches under some form of protection).

Colombia

In the late 1990s, there were approximately five disjunct populations in the central Andes Mountains (Snyder et al. 2000, p. 125). In Colombia, groups of 50 individuals have been observed, and in one case, a population was estimated to have 156 individuals (Flórez and Sierra 2004, pp. 2–3). In

most cases, these individuals reside on cliff formations that are favorable for nesting (where they are less accessible to poachers), and where deforestation is having less of an impact (Flórez and Sierra 2004, pp. 2–3; Rodríguez and Hernández-Camacho 2002, p. 203). In Colombia, this species inhabits a wide range of altitudes and areas with various degrees of alteration (Flórez and Sierra 2004, pp. 1–3; Juniper and Parr 1998). In Colombia, this species has been observed between altitudes of 700 and 1,600 m (2,297 to 5,249 ft) (Flórez and Sierra 2004, pp. 1–3; Salaman et al. 2002, pp. 167, 187). Populations have been observed in Guajira peninsula, Las Orquideas, Tayrona National Park, Serranía de Perijá, Serranía de San Lucas, San Salvador Valley, Sierra Nevada De Santa Marta, La Guajira Department, and Cueva de los Guacharos National Park (Strewe and Navarro 2003, p. 3). In 1998, this species was observed in flocks of up to 12 individuals at Villa Iguana and Alto Cagadero in Serranía de los Churumbelos (Salaman et al. 2007, pp. 33, 38, 47, 89). It has been observed in palm stands in the San Salvador valley during the breeding season (December–July) (Strewe and Navarro 2003, p. 33).

There are two small, stable populations of military macaws at Sierra Nevada de Santa Marta and Churumbelos, Cauca, with approximately 50 mature birds at each site (Fundación ProAves 2011, p. 28). In 2004, Flórez and Sierra estimated that the population in the cliffs of the Cauca River was 156 individuals and contained 54 breeding pairs and 26 nests (2004, p. 3). However, this population is subjected to impacts from poaching and deforestation (Flórez and Sierra, 2004, pp. 3–4), so the population now may be smaller. These researchers also noted that many chicks fall from the cliff nests and die. As of 2011, there were no recent records in northern Antioquia (Paramillo), Serranía de San Lucas, or Perijá ranges (Fundación ProAves 2011, pp. 28–29).

In the Frío Valley of Colombia, this species is reported to be present only during the breeding season (Strewe and Navarro 2004, p. 50). Several nests were found here in forest fragments. A population at El Congo Reserve was intensively studied in 2001. One nest was located 12 m (39 ft) above ground in a *Ceiba* tree, within open primary forest on a steep slope at 900 m (2,953 ft). A breeding population of 12 pairs, with groups of up to 28 was observed in December 2000. However, here it is still threatened in the valley by habitat loss and domestic trade (two cases noted in 2001) (Strewe and Navarro

2004, p. 50), and the population may now be decimated.

Ecuador

In Ecuador, this species is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 71). This species has been observed in the areas of Sumaco and Zamora-Chinchi in Ecuador (Snyder et al. 2000, p. 125) and at Kichwa River Reserve (Reserva Kichwa Río), within the Gran Sumaco Guacamayos Biosphere Reserve (Arcos-Torres and Solano-Ugalde 2008, p. 72). Most records of military macaw in Ecuador during the 1980s and 1990s found groups of up to 20 individuals (Ridgely and Greenfield 2001); however, lately most records have not exceeded 8 individuals (Arcos-Torres and Solano-Ugalde 2008, p. 71) except for a breeding colony of 16 individuals that

was observed in the Reserva Kichwa Río (Arcos-Torres and Solano-Ugalde 2008, pp. 70–72). Prior to 1980, it was observed in the upper Upano River Valley (Ridgely 1980 p. 244). In 2006, 200 ha (494 ac) were turned into the Narupa Reserve, where this species was observed in approximately 2010 (Fundación ProAves et al. 2010, p. 42). Additionally, in 2010, a pair of military macaws was observed in northern Ecuador in the Sumaco region (Olah and Barnes 2010, p. 19).

Mexico

There are several small populations of military macaws in Mexico, each consisting of between approximately 20 and 90 individuals (Jimenez-Arcos et al. 2012, p. 864; Rivera-Ortiz et al. 2008, p. 256), although there has been an anecdotal report of a population

estimated to be 130 individuals (Bonilla 2012, p. 6). This species follows seasonal food sources, so flocks move to other areas seasonally. In Mexico, there are reasonably healthy but small populations in the following areas:

- Alamos Rio Cuchujaqui (Sonora),
- Puerto Vallarta (Jalisco),
- Tehuacan-Cuicatlan Biosphere Reserve (at the border of Puebla and Oaxaca States) Mineral de Nuestra Señora Reserve (Sinaloa),
- El Cielo Biosphere Reserve (Tamaulipas),
- Sierra Gorda Biosphere Reserve (Querétaro),
- Sierra Manantlán Biosphere Reserve (Jalisco),
- Vicinity of Copalillo (Guerrero) (Jimenez-Arcos et al. 2012, p. 865).

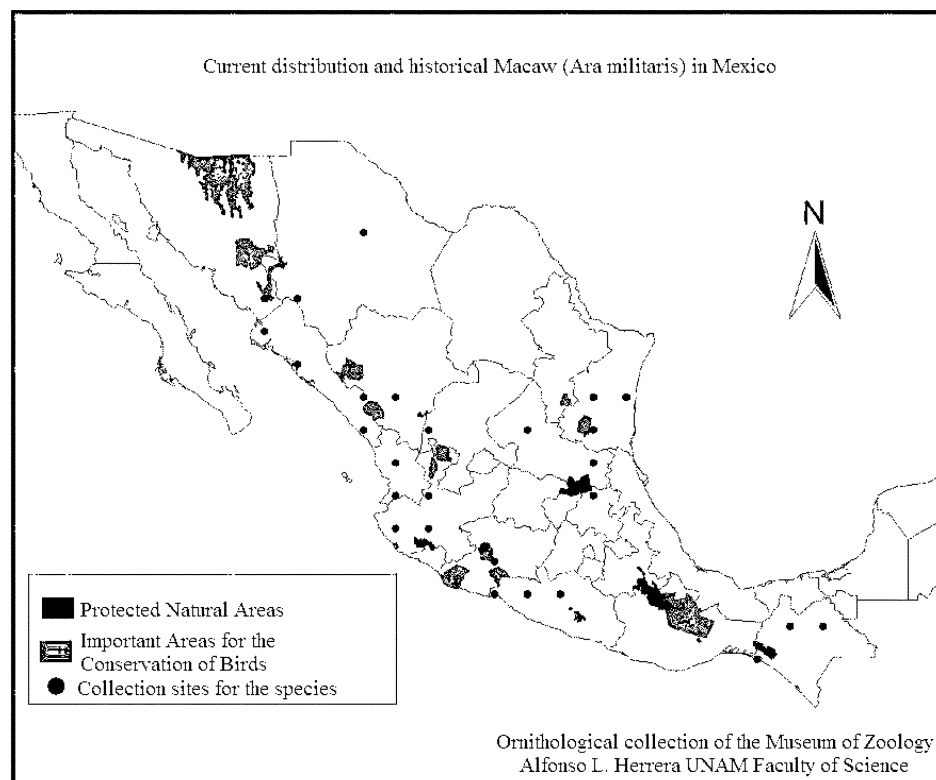


Figure 2. Current and historical distribution of *A. militaris* in Mexico. Courtesy of Arizmendi 2008.

In Mexico, there may also be isolated populations of military macaws in other States. Figure 2 shows the approximate present day and historical distribution of the military macaw in Mexico as of 2008 (Arizmendi 2008, p. 4). Other States where it may exist include Colima, Durango, Michoacán, Morelos, Nayarit (in the Valley of Flags or “Valle

de Banderas”), Nuevo León, San Luis Potosí, and Zacatecas. Areas where it has been recently documented are described below.

Chihuahua

Researchers believe there is a remaining population in the Sierra Madre Occidental Mountains (north-central Mexico) in Otachique (Cruz-

Nieto et al. 2006, p. 14). In 2005, 25 nests were observed (Cruz-Nieto et al. 2006, p. 14). This canyon is approximately 700 m (0.5 miles) wide by 14 km (8.6 miles) in length and consists of mature pines, firs, and oaks. Some gallery temperate forest remains in this area.

Guerrero

A colony of approximately 20 military macaws was studied between 2006 and 2010 in the vicinity of Copalillo, Guerrero (Jiménez-Arcos et al. 2012, pp. 864–865). The vegetation is tropical deciduous forest; and a canyon is present.

Jalisco

This species is found sporadically in small groups of a few to approximately 100 macaws in the western foothills of Sierra del Cuale and Sierra Cacoma in Jalisco on the western coast of Mexico (Renton 2004, pp. 13–14). Other groups of macaws in the region are in Cabo Corrientes in the Horcones river basin (approximately 100 macaws). There are other small populations in the vicinity of Puerto Vallarta (Carrillo et al. 2013, pp. 45, 47). This species was observed in 2004 near a freshwater lake, Cajón de Peña (26 by 9 km (16 by 5.6 mi) in size), which was constructed in 1976. It is found in the Chamela-Cuixmala Biosphere Reserve (132,000 ha or 32,617 ac), which is managed by Mexico's Instituto de Ecología of the National Autonomous University of Mexico (UNAM) and nongovernmental organizations (NGOs). Patches of semi-deciduous forest in this area form corridors between existing protected areas, such as the Chamela-Cuixmala and the Sierra Manatlán Biosphere Reserves (Renton 2004, p. 14). These patches likely have served as critical ecological links for this species.

Oaxaca

This species has recently been the focus of research in Sabino Canyon, Oaxaca. Sabino Canyon is in the Tehuacan-Cuicatlan Biosphere Reserve (Reserva de la Biosfera Tehuacan Cuicatlan), created in 1998, in central Mexico. The reserve spans 490,187 ha (1,211,278 ac) and is located within the Mixteca Oaxaqueña Province between the cities of Puebla and Orizaba. It is approximately 150 km (93 mi) southeast of Mexico City (<http://www.parkswatch.org>, accessed July 11, 2011) and approximately 2 hours from Tehuacan, Oaxaca, Mexico. Large mountain ranges delineate the boundaries of the reserve, and six rivers are within the protected area's boundaries.

In 2001, this species was observed in two canyons within this reserve. In both ravines, 20 pairs were observed nesting (Salazar-Torres 2001, p. 18). Here, this species nests in the canyon cliff walls in crevices that can be as high as 250 m (820 ft). Between 2002 and 2004, approximately 100 individual military

macaws were observed (Bonilla-Ruz et al. 2007a, p. 729). During 2007–2008, at least 67 birds were observed during the month of August (Rivera-Ortiz et al. 2008, p. 256; Rivera-Ortiz et al. 2006, p. 26). The known nesting site locations within the reserve increased from five to nine during the study period (Rivera-Ortiz et al. 2006, p. 28). Currently in the Sabino Canyon, the population of military macaws is thought to be between 90 and 100 individuals (Arizmendi 2008, p. 15).

Sinaloa

This species exists in Mineral de Nuestra Señora de la Candelaria Ecological Preserve, 12 km (7.4 mi) southeast of the town of Cosala in Sinaloa, Mexico (Rubio et al. 2007, p. 52; Bonilla-Ruz et al. 2007b, p. 45). The preserve is 1,256 ha (3,104 ac) and consists of dry tropical forest. In 2002, this area was designated as a protected area by the State of Sinaloa Decree.

Sonora

Between 2008 and 2009, it was observed at the Northern Jaguar Reserve in east-central Sonora, and was described as a rare summer resident there (Flesch 2009, pp. 5, 12). In this area, this species was recently observed in small flocks in cliff areas (Flesch 2008, pp. 35–36). In 2005, it was observed in the Río Aros canyon and upper Río Yaqui valley in an area known as the Yaqui Basin (O'Brien et al. 2006, pp. 4, 27–28). Flesch suggests that the species is likely to occur only in cliffs near stands of tropical vegetation (full citation 2008, p. 27).

Tamaulipas

Historically, in Mexico's eastern State of Tamaulipas, flocks of approximately 60 individuals were noted almost daily in the area of Gómez Farías, Mexico (Sutton and Pettingill 1942, p. 14). The Gómez Farías region is on the eastern slope of the Sierra Madre Oriental mountain range, known locally as the "Sierra de Guatemala." This area is in the general vicinity of the state-protected El Cielo Biosphere Reserve, where this species is still known to occur (Arvin 2001, p. 8). The University of Texas at Brownsville maintains a research station, Rancho del Cielo, within the 145,687-hectare (360,000-acre) reserve. The research station supports locally driven scientific research and community development (University of Texas at Brownsville, unpaginated). Activities conducted by the research station have positive impacts on this species by attracting researchers and the birding community,

preserving and protecting habitat, and creating awareness in the area.

Peru

There are populations in Manu Biosphere Reserve, Tambopata National Reserve, and Bahuaja Sonene National Park in Peru. The two latter parks border one another in the southern Peruvian Amazon region (ParksWatch 2002, p. 1). This species has been observed around the Pongo de Mainique of the Urubamba River and on the upper Tambopata River (Snyder et al. 2000, p. 125). According to a 2010 paper, it was observed in the Madre de Dios department in the southeastern Peruvian Amazon (Lee 2010, p. 14). Flocks of 40 to 50 individuals have been observed in Atalya at Madre de Dios (Snyder et al. 2000, p. 125). The species has been observed seasonally in small numbers in the area of the Huállaga River Canyon (JGP Consultants 2011 pp. 1, 5, 8).

Venezuela

Within Venezuela, it has been documented primarily within protected areas. In this country, little information about the species exists (Rodríguez et al. 2004, pp. 375–376). Here it persists in the Andes in the Central Coastal Cordillera and Sierra de Perijá (Rodríguez et al. 2004, pp. 375, 378, 379). It has been found on the north slopes of El Ávila, Guatopo, Henri Pittier National Park, the State of Cojedes, Cerro La Misión, and Sierra de Perijá National Park (Desenne and Strahl 1994 and Fernandez-Badillo et al. 1994 in Snyder et al. 2000, p. 125). A new population of this species was recorded at two localities at the Catatumbo-Barí National Park along the Colombian-Venezuelan border (Avendaño 2011, p. 2). Moist forests exist as four distinct enclaves within the Catatumbo Valley, in both northwestern Venezuela and northeastern Colombia. This extends the species' previously known range from the east slope of the Serranía de Perijá southwards (Avendaño 2011, p. 2).

Summary of Range

According to several surveys, the military macaw exists in small populations ranging from a few pairs to approximately 100 individuals. It is found in protected areas in Mexico, Colombia, Bolivia, and to a lesser extent, in Ecuador, Peru, Venezuela, and Argentina (see Figure 1), and is unlikely to exist in small populations outside of protected areas where large expanses of suitable habitat still remain (Bonilla 2012, p. 9). The population in the Pilón Lajas Biosphere Reserve, Bolivia, may

serve as a link to other populations of this species to the northwest and to the south (Hennessey et al. 2003, pp. 330–331). Records indicate that this species occurs primarily in protected areas (Flesch 2009; MacLeod 2009; Flesch 2008; Flórez and Sierra 2004; Rodriguez 2004; Renton 2004; Hennessey et al. 2003), such as protected parks where there are large remaining areas of suitable habitat for nesting, feeding, and breeding (see Figure 1).

Summary of Population Estimate

There are various but imprecise population estimates for the military macaw. One report estimates the population to be fewer than 10,000 individuals (Arizmendi 2008, p. 3). BLI reports that the population is estimated to be between 10,000 and 19,999 mature individuals with a decreasing trend (BLI 2014, p. 2). We believe that the population is significantly fewer than 10,000 based on recent documented observations of this species, most of which are described in this status review. Researchers in Colombia agree with our conclusion (Botero-Delgadillo and Páez 2011, p. 13). Published literature (referenced in this document) has documented small flocks ranging from approximately 16 to 156 individuals distributed in disjunct locations in Mexico, Argentina, Ecuador, Venezuela, Peru, Colombia, and Bolivia. In situations where the species is rare or has small populations, the number of observations made per survey may be very small and the number of sites limited, and, therefore, estimates may not be accurate (Pollack 2006, p. 891).

The current total population number is unclear; however, based on these recent records, we believe that the population is between a few thousand and 10,000 remaining individuals (BLI 2014, p. 1; Bonilla 2012, p. 9).

Conservation Status

International Union for Conservation of Nature (IUCN)

There are various protections in place for this species at the international, national, and local levels. At the international level, this species is listed as vulnerable by the IUCN (2011). However, this status under IUCN conveys no actual protections to the species.

CITES

The military macaw is protected by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is one of the most important means of controlling international trade in animal and plant

species affected by trade. CITES is an international agreement through which member countries, called Parties, work together to ensure that international trade in CITES-listed animals and plants is not detrimental to the survival of wild populations by regulating their import, export, and reexport. All of the range countries for this species are Parties to CITES (<http://www.cites.org/eng/disc/parties/alphabeta.php>, accessed May 7, 2014). Most psittacines (parrots), including the military macaw, were included in CITES Appendix II in 1981. An Appendix-II listing includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival. The military macaw was transferred to Appendix I of CITES in 1987, because populations were declining rapidly due to uncontrolled trapping for the international pet bird trade. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

WBCA

The import of the military macaw into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992, in an effort to ensure that exotic bird species are not adversely affected by U.S. trade. The purpose of the WBCA is to promote the conservation of CITES-listed exotic birds by ensuring that all imports into the United States are (1) sustainable and (2) not detrimental to the species. Permits may be issued to allow imports of listed birds for scientific research, zoological breeding or display, or as personal pets when certain criteria are met. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if the Service approves a management plan for their sustainable use. At this time, the military macaw is not part of a Service-approved cooperative breeding program and does not have an approved management plan for wild-caught birds.

Argentina

This species is considered to be a critically endangered species by the Government of Argentina (Navarro et al. 2008, p. 1). It is protected through national legislation (Law 22,421 and Decree 691/81), administered by the Dirección Nacional de Fauna y Flora Silvestres. Law 22,421 addresses the

Conservation of Fauna, enacted in 1981. Decree 691/81 addresses the protection and conservation of wild fauna and is implemented through law 22,421.

Bolivia

In Bolivia, this species is listed as vulnerable. The 1975 Law on Wildlife, National Parks, Hunting and Fishing (Decree Law No. 12,301 1975, pp. 1–34) has the fundamental objective of protecting the country's natural resources. This law governs the protection, management, utilization, transportation, and selling of wildlife and their products. It also governs the protection of endangered species, habitat conservation of fauna and flora, and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries.

Colombia

Colombia categorizes this species as “vulnerable” (Salaman et al. 2009, p. 21). A vulnerable species is considered to be one that is not in imminent danger of extinction in the near future, but it could be if natural population trends continue downward and deterioration of its range continues (EcoLex 2002, p. 10).

Ecuador

In Ecuador, this species is considered endangered, “en peligro de extinción”. Here, this species is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 69).

Mexico

In Mexico, the military macaw is protected as endangered under Mexico's Wildlife Protection Act (Benetiz-Diaz 2012, p. 2) and has been highlighted as a priority species for conservation in the Mexican Parrot Conservation Plan (Rivera-Ortiz et al. 2008, p. 256; Renton 2004, p. 12). Its official list of endangered and threatened bird species is termed the Norma Oficial Mexicana 059 (NOM–059, 2010) (Benetiz-Diaz 2012, p. 2).

Peru

In Peru, this species is listed as vulnerable and its protections fall under the jurisdiction of the National Institute of Natural Resources (Instituto Nacional de Recursos Naturales, INRENA). Peru's Supreme Decree No. 034–2004–AG (2004, p. 276,855) prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation.

Venezuela

In Venezuela, this species is listed as endangered (Rodriguez et al. 2004, p. 376).

NGO Involvement

In the 1980s, conservationists realized the value of identifying areas or habitat in terms of numbers of endemic bird species. BirdLife International, in partnership with countries, other nongovernmental organizations (NGOs), and various other partners, developed the Important Bird Area (IBA) program, which is a worldwide initiative to identify and protect critical areas for bird conservation. IBAs are areas that regularly contain significant numbers of one or more globally threatened species or other species of global conservation concern. One of the criteria in identifying important regions for bird conservation is the distribution of restricted-range and globally threatened species such as the military macaw. As of 2007, more than 8,500 IBAs had been identified worldwide (García-Moreno et al. 2007, p. 324). The military macaw is included in 37 of those IBAs (BLI 2011b, pers. comm.). Note that this does not mean this species always occupies those areas; rather, the species has been identified in those areas.

A number of locally based and international conservation organizations have developed programs in connection with protected areas within this species' range, such as ecotourism, to observe clay lick areas (Lee 2010, pp. 167–168). The Wildlife Conservation Society (WCS) is implementing a range of projects aimed at strengthening the management of Greater Madidi-Tambopata Landscape in Bolivia. Its program is based on three main categories: (1) Park management, (2) natural resources management, and (3) scientific research (Parks Watch 2005, pp. 2–3). The Greater Madidi-Tambopata Landscape, where the WCS is monitoring populations of the military macaw (WCS 2009, pp. 2, 8), encompasses one of the largest swaths of intact montane forest in the Tropical Andes in northern Bolivia and southern Peru. The GMTL is 110,074 km² (42,500 mi²) and includes five protected areas.

A Colombian-based NGO, Fundación ProAves, is also working to protect this species and its habitats. Fundación ProAves developed a conservation plan for 2010 to 2020 for several parrot species, including the military macaw (Botero-Delgadillo and Páez 2011, p. 7). However, it is unclear if or when it will be adopted by the Government of Colombia.

In Mexico, several NGOs are participating in the conservation and management of this species. In 1989, a strong citizen movement began to conserve the 383,567-ha (947,815-ac) Sierra Gorda Biosphere Reserve by

establishing the local group, Grupo Ecológico Sierra Gorda. In collaboration with the local community, this group has taken action to protect bird communities as well as other groups of wildlife in this area. Strategies include environmental education, establishment of private reserves, and payment for environmental services in a 25,000-ha (61,776-ac) area of this reserve (Pedraza-Ruiz, 2008 p. 1). The Chamela-Cuixmala Biosphere Reserve is managed by Mexico's Instituto de Ecología of the National Autonomous University of Mexico (UNAM) and local NGOs. Other NGOs are working with communities to obtain macaw feathers from aviaries so that indigenous people will not hunt the macaws for their feathers (Renton 2004, p. 14). In the Sinaloa area, the Universidad Autónoma de Sinaloa has been active in conservation of this species since 1998 (Rubio et al. 2007, p. 52). This university conducts research outreach activities to foster knowledge, and conservation of this species at the Mineral de Nuestra Señora de la Candelaria Ecological Preserve.

Evaluation of Threat Factors

Introduction

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the ESA, a species may be determined to be endangered or threatened based on any of the following five factors:

- A. The present or threatened destruction, modification, or curtailment of its habitat or range;
- B. Overutilization for commercial, recreational, scientific, or educational purposes;
- C. Disease or predation;
- D. The inadequacy of existing regulatory mechanisms; and
- E. Other natural or manmade factors affecting its continued existence.

Throughout the range of this species, the factors impacting this species are generally very similar. The primary factors affecting the military macaw are habitat loss and degradation, and poaching (Carrillo et al. 2013, p. 46; Gastañaga et al. 2011, entire; Strewe and Navarro 2004, p. 50). Habitat loss is primarily due to conversion of the species' habitat (generally forests) to agriculture and other forms that are not optimal for the military macaw (Donald et al. 2010, p. 26; Flórez and Sierra 2004, p. 3). Conversion of habitat to soy plantations is now considered to be one

of the principal causes of Amazon deforestation (Bonilha 2008, p. 17). Because this species has a small and fragmented population, poaching, while apparently uncommon, remains a concern (Botero-Delgadillo and Páez 2011, p. 13).

We focus primarily on where this species has been documented, particularly in parks and other areas with protected status and the peripheral zones. In some cases, we will evaluate the factor by country. In other cases, we may evaluate the factor by a broader region if we do not have adequate information specific to a particular country about this species. This is because often the threats are the same or very similar throughout the species' range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat

The military macaw has a large but fragmented distribution (276,000 km² (106,564 mi²)), and not all locations where the military macaw exists are known (BLI 2014, p. 1). Habitat destruction and modification is one of the main threats to the military macaw; significant amounts of this species' habitat have been converted such that its habitat is no longer suitable and no longer provides adequate shelter (nesting sites) and food sources, and these causes of habitat loss are likely to continue (Marín-Togo et al. 2012, p. 462). Between 2000 and 2005, of all the continents, South America had the largest net loss of forested area, experiencing a loss of 4.3 million ha (10.6 million ac) per year (FAO 2006 in Mosandl et al. 2008, p. 38). In some countries, extractive activities for nontimber forest products occur, such as the removal of palm trees (*Arecaceae* family) to obtain hearts of palm (ParksWatch 2011; <http://www.tropicalforestresearch.org>).

Currently, the military macaw exists in many parks and other areas that have protected status (Marín-Togo et al. 2012, p. 465; Coconier et al. 2009, p. 63; Arizmendi 2008, p. 4; Rodríguez et al. 2004, p. 78; Renton 2004, p. 12). Studies have found that, compared with the surrounding areas, conditions inside parks were significantly better than their surrounding counterparts (Bruner et al. 2001, p. 125). One study found that, in 40 percent of tropical parks, land that had formerly been under cultivation and that was incorporated into park boundaries had recovered. This subsequently led to an increase in vegetative cover. The study found that

83 percent of parks were successful at mitigating encroachment (Bruner et al. 2001, p. 125). This was confirmed in a study published in 2007 that found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira et al. 2007, p. 1,235). However, this species still faces habitat loss (Benetiz 2012, p. 4).

We are limiting our analysis to areas where there is information available about this species. For instance, there is very little information available about this species in Argentina and Venezuela (Coconier et al. 2009, p. 63; Navarro et al. 2008, p. 1; Coconier et al. 2007, p. 52; Rodriguez et al. 2004, pp. 378–379). However, in both of these countries, the species faces similar threats (such as the lack of suitable habitat) as in other countries (Rodriguez et al. 2004, p. 373). The largest populations of this species, discussed in detail in the Range, Observations, and Population Estimates section, appear to be in Mexico and Bolivia. Even in these countries, its populations are small and fragmented. In other countries within its range such as Colombia, Peru, and Ecuador, it exists in smaller populations, and Argentina (Nores and Yzurieta 1994, pp. 315–316) and Venezuela have even smaller and possibly negligible populations. Additionally, the military macaw may have occurred in Guatemala in the past, but it is no longer found there (Gardner 1972 in Snyder et al. 2000, p. 125).

Argentina

In Argentina, habitat destruction, particularly deforestation for agricultural expansion for soy plantations, and timber extraction had significantly increased as of 2009 (Devenish 2009, p. 60; Chebez et al. *in litt.* in Navarro et al. 2008, pp. 7, 9; DiPaola et al. 2008, pp. 1, 8). The species was thought to no longer exist in Argentina, which is the southernmost part of its range, but recent surveys found small populations of this species in at least two locations in the Salta Province (Navarro et al. 2008, p. 1). The primary threat to forested areas in Argentina is the expansion of agriculture, particularly soy, into remaining habitat such as the Chaco plains in the Andes mountain range (Centro de Acción Popular Olga Márquez de Aredez (CAPOMA) 2009, p. 6). The practice of drying swamps through channeling is common in northern Argentina, particularly for producing soybeans, which is experiencing increasing demand in the global market. The current rate of deforestation stands at 25,000 ha

(61,776 ac) per year resulting from land converted to agricultural use (Devenish 2009, p. 60). The area converted to soy production increased from as little as 3 percent in the 1970s to 40 percent of the total crop area in 2003, covering 14 million ha (34.6 million ac) (Devenish 2009, p. 60). Conversion of lands to soy production is favored by the current political and economic climate, both at the global and national levels (Devenish 2009, p. 60). With regard to other types of land use, the area used for cattle ranching has decreased, but exotic tree plantations have doubled (Devenish 2009, p. 60).

In addition, pipeline routes and associated roads are being established in this area in connection with oil, gas, and mineral exploration (Navarro et al. 2008, pp. 7, 9). Road building operations greatly facilitate access to large, previously inaccessible forested areas (Fimbel et al. 2001, pp. 511–512). The area occupied by permanent facilities including pipelines and refineries is relatively small, but oil development areas cover large tracts of land. Oil development can have significant negative impacts on nearby habitat through construction of roads and other buildings, discharge of contaminants, and oil spills and leaks (Gay et al. undated, pp. 2–6).

Although some of this species' habitat is protected, its habitat continues to shrink in Argentina. In the area of Acambuco, where the military macaw has been observed, the designation of Acambuco Reserve as a provincial reserve provides some protective measures. The purposes of this reserve, in part, are to preserve its genetic resources, to preserve the environment surrounding catch basins of its rivers, and to guarantee the maintenance of the biodiversity living in the reserve. However, in the Salta Province, this species is primarily found in areas that are unprotected, with the exception of the Acambuco Reserve (Navarro et al. 2008, pp. 1, 7, 9). In summary, significant amounts of this species' habitat have been converted such that its habitat is no longer suitable, and these causes of habitat loss are likely to continue.

Bolivia

Madidi National Park experiences threats that are representative of threats to this species' habitat in Bolivia. The park is one of the key areas where this species likely has a viable population in Bolivia. Thus, we focused our analysis on this park. The National Service of Protected Areas (SERNAP) has authority over Bolivia's parks and protected lands. Approximately 53 percent (57.2

million ha; 141.3 million ac) of Bolivia's total area is forested (FAO 2010, p. 228). Of this area, 38.9 million ha (96.1 million ac) are within the Bolivian Amazon and constitute 5 percent of the total Amazon forest (Locklin and Haack 2003, p. 774). As of 2005, Bolivia had 12 national parks, including 6 with integrated management natural areas, 1 with indigenous territory (or communal lands), and 4 national reserves; 2 biosphere reserves; and 3 integrated management natural areas, totaling 16,834,380 ha (41,598,659 ac) (ParksWatch 2005, p. 2). A discussion of typical threats in Bolivia's parks follows. The region suffers from chronic and intense poverty levels, which affect more than 90 percent of the population (Instituto Nacional de Estadística de Bolivia (INE) 2005). The result is intense conflict between development and conservation. In Madidi National Park, the three greatest threats to the nature preserve are the construction of a highway within the park, drilling for oil, and a planned hydroelectric dam. Other activities that are impacting or are likely to impact this park are illegal logging, gold mining, and uncontrolled tourism (ParksWatch 2011b, pp. 1–15; Chavez 2010, pp. 1–2).

Deforestation and Logging

The forests of Bolivia have mainly been subjected to selective logging (Salo and Toivonen 2009, p. 610; Fredericksen 2003, p. 10), which has been done at very low levels and with low human pressures (Pacheco 2006, p. 206), allowing them so far to remain largely intact. In the five national parks where the military macaw is regularly observed, there are some protections in place for the species' habitat (Hennessey 2011, pers. comm.). However, logging still occurs within the range of this species (ParksWatch 2011b, p. 1). Large tracts of primary forest remain in Bolivia, but it is likely that some of these will be subjected to logging (Fredericksen 2003, p. 13) due to slash-and-burn activities by indigenous communities, and because forest products are one of Bolivia's primary exports (Byers and Israel 2008, p. vi). The use of slash-and-burn practices on steep and erodible slopes has considerably affected the area's hydrological regime, particularly near the city of Santa Cruz. In many areas of human settlement, soil erosion is compounded by logging, nutrient depletion, and weed invasion.

As of 2006, 89 timber companies held the rights to 5.8 million ha (14.3 million ac) of logging concessions (Pacheco 2006, p. 208). The Bolivian Forestry Law of 1996 (Forestry Law 1700)

requires the preparation and approval of management plans and adherence to best management practices (BMPs) (Fredericksen 2003, p. 10). For instance, harvesters must pre-map harvestable trees (which have minimum diameter limits), protect seed trees, and set aside areas that are designated as protected or not harvestable. Management issues still need to be addressed, including sufficient regeneration time for commercial species (Fredericksen 2003, p. 10). However, Bolivia continues to attempt to balance the use of its natural resources with competing priorities. For example, the Pilón Lajas Management Plan divided the reserve into specific zones to combine indigenous community rights with conservation initiatives (Hennessey et al. 2003, p. 320). Despite national laws and regulations, activities such as illegal timber extraction continue to spread unabated (World Bank 2006, p. 8; U.S. Forest Service 2007, p. 2; Pacheco 2006, p. 208).

Roads

There are increasing demands for road infrastructure within Bolivia for many reasons. It is one of the poorest countries in South America (MacLeod 2009, p. 6; INE 2005), and the government would like to improve its economy (ParksWatch 2011b, p. 13). The construction of the Apolo-Ixiamas Road is one way of facilitating access to its natural resources. A road has been proposed that would bisect the Madidi National Park and Natural Integrated Management Area, opening vast, currently inaccessible tropical forest areas to colonization and resource extraction (ParksWatch 2011b, pp. 1–2). This can promote illegal logging, and facilitate access to previously inaccessible forested areas (Fimbel et al. 2001, pp. 511–512). The construction of roads through this park has been a source of controversy for several years (http://conservation-strategy.org/sites/default/files/field-file/6_Madidi_Road_Complete_Document.PDF, accessed May 6, 2014). The current status of the road and whether it will be constructed around the park or through the park remains unclear. However, regional development plans are often implemented without consideration of impacts on natural resources (WCS 2009, p. 4). Plans to connect Bolivia and Peru to Brazil's expanding markets and expand the energy industry (oil and gas) will affect fragile areas of high biodiversity (WCS 2009, p. 4). Roads constructed in the past have also been problematic. In the late 1990s, roads through Serranía Sadiri spurred an increase in unsustainable logging of the

area's mahogany trees, which were the most valuable tree at the time (World Land Trust 2010, p. 1).

Hydroelectric Power

Possibly one of the greatest threats in the Madidi National Park is the proposed Bala Hydroelectric Dam Project at the Beni River in the Bala Gorge, where the Beni River goes through the Bala Mountain Range. The Bala Hydroelectric Dam, as proposed, could flood much of Madidi National Park and the adjacent biosphere reserve and indigenous territory Pilón Lajas, which is an area of about 2,000 km² (4,942 mi²) (Chavez 2010, pp. 1–2; Bolivia Supreme Decree 24191). Construction of dams can have severe impacts on ecosystems (McCartney et al. 2001, p. v). For example, a dam blocks the flow of sediment downstream. During construction of dams, disturbance to soils at the construction site is one of the largest concerns. This leads to downstream erosion and increased sediment buildup in a reservoir. Although the current status of this dam is unclear, it is clear that the Government of Bolivia is intent on becoming more self-reliant, in part through creating its own sources of energy through hydroelectric dams.

Other Pressures

In Madidi National Park, there is limited legal hunting, but in the areas surveyed, this species was described as common and not exploited (Hosner et al. 2009, p. 226). Nine villages or communities are within the national park, and 22 are in the integrated management natural area. Of the 31 communities, 3 are located in the Andean plateau zone. In the lowlands, two of the communities occupy the zone of valleys around the municipality of Apolo. Timber extraction occurs here (WorldLand Trust 2010, p. 1). In 2010, an additional 25,090 ha (62,000 ac) of pristine tropical rainforest in Bolivia were protected, following a decision by an indigenous community to create a tourism refuge in the Sadiri rainforest (WorldLand Trust 2010, p. 6). Landless Andean farmers make a living in the lowlands, and they at times expand the agricultural frontier, increasing the risk of disease transmission between domestic animals and wildlife, bringing crops and domestic animals closer to wildlife predators, and increasing hunting pressure in surrounding forests (WCS 2009, p. 4).

In summary, threats to the species' habitat in Bolivia include unsustainable land use practices, illegal logging, road building, and exploration activities for oil extraction, which are contributing to

the erosion of Bolivia's ecosystems (MacLeod 2009, p. 6; ParksWatch 2005, p. 1). Large tracts of primary forest remain in Bolivia, but it is likely that many of these will be subjected to logging and other pressures, such as extraction of non-timber forest products, particularly because forest products contribute to Bolivia's national exports (Byers and Israel 2008, p. vi). The Government of Bolivia is attempting to balance improving its economy with conservation initiatives, and some of its development initiatives may negatively impact this species' habitat. Despite protections in place, this species' habitat in Bolivia continues to experience these threats, and we expect these pressures to continue into the future.

Colombia

In the past, human colonization, development, and exploration within the range of the species in Colombia were limited due to the exceptionally steep and high terrain of the Andes (Salaman et al. 2002, p. 160). However, researchers reported in 2004 that the Cauca River Canyon in northeastern Colombia, an area containing military macaws, was extensively deforested (Floréz and Sierra 2004, p. 3). The main threats in the lowlands are the expansion of agriculture, particularly by small farmers in the middle altitude areas, and extractive activities such as hunting (including the removal of birds to sell as pets) and wood harvesting (Salaman et al. 2007, p. 89). As resources become scarcer in the lowlands, these pressures move upland. Associated with these farming practices is the use of livestock and the erosion caused by livestock grazing on steep slopes, as well as erosion due to cultivation.

A 2010 report indicated that forest cover was largely continuous in Colombia, but deforestation had increased dramatically as of 2010 (FAO 2010, pp. 22, 106). Deforestation rates in lowland moist forest on the foothills of the eastern Andes of Colombia are rapidly accelerating. Deforestation has increased from 1.4 percent (1961–1979) to 4.4 percent (1979–1988), and is correlated with increasing human population density (Salaman et al. 2007, p. 89; Viña and Cavelier 1999, p. 31). Primary forest habitats throughout Colombia have undergone extensive deforestation. Viña et al. (2004, pp. 123–124) used satellite imagery to analyze deforestation rates and patterns along the Colombian-Ecuadorian border (in the Departments of Putumayo and Sucumbios, respectively), finding that between 1973 and 1996, a total of 829

km² (320 mi²) of tropical forests within the study area were converted to other uses. This corresponds to a nearly one-third total loss of primary forest habitat, or a nearly 2 percent mean annual rate of deforestation within the study area.

Since the 1970s, the Colombian Government has encouraged road construction and colonization projects. The goal is to create links to the vast and undeveloped Amazonian region, and to open up the Llanos and Amazonian lowlands for utilization of their natural resources (Salaman et al. 2007, pp. 10, 89; Salaman et al. 2002, p. 160). In recent years, this species' habitat has come under increased pressure with the completion of the Mocoa-Bogotá highway, the proposed Puerto Asís-Florencia road, and the discovery and exploitation of petroleum and precious metals. All of these factors contribute to an escalation in human encroachment and associated impacts that degrade this species' habitat (Salaman et al. 2007, p. 10). The few remaining forest connections between the upper and lower slopes are under pressure, even where they are minimally protected.

Five main routes link the lowlands from Colombia's high Andean interior to other areas. Infrastructure development on the eastern slope of the Andes in Colombia, as well as adjacent Ecuador, has also caused significant human population pressures and has led to much habitat degradation. Increased and improved access roads have led to the conversion of mature tropical forests for pasture lands, petroleum products exploitation, and coca plantations (Salaman et al. 2007, p. 89). These road projects to link Colombia with Venezuela and Ecuador along the entire eastern base of the Andes have contributed to additional deforestation.

Serranía de los Churumbelos National Park

Currently, the Serranía de los Churumbelos forest is almost entirely intact and is owned by the government (Salaman et al. 2007, pp. 10, 91–92). This mountain range has largely avoided the degree of human impact that other regions have suffered. However, this is changing rapidly due to mineral exploration (petroleum and precious metals) and natural resources (timber and rich organic soils for agriculture) demands. The Serranía de los Churumbelos could become the focus of large-scale deforestation and colonization in the near future (Salaman et al. 2007, p. 89). Parque Natural Nacional Cueva de los Guácharos provides some protection to the forests in this region although it is a small park

(approximately 5,000 ha or 12,355 ac), and even here, illegal encroachment occurs (Salaman et al. 2007, p. 89).

Catatumbo-Barí National Park

The primary threat in the Catatumbo-Barí National Park (at the Colombian-Venezuelan border) is deforestation and impacts associated with coca plantations surrounding the Park (Fundación ProAves 2011, pp. 28–29). Coca cultivation has fluctuated for several years. Over a 4-year study period, it contained about 100 ha (247 ac) of coca (United Nations Office on Drugs and Crime, undated report, p. 33). A new population of this species was recently recorded at two locations in this park (Avendaño 2011 in BLI 2014a, p. 2). In addition, one population in the Cauca valley (fewer than 50 mature birds) could be affected by the construction of a dam (155 m (508.5 ft) in height) that could affect its sole breeding cliff. However, the status of the dam is still unclear (American Bird Conservancy 2012, p. 24).

Ecuador

Ecuador experiences one of the highest deforestation rates in South America (Mosandl et al. 2008, p. 37). Forested habitat within many parts of Ecuador has diminished rapidly due to logging, clearing for agriculture, and road development (Youth 2009, pp. 1–3; Mosandl et al. 2008, p. 37; Sierra 1999, p. 136; Dodson and Gentry 1991, pp. 283–293). Between the years 1990 and 2005, Ecuador lost a total of 2.96 million ha (7.31 million ac) of primary forest, which represents a 16.7 percent deforestation rate, and a total loss of 21.5 percent of forested habitat since 1990 (Butler 2006b, pp. 1–3; FAO 2003b, p. 1). Much of the primary moist forest habitat has been replaced with pastures and scattered trees (Collar et al. 1992, p. 533). Very little suitable habitat now remains for the species here, and remaining suitable habitat is highly fragmented (Bass et al. 2010, p. 2; Snyder et al. 2000, p. 122). In the area where this species exists, near the Gran Sumaco Biosphere Reserve, there are several oil reserves (Celi-Sangurima 2005, p. 22). However, specific impacts to this species as a result of oil exploration or extraction activities are unknown.

The colony in Kichwa River Reserve is currently in an area designated as protected, although it is unclear what these protections entail. In this area, the local community group Macaw Rio is interested in conducting ecotourism. Although this colony has persisted for about 150 years (Huataatoca pers comm. in Arcos-Torres and Solano-Ugalde

2008, p. 72), it likely will be affected by logging and the resulting deforestation on nearby land. Researchers suggest that the apparent lack of this species in Ecuador is possibly related to lack of suitable sites for the formation of breeding colonies, or lack of knowledge about sites that may be located in inaccessible areas (Arcos-Torres and Solano-Ugalde 2008, p. 72). We know of no specific threats to the species in the Kichwa River Reserve, other than those associated with small population sizes, which is discussed under Small Population Size, below.

Mexico

Mexico has suffered extensive deforestation (conversion of forest to other land uses) and forest degradation (reduction in forest biomass through selective cutting, etc.) over the past several decades (Commission for Environmental Cooperation (CEC) 2010, pp. 45, 75). In recent decades, Mexico's deforestation has been rapid (Blaser et al. 2011, pp. 343–344). Between 1990 and 2000, Mexico lost forest (factoring in natural regeneration of degraded forest and planting of forest in areas that previously did not have forest) at a net rate of 344,000 ha (850,043 ac) per year (FAO 2010, p. 21). During 1990–2010, Mexico lost approximately 6 million ha (15 million ac) of forest, and had one of the largest decreases in primary forests worldwide (FAO 2010, p. 56, 233). Although Mexico's rate of forest loss has slowed in the past decade, it still continues. The current rate of net forest loss in Mexico is 155,000 ha (383,013 ac) per year, with an estimated 250,000–300,000 ha (617,763–741,316 ac) per year degraded (Government of Mexico (GOM) 2010b, in Blaser et al. 2011, p. 344; FAO 2010, p. 233).

As of 2010, Mexico had 64.8 million ha (160.1 million ac) of forest (Food and Agriculture Organization (FAO) 2010, p. 228), and 50 percent of these forests are considered degraded. Projections of lost forested area by the year 2030 in Mexico are between 10 percent to nearly 60 percent of mature forests lost, and approximately 0 to 54 percent of regrowth forests lost (CEC 2010, pp. 45, 75). Deforestation via forest conversion to agricultural uses remains a major driver of land transformation in Mexico (CEC 2008, p. 24). Agricultural production is projected to double within the country by 2030 (CEC 2010, pp. 34, 70). Although some of this increase in production is expected due to an increase in productivity on previously converted land, total agricultural land area in Mexico is projected to increase by 6,300 to 41,400 ha (15,568 to 102,302 ac) by 2030 (CEC 2010, p. 75).

In the range of the military macaw, such as the tropical forest along the Pacific coast of Mexico, high rates of deforestation have occurred; slash-and-burn agriculture still occurs along with grazing. In 2002, it was estimated that the species had suffered a 23 percent habitat loss within its range in Mexico using a Genetic Algorithm for Rule-set Prediction (GARP) analysis tool (Ríos-Muñoz 2002, pp. 24, 32). GARP analysis essentially uses ecological characteristics of known species locations in order to determine its likely distribution.

A 3-year study documented loss of habitat, particularly trees used by macaws, in the Tehuacan-Cuicatlan Biosphere Reserve, Sabino Canyon. In their study, researchers found a total of 170 individual plants of species consumed by military macaws in the pine forests in an area of 1,500 m² (16,146 ft²) in 2005 (Arizmendi 2008, p. 43). By January 2008, eleven (6.5 percent) of these trees had been logged. In the transitional forest between dry and pine (in an area of 1,000 m² or 10,764 ft²), 134 plants were documented in 2005, and by January 2008, fifteen (11.90 percent) of them had been logged. Arizmendi suggested that these activities are carried out by local communities, and suggested that a local environmental education campaign be implemented. A reduced number of trees limit the availability of adequate food resources across the landscape. With fewer trees remaining, the area cannot support the same number of individuals of the species and, therefore, causes a further reduction in the population. Macaws were not found in deforested areas, even where one of their important food sources, *Hura polyandra*, was left as shade for cattle (Rivera-Ortiz et al. 2008, p. 256). As further support, in Jalisco, most of the sites where macaws were present had little or no habitat loss (note that none of the sites in Jalisco where military macaws were located were in protected areas). No macaws were located in sites with more than 30 percent habitat loss, even though these sites may have had abundant trees.

Mining

At the Mineral de Nuestra Señora reserve in Cósala, where this species occurs, mining activities are occurring (Rubio et al. 2007, p. 52; Bonilla-Ruz et al. 2007b, p. 45). This reserve is 12 km (7.5 mi) southeast of Cósala in Sinaloa, Mexico. This reserve was created after a joint effort in 1999 between the state, municipal government, and the Autonomous University of Sinaloa. The Autonomous University of Sinaloa

conducted technical studies to propose the area as a nature reserve. The university also conducted conservation projects here which focused on the “Ecology and Conservation of the Military Macaw” and “Environmental Education and Ecotourism.” In 2002, the Mineral de Nuestra Señora reserve was formally designated. Since then, parrot populations and their habitat here both within and outside the preserve have been affected by mining activities taking place in the area (Rubio et al. 2007, p. 52). In early 2005, mining efforts began on underground development and drilling (Scorpio Mining 2011, p. 2). The current effect of mining on the species is unclear.

Peru

There is little to no current published information with respect to specific threats to this species in Peru (Gastañaga et al. 2011, entire; JGP Consultants 2011, entire; Lee 2010, entire; Cowen 2009, entire; Terborgh 2004, entire; Brightsmith 2004, entire). It exists in several parks that convey some measures of protection (Oliveira et al. 2007, p. 1,235; Terborgh 2004, p. 35). Peru’s protected areas are managed by the General Department of Natural Protected Areas, INRENA, under the authority of Law No. 26834, Law of Natural Protected Areas, promulgated in 1997. The Peruvian national protected area system includes several categories of habitat protection. Habitat may be designated as any of the following:

- (1) Parque Nacional (National Park, an area managed mainly for ecosystem conservation and recreation);
- (2) Santuario (Sanctuary, for the preservation of sites of notable natural or historical importance);
- (3) Reserva Nacional (National Reserve, for sustainable extraction of certain biological resources);
- (4) Bosque de Protección (Protection Forest, to safeguard soils and forests, especially for watershed conservation);
- (5) Zona Reservada (Reserved Zone, for temporary protection while further study is under way to determine their importance);
- (6) Bosque Nacional (National Forest, to be managed for utilization);
- (7) Reserva Comunal (Communal Reserve, for local area use and management, with national oversight); and
- (8) Cotos de Caza (Hunting Reserve, for local use and management, with national oversight) (BLI 2008, p. 1; Rodríguez and Young 2000, p. 330).

Because the designations of national parks, sanctuaries, and protection forests are established by supreme decree that supersedes all other legal

claim to the land, these areas tend to provide more habitat protection than other designations. All other protected areas are established by supreme resolution, which is viewed as a less powerful form of protection (Rodríguez and Young 2000, p. 330).

This species has been documented in the Tambopata National Reserve, which is a 275,000-ha (679,540-ac) conservation area created by the Peruvian Government in 1990. The main purpose was to protect the watersheds of the Tambopata and Candamo Rivers. This area protects some of the last pristine lowland and premontane tropical humid forests in the Amazon. Within the Tambopata National Reserve, there have been isolated human settlements along stretches of the Malinowski River, which flows into the Tambopata River. Fewer than 5,000 people inhabit the Tambopata National Reserve’s border area to the north. They make a living of slash-and-burn agriculture, small-scale gold mining, timber extraction, and hunting and fishing. One area of Tambopata, including a buffer zone, was recently described as a “crisis zone” (Lee 2010, p. 169). It has been described as being at high risk for illegal settlement, timber extraction, and mining (Lee 2010, p. 169).

Populations of this species are thought to be in the Manu Biosphere Reserve and the Bahuaja Sonene National Park in Peru (WCS 2007, p. 1; Herzog *in litt.* 2007; Terborgh 2004, pp. 40–41). The problems here are primarily due to human population growth (Terborgh 2004, pp. 40–41). Five indigenous groups reside in the Manu Biosphere Reserve—they are both legal and illegal settlers (Terborgh 2004, pp. 40–41). An ecological research station has been in place since 1973 in Manú National Park (Terborgh 2004, entire), which also adds some protection to the species. Research has shown that often simply having a long-term research presence there can help to reduce poaching (Campbell et al. 2011, p. 2). Unlike parks in the United States, in countries such as Peru, parks and protected areas were formed around the indigenous tribes that live there (Terborgh 2004, p. 51), and the management and purpose of the parks often include protection of the rights of indigenous human communities. This philosophy of park protection and mandates of parks differs from in the United States, where humans are viewed as visitors to the parks, rather than permanent residents (Terborgh 2004, p. 51). In Manu Biosphere Reserve, another potential threat is oil exploration. Both Shell and Mobil Oil

have conducted oil exploration activities in this area (Terborgh 2004, p. 55; ParksWatch 2002, pp. 5, 7). Within Bahuaia, as of 2002, there were no human establishments within its boundaries (ParksWatch 2002a, p. 1). However, activities that could affect the military macaw in this area include gold mining, illegal logging, extraction of forest resources, and farming (ParksWatch 2002b, p. 1).

Venezuela

There is little published information about the military macaw in Venezuela (BLI 2014, pp. 1–2; Rodriguez 2004, entire). Here it exists in the Andes in the Central Coastal Cordillera, and Sierra de Perijá (Rodriguez et al. 2004, pp. 375, 378, 379). It has been found on the north slopes of El Ávila, Guatopo, Henri Pittier National Park, Cerro La Mision, and Sierra de Perijá National Park (Desenne and Strahl 1994 in Snyder et al. 2000, p. 125; Fernandez-Badillo et al. 1994 in Snyder et al. 2000 p. 125). Most of its range in Venezuela is within protected areas, but as of 2000, threats still were reported to exist in the protected areas (Snyder et al. 2000, p. 125). In 2000, Snyder et al. noted that Sierra de Perijá was being deforested for narcotics, land speculation, and cattle (p. 125). A population of this species was recorded for the first time at two localities at the Catatumbo-Barí National Park in the Colombian-Venezuelan border, extending the previous species' range from the east slope of the Serranía de Perijá southwards (Avendaño 2011, p. 2).

Summary of Factor A

Habitat loss, human encroachment, and conversion to agriculture are the main threats acting on the species throughout its range. These threats are exacerbated by an inability by range country governments to adequately manage and monitor the species (see discussion under Factor D, below). South America had the largest net loss of forest area of all continents between 2000 and 2005 (Mosandl et al. 2008, p. 38), with a net loss of 4.3 million ha per year. Although specific, detailed information about this species' remaining occupied habitat status is not available for each country, we know that much of this species' habitat has been lost through conversion of land to farming, forestry, or other activities (Bonilha and Switkes 2008, p. 17; Etter et al. 2006, p. 369; Renton 2004, p. 13). Conversion of habitat to soy plantations is now considered to be one of the principal causes of Amazon deforestation. Deforestation may already have destroyed as much as 1.2 million

ha (3 million ac) in the Amazon. This, combined with pressures of capture for the pet trade, has severely impacted the wild population of military macaws. Studies have shown that, over time, resident bird diversity generally declines as remaining forest becomes smaller and more fragmented (Turner 1996, pp. 202, 206).

As with most parrots, the military macaw requires large areas of suitable habitat, including large trees or other nesting cavities for nesting, feeding, and roosting as well as food sources. Deforestation and logging is a common form of habitat loss that affects this species (Benetiz-Diaz 2012, p. 4; Ríos-Muñoz et al. 2009, pp. 502–505). Deforestation via conversion of land to agricultural use is a threat to military macaws because it directly eliminates forest habitat, removing the trees that support the species' nesting, roosting, and dietary requirements. It also results in fragmented habitat that isolates military macaw populations, potentially compromising the genetics of these populations through inbreeding depression and genetic drift (Lande 1995, pp. 787–789; Gilpin and Soulé 1986, p. 27). We do not know the exact extent of deforestation in the range of the military macaw. However, the best available information indicates that deforestation continues to occur and affect the species throughout its range, despite protections that are in place.

Currently the population of military macaws is extremely small (likely a few thousand individuals), those populations are severely fragmented, and its suitable habitat is becoming increasingly more scarce. Therefore, based on the best available scientific and commercial information, we find that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the military macaw now and in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The trade in wild parrots is common in some areas of South America (Gastañaga et al. 2011, entire; Cantú-Guzmán et al. 2008, entire). In its Red List assessment, the IUCN indicates that the two major threats to the military macaw are habitat loss and capture for the domestic pet trade (IUCN 2011, p. 1). Many reports indicate that poaching for the pet trade is still a problem for parrot species, particularly in poorer countries (Herrera and Hennessey 2007, entire; Dickson 2005, p. 548). For perspective, in the United States, captive-bred specimens of this species

were recently found offered for sale for \$699 (Basile 2010, p. 2). In 2006, four military macaws were advertised for sale with an average sale price of \$850 (Cantú-Guzmán et al. 2008, p. 72). Although the scope of the illegal trade in the military macaw is unknown, poaching can be a lucrative and relatively risk-free source of income (Dickson 2005, p. 548).

A high percentage of birds die during the process of capturing from the wild, transporting, and selling them. Because most of these activities are illegal, it is difficult to accurately determine the actual mortality rate, but estimates vary between 31 and 90 percent (Weston and Memon 2009, p. 79; Cantú-Guzmán et al. 2007, pp. 7, 20, 22, 55, 60). Military macaws mate for life, are long-lived, and have low reproductive rates. These traits make them particularly sensitive to the impacts of their removal from the wild (Lee 2010, p. 3; Thiollay 2005, p. 1,121; Wright et al. 2001, p. 711). Wild harvest can destroy pair bonds, remove potentially reproductive adults from the breeding pool, and have a significant effect on small populations (Kramer and Drake 2010, p. 11). These activities adversely affect a species' population numbers (Pain et al. 2006, p. 322).

Although poaching continues to occur for the pet trade, it has been found to be significantly lower at protected sites (Pain et al. 2006, pp. 322–328; Wright et al. 2002, p. 719). Other reports have found that national or local protection, particularly when local communities are actively involved in conservation efforts, can successfully reduce nest take (Pain et al. 2006, p. 328; Chassot et al. 2006, pp. 86–87). Gonzalez (2003, pp. 437–446) found evidence of poaching, particularly during nesting seasons, in the Pacaya-Samiria National Reserve, a protected area in the Loreto Department, Peru, during his 1996–1999 study. However, he also found that poaching decreased during the 1998 harvest season (Gonzalez 2003, p. 444), which he attributed to increased numbers of birds confiscated by regional authorities, which may have subsequently discouraged poaching (also see Factor D, below).

A related factor is the destruction of trees in this species' habitat due to poaching. This species primarily depends on tree-cavity nests as its habitat. Not only does nest poaching negatively affect this species by reducing the population size and the number of birds available to reproduce, it also in some cases destroys this species' habitat. Several studies have found that poachers will cut down trees to remove nests. A study conducted in the late 1990s found that in some cases

in Peru, poachers cut down the nesting tree in order to access the nestlings (Gonzalez 2003, p. 443). They also were observed “hacking” open the nest cavities to remove chicks (Bergman 2009, pp. 6–8; Low 2003, pp. 10–11). An average of 21 nests was destroyed per poaching trip (Gonzalez 2003, p. 443). Nest destruction was also reported by Bergman in Ecuador in 2009 (pp. 6–8).

The military macaw was listed in CITES Appendix II, effective June 6, 1981, and was transferred to CITES Appendix I, effective October 22, 1987. Most of the international trade in military macaw specimens consists of live birds. Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that, during the nearly 6 ½ years that the military macaw was listed in Appendix II, a total of 1,034 military macaw specimens were reported to UNEP–WCMC as (gross) exports. Of those 1,034 specimens, 1,019 were live birds and 15 were feathers. In analyzing these data, it appears that several records may be over-counts due to slight differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of military macaw specimens in international trade during this period was 973, including 958 live birds and 15 feathers. Fourteen of the live birds were captive-bred, and the others were reported with the source unknown. Exports from range countries included: 364 live birds from Bolivia; 320 from Mexico; 11 from Ecuador; 4 from Venezuela; and 1 from Argentina.

During the more than 25 years following the transfer to Appendix I (October 22, 1987 through December 31, 2012, the last year for which complete data were available at the time the following numbers were compiled, the UNEP–WCMC database shows a total of 1,894 military macaw specimens as (gross) exports, including 1,455 live birds, 224 scientific specimens, 213 feathers, 1 body, and 1 trophy (UNEP–WCMC trade database, accessed May 20, 2014). As noted above, it appears that some records may be over-counts due to differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of live military macaws in international trade during the 25-year period was 1,301. Of those 1,301 birds, 1,022 were captive-bred or captive-born, and 119 were reported as wild. The source of the remaining live birds is unknown. Exports from range countries included: 54 live birds from Mexico; 10 from Argentina; 4 from Venezuela; 2

from Colombia; and 1 from Peru. Annual quantities exported ranged from a low of 14 live birds during 2006, to 122 live birds (including 80 exported from South Africa) in 2009. Since 2004, none of the exports from range countries has been reported as wild origin.

Argentina, Bolivia, Ecuador, and Mexico

In Argentina, Ecuador, and Venezuela, there is little to no information available about overutilization. International trade has diminished, but local trade continues to occur. In Bolivia, a report published in 2009 indicated that of 17,609 birds (including military macaws) documented in the market studied in Department of Santa Cruz (not far from the range of this species), 64 percent of the birds were found to be adults captured in the wild. Ninety percent (24,707) of the birds were found to be from the Department of Santa Cruz. A total of 2,604 individuals were from the Department of Tarija, 176 from the Department of Beni, 20 from Peru, and 12 from Brazil (Herrera and Hennessey 2009, p. 233). The report indicated that most parrots (some of which were military macaws) were locally sold, and found that 23,306 were in the city of Santa Cruz, and 4,156 were sent to Cochabamba.

In Mexico, the military macaw is reportedly one of the most sought-after species in the illegal pet bird trade (Cantú-Guzmán et al. 2007, p. 38), and poaching remains a concern. In 1995–2005, it was the fifth most seized Mexican psittacine species by Mexico’s Environmental Enforcement Agency, becoming the fourth most seized psittacine species in 2007–2010 (p. 52). As an example, at a sinkhole in El Cielo Biosphere Reserve, a population of approximately 50 birds was decimated by poaching in the 1980s (Aragón-Tapia *in litt.* 1989 in Snyder et al. 2000, p. 125). In many areas, it nests in relatively inaccessible cavities on cliff walls, which provide some protection against the pressures of nest poaching. However, nest poaching is a severe threat in Jalisco and Nayarit, where the species nests in tree cavities (Contreras-González et al. 2007, p. 43; Renton *in litt.* 2007 and Bonilla *in litt.* 2007 in BLI 2011a, pp. 1–2). Between 2005 and 2006 in Mexico, five military macaws were found for sale, and the average price was \$373 (Cantú-Guzmán et al. 2007, p. 76).

Local residents in Argentina indicated that young chicks are removed “for foreigners” but also noted that it is extremely difficult due to the difficulty in accessing the species’ preferred

nesting sites and the aggressiveness of the macaws (Navarro et al. 2008, pp. 7, 9). Additionally, in Mexico and Ecuador, indigenous communities have used military macaw feathers for ceremonial and medicinal practices. However, NGOs are working with these communities to obtain macaw feathers from aviaries so that the indigenous people will not hunt the macaws (Renton 2004, p. 14).

Colombia

This species and other *Ara* macaws are occasionally hunted by indigenous people in Colombia. In one study, in the Catatumbo-Barí National Park, hunting was found to be concentrated around the 15 indigenous communities within the 160,000-ha (395,369-ac) park (Avendaño 2011, p. 2). In 2004, in a cliff-nesting location along the Cauca River, Colombia, threats to this species included poaching and loss of foraging trees (Flórez and Sierra 2004, pp. 2–3). They found that, at the Cauca River site, it was common for some people to remove hatchlings from the nests and sell between 20 to 30 chicks per year on the black market (p. 3). To counteract these activities, a local awareness campaign was initiated (Flórez and Sierra 2004, pp. 2–3). As a result of this project, 3,000 *Hura crepitans* trees (a species used by the military macaw) were planted by the local communities, and the awareness campaign appeared to be effective. Researchers do not believe that hunting pressure is a serious short-term threat. However, local education and awareness programs generally need to be ongoing and long-term for them to be effective, and the local communities need to be aware of the benefits of conserving species in the wild as well as having an alternative source of income (*i.e.*, income other than that derived from poaching).

Peru

A recent study in Peru examined nest poaching and illegal trade of parrots, including the reasons for poaching, and the methods, seasons, and locations where the sale and actual poaching of parrots occurred. This study found that this species is still being poached in the wild (Gastañaga et al. 2011, pp. 79–80), even in protected areas and despite national protections in place. During the 2007–2008 study, eight military macaws were found for sale in two out of eight markets surveyed in Peru (p. 79). Seven of these birds were found in the Amazonian lowland city, Pucallpa (p. 80). The study also found that, where protections and enforcement have been implemented such as in Cusco, there were no parrots for sale in markets. This

indicates that, although it still continues, poaching is becoming less frequent due to involvement by NGOs, minimal international demand for the species, and enforcement by authorities.

Summary of Factor B

Among birds, parrots are the group most subject to commercial trade (Hutton et al. 2000, p. 14). Parrots have suffered a disproportionate number of extinctions, in part due to their desirability as pets. Conservation efforts by the various entities working to ensure long-term conservation of the military macaw may result in its population slowly increasing; however, it is likely that the population is still declining. Even though the military macaw is listed as an Appendix-I species under CITES and laws have been established within the range countries to protect this species, we are still concerned about the illegal capture of this species in the wild. Despite regulatory mechanisms in place and restricted international trade, poaching is lucrative and continues to occur. Additionally, because each population of military macaws is small, with usually fewer than 100 individuals, poaching is likely to have a significant effect on the species. Based on the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the military macaw throughout its range.

C. Disease or Predation

Disease

Studies of macaws indicate that this species is susceptible to many bacterial, parasitic, and viral diseases, particularly in captive environments (Kistler et al. 2009, p. 2,176; Portaels et al. 1996, p. 319; Bennett et al. 1991). Viral diseases seem to be more prevalent and subsequently more studied in parrots than bacteria and parasites. Psittacines are prone to many viral infections such as retrovirus, pox virus, and paramyxovirus, and captive-held birds seem particularly susceptible (Gaskin 1989, pp. 249, 251, 252). A highly fatal disease, Pacheco's parrot disease, is also caused by a virus (Simpson et al. 1976, p. 218). After infection from this virus, death occurs suddenly without apparent sign of sickness other than some mild nasal discharge and lethargy (Simpson et al. 1976, p. 211). However, as transmission of this disease is mainly through nasal discharge and feces, it is less likely to happen in open habitat in the wild than in a confined aviary, particularly because in the wild this

species has been observed to alternate nest sites based on food availability (Chosset et al. 2004, pp. 35–39). Another disease, proventricular dilatation disease (PDD), may be one of the worst diseases known to affect parrots (Kistler et al. 2008, p. 2). PDD has been documented in several continents in more than 50 different parrot species and in free-ranging species in at least five other orders of birds (Kistler et al. 2008, p. 2). It is not clear if some diseases observed in birds in captivity also occur in the wild with the same frequency. However, because the populations of military macaws are small and widely distributed, disease is less of a concern because diseases tend to be more easily transmitted between individuals within close range, and wild birds disperse and are not constantly in close proximity. Also, captive conditions in aviaries make birds more susceptible to disease where the stress of confinement combined with inadequate diet can reduce the ability of birds to fight disease.

We have no evidence of significant adverse impacts to wild populations of military macaws due to disease. Disease is a normal occurrence within wild populations. There is no indication that disease occurs to an extent that it is a threat. Based on the best available scientific and commercial information, we find that disease is not a threat to the military macaw in any portion of its range now or in the future.

Predation

Eggs and chicks are more susceptible to predation than adult macaws (Arizmendi 2008, p. 44). Chicks and eggs are particularly susceptible to predation by snakes (Arizmendi 2008, p. 44), but military macaws select their nests where they are likely to have a high level of reproductive success. Because military macaws generally construct their nests in high locations such as canyon cliffs, snake predation is less of a concern because snakes need tree canopy or vines to climb in order to gain access to eggs and chicks.

Other predators known to consume this species' eggs include iguanas, red-tailed hawks (*Buteo jamaicensis*), turkey vultures (*Carthartes aura*), and some mammals (Arizmendi 2008, p. 44). In the Sabino canyon, iguanas were observed near the nesting sites. Researchers suggested that a predator control program here would benefit the macaws (Arizmendi 2008, p. 45). Macaws frequently exhibit alarmed behavior when red-tailed hawks and turkey vultures approach their nests (Arizmendi 2008, p. 44). In Argentina, a flock of parrots was attacked by a pair

of peregrine falcons (*Falco peregrinus*), which also nest in ravines (Navarro et al. 2008, p. 6). However, although parrots and falcons can be combative, the peregrine falcon, which normally consumes small mammals and birds, is not thought to be a natural predator of the military macaw (Bradley et al. 1991, p. 193). Due to its large size and careful nest site selection, the military macaw is less susceptible to predation by both land and aerial predators (Floréz and Sierra 2004, pp. 2–3). However, even limited predation is still a concern in part because removal of potentially reproductive adults from the breeding pool can have a significant effect on small populations by destroying macaw mating pair bonds (Kramer and Drake 2010, p. 11). Additionally, studies on similar species in similar Andean habitats indicate that vulnerability to predation by generalist predators increases with increased habitat fragmentation and smaller patch sizes (Arango-Vélez and Kattan 1997, p. 140). Because each population of military macaws is small, with usually fewer than 100 individuals, and because this species mates for life, even low levels of predation are likely to have a significant effect on the species.

Summary of Factor C

Diseases associated with military macaws in the wild are not well documented. Although there is evidence that diseases occur in parrots in the wild, we found no information that diseases affect this species to the degree that they are negatively impacting this species in the wild. Because the populations are distributed across such a large area, these populations have resiliency against impacts from disease if one population is affected by a disease outbreak. Conversely, although disease in the wild is not a concern, predation does remain a concern; there is evidence that predation on this species occurs often enough that it can have a significant impact. Because of the species' small and declining population size, tendency to mate for life, low reproductive capacity, and existence in isolated habitat fragments, even minimal predation renders the species more vulnerable to local extirpations. Therefore, we find that predation, compounded by ongoing habitat loss and poaching, is a threat to the military macaw.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms to protect a species could potentially fall under categories such as regulation of trade, wildlife management, parks

management, or forestry management. Regulatory mechanisms could be at the local, national, or international levels.

International Wildlife Trade (CITES)

A specimen of a CITES-listed species may be imported into or exported (or reexported) from a country only if the appropriate permit or certificate has been obtained prior to the international trade and it is presented for clearance at the port of entry or exit. The Conference of the Parties (CoP), which is the decisionmaking body of the Convention and comprises all its member countries, has agreed on a set of biological and trade criteria to help determine whether a species should be included in Appendix I or II. The military macaw is listed in Appendix I. For Appendix-I species, both an export permit (or reexport certificate) must be issued by the country of export and an import permit from the country of import must be obtained prior to international trade. An export permit for species listed in either Appendix I or II may only be issued if the country of export determines that:

- The export will not be detrimental to the survival of the species in the wild (CITES Article III(2) and Article IV(2));
- The specimen was legally obtained according to the animal and plant protection laws in the country of export;
- For live animals or plants, they are prepared and shipped for export to minimize any risk of injury, damage to health, or cruel treatment; and
- For Appendix I species, an import permit has been granted by the importing country.

Except in certain cases, such as specific scenarios for approved captive-breeding programs, the import of an Appendix-I species requires the issuance of both an import and export permit. Import permits are issued only after the importing country determines that it will not be used for primarily commercial purposes (CITES Article III(3)) and that the proposed recipient of live animals or plants is suitably equipped to house and care for them. Thus, with few exceptions, Appendix-I species cannot be traded for commercial purposes.

The CITES Treaty requires Parties (member countries) to have adequate legislation in place for its implementation. Under CITES Resolution Conference 8.4 (Rev. CoP15) and related decisions of the CoP, the National Legislation Project evaluates whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2011a). In reviewing a country's national legislation, the

CITES Secretariat evaluates factors such as:

- Whether a Party's domestic laws prohibit trade contrary to the requirements of the Convention,
- Whether a Party has penalty provisions in place for illegal trade, and if they have designated the responsible Scientific and Management Authorities, and
- Whether a Party's legislation provides for seizure of specimens that are illegally traded or possessed.

The CITES Secretariat has determined that the legislation of Argentina, Colombia, Mexico, and Peru is in Category 1, meaning they meet all the requirements to implement CITES. Bolivia, Ecuador, and Venezuela were determined to be in Category 2, with a draft plan, but not enacted (<http://www.cites.org>, SC62 Document 23, pp. 7–8). This means the Secretariat determined that the legislation of Bolivia, Ecuador, and Venezuela meet some, but not all, of the requirements for implementing CITES. Based on the decrease in reported international trade, CITES and the range countries for this species have effectively controlled legal international trade of this species. Therefore, we find CITES is an effective mechanism for preventing overexploitation for international trade in this species.

Parks and Habitat Management

We are focusing our evaluation of the potential threats to this species primarily to parks for the following reasons. Most suitable habitat, primary forest, only remains in these protected areas. The best available information suggests that this species is now mostly found in protected areas such as parks, in part because this is where suitable habitat remains for the species. Additionally, the majority of the information available regarding the potential threats to the species pertains to the parks, where the species is usually found. Our rationale is supported by Cowen, who noted that encounter rates for large macaw species were generally higher in primary forests (2008, p. 15), which tend to be located in areas with protected status. Throughout this species' range, we found that many of the threats that occur to this species are the same or similar. Threats generally consist of various forms of habitat loss or degradation. Each range country for this species has protections in place, but for reasons such as limited budgets and limited enforcement capabilities, the laws and protections are generally not able to adequately protect the species.

Research has found that tropical parks have been surprisingly effective at protecting ecosystems and species within boundaries designated as parks or other protected status despite underfunding and pressures for resources (Oliveira et al. 2007, p. 1,235; Bruner et al. 2001, p. 126; Terborgh 1999, entire). Bruner's study found that protected areas are especially effective in preventing land clearing. It found that, in 40 percent of parks, land that had formerly been under cultivation and that was incorporated into park boundaries had actually recovered. This subsequently led to an increase in vegetative cover. The study also found that 83 percent of parks were successful at mitigating encroachment (Bruner et al. 2001, p. 125). It concluded that the conditions inside the parks were significantly better than in their surrounding areas (Bruner et al. 2001, p. 125). Oliveira et al. found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (2007, p. 1,235). However, despite these protections, this species has experienced threats such that their populations are now so small (generally fewer than 100 in each population) that any pressure now has a more significant effect. Parks, without management, are often insufficient to adequately protect the species. Our analysis of regulatory mechanisms is discussed essentially on a country-by-country basis, beginning with Argentina, and is summarized at the end. Conditions in specific parks are discussed below.

Argentina

In 2007, Argentina enacted a law mandating minimum standards for the environmental protection of native forests (Ley de Bosques). However, the federal government has not fully enforced the law, and provincial governments are not in full compliance with it (DiPaola et al. 2008, p. 2). Argentina lacks adequate protections of its natural environments; there is a lack of environmental awareness and commitment from the government to adequately protect its resources (FAO 2007, pp. 43–44, 59–60). Provinces usually allow landowners to decide whether to maintain forest cover or deforest the land. The absence of a serious land use planning strategy, particularly during the past 20 years, has led to significant habitat degradation (FAO 2007, p. 60). The threat to native forests has remained particularly high in the Salta Province. As a result, a coalition of indigenous communities and nongovernmental organizations filed for injunctive relief

in Argentina's highest court to attempt to combat deforestation (DiPaola *et al.* 2008, p. 2). In this case, the court mandated deforestation activities to be halted pending the completion of a cumulative environmental impact study. The decision forced the Salta Province to comply with the deforestation moratorium imposed by the Forestry Law, and pressured the Province to comply with the other key provision of the law by completing an environmental land use plan (DiPaola *et al.* 2008, p. 2). Although the Forestry Law is in place and the court case has set a precedent for compliance with this law, the area where this species occurs in Argentina to the best of our knowledge remains largely unprotected (Navarro *et al.* 2008, pp. 7, 9).

Bolivia

This species primarily inhabits the parks and protected areas in Bolivia's Andean region (Herzog 2011, pers. comm.). National parks are intended to be strictly protected; however, some areas where the species occurs are also designated as areas of integrated management, which are managed for both biological conservation and the sustainable development of the local communities. Bolivia attempts to balance natural resource uses; however, it is one of the poorest countries in South America (MacLeod 2009, p. 6; CIA World Factbook, accessed December 6, 2011), and subsequently has competing priorities. As of 2005, Bolivia had 5 national parks, 6 national park and integrated management natural areas, 1 national park and indigenous territory (or communal lands), 4 national reserves, 2 biosphere reserves, and 3 integrated management natural areas (ParksWatch 2005, p. 1). These make up Bolivia's National System of Protected Areas ((SNAP) Servicio Nacional de Areas Protegidas). Below are the designations and their relevant categorizations of protections (eLAW 2003, p. 3).

(1) Park, for strict and permanent protection of representative ecosystems and provincial habitats, as well as plant and animal resources, along with the geographical, scenic and natural landscapes that contain them;

(2) Sanctuary, for the strict and permanent protection of sites that house endemic plants and animals that are threatened or in danger of extinction;

(3) Natural Monument, to preserve areas such as those with distinctive natural landscapes or geologic formations, and to conserve the biological diversity contained therein;

(4) Wildlife Reserve, for protection, management, sustainable use, and monitoring of wildlife;

(5) Natural Area of Integrated Management, where conservation of biological diversity is balanced with sustainable development of the local population; and

(6) "Immobilized" Natural Reserve, a temporary (5-year) designation for an area that requires further research before any official designations can be made and during which time no natural resource concessions can be made within the area (Supreme Decree No. 24,781 1997, p. 3).

The foundation of Bolivia's laws is largely based on Bolivia's 1975 Law on Wildlife, National Parks, Hunting, and Fishing (Decree Law No. 12,301 1975, pp. 1–34), which has the fundamental objective of protecting the country's natural resources. This law governs the protection, management, utilization, transportation, and selling of wildlife and their products; the protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries, regarding the preservation, promotion, and rational use of these resources (Decree Law No. 12,301 1975, pp. 1–34; eLAW 2003, p. 2). Later, Bolivia passed an overarching environmental law in 1992 (Law No. 1,333 1992), with the intent of protecting and conserving the environment and natural resources. Studies have shown that protected areas have been successful in providing protection from poaching, logging, and other forest damage, especially when compared to unprotected areas (Lee 2010, p. 3; Killeen *et al.* 2007, p. 603; Oliveira *et al.* 2007, p. 1,234; Asner 2005, p. 480; Ribeiro *et al.* 2005, p. 2; Gilardi and Munn 1998, p. 641). However, pressures on the parks' resources are increasing; these are described below.

Within the Greater Madidi-Tambopata Landscape, activities that could negatively affect this species occur, and there are competing priorities within these protected areas. The GMTL is divided into three contiguous areas, with two different management categories: A strictly protected National Park in two sections that total 1,271,000 ha (3,140,709 ac), and a natural integrated management area with 624,250 ha (1,542,555 ac), where conservation and sustainable development of the local communities is the main purpose (Conservation Strategy Fund (CSF) 2006, p. 29). The most significant activities that are having a negative impact or could in the

future in this area are the construction of a highway within Madidi, mining for natural resources such as gold, drilling for oil, and a planned hydroelectric dam (ParksWatch 2011b, p. 8; <http://www.amazonfund.eu/art-oil-madidi.html>, accessed September 13, 2011; Chavez 2010, pp. 1–2). There is limited legal hunting of this species occurring here, but in the areas surveyed, this species was described as common and not exploited (Hosner *et al.* 2009, p. 226). Timber extraction still occurs in some areas (WorldLand Trust 2010, p. 1). In the rainforest and foothill forest of Serranía Sadiri within Madidi, roads in the late 1990s spurred a rise in the unsustainable logging of the area's mahogany trees, which were the most valuable tree at the time (World Land Trust 2010, pp. 1–2). Within the Apolobamba protected area, uncontrolled clearing, extensive agriculture, grazing, and "irresponsible" tourism are ongoing (Auza and Hennessey 2005, p. 81). Habitat degradation and destruction from grazing, forest fires, and timber extraction are ongoing in other protected areas, such as Tunari National Park (Department of Cochabamba), where suitable habitat exists for this species (De la Vie 2004, p. 7).

Bolivia's national policy is to decentralize decisionmaking, and responsibility for land planning and natural resource management is increasingly shifting to local and regional governments (Wildlife Conservation Society (WCS) 2009, pp. 2–5). However, the decentralization process is occurring without sufficient personnel, staff training, and operational funds. There is little information as to the actual protections that Bolivia's laws and protected areas confer to military macaws, despite the laws in place at the national level for its wildlife. Threats to the species and its habitat include unsustainable land use practices, illegal logging, mining, road building, oil extraction, illegal animal trade, and hunting, which are all still occurring within this species' habitat (MacLeod 2009, p. 6; WCS 2009, pp. 2–5). The mechanisms in place are inadequate at reducing the threat of habitat destruction and human disturbance within these protected areas.

Colombia

The Colombian Government has enacted and ratified numerous domestic and international laws, decrees, and resolutions for managing and conserving wildlife and flora. Colombia currently has 54 areas that have protected status (El Sistema Nacional de Areas

Protegidas (SINAP); National Natural Parks of Colombia 2011). Of those, 33 have been declared Important Bird Areas (IBAs). The protected area designations are as follows: national parks (parques nacionales), flora and fauna sanctuaries (santuarios de fauna y flora), flora sanctuaries (santuarios de flora), nature reserves (reserva natural), and unique natural areas (área natural única) (Law 165 of 1994). Small populations of this species occur in several reserves and protected areas in Colombia (Strewe and Navarro 2003, p. 32). These protected areas in Colombia offer various degrees of protection to the species.

In 2003, conservation priorities were identified for its bird species, a conservation corridor was designed, and a habitat conservation strategy within the San Salvador valley was developed (Strewe and Navarro 2003, p. 29). The private Buena Vista Nature Reserve was established and protects approximately 400 ha (988 ac) of tropical wet lowland forest and wet premontane forest on the northern slope of the Sierra Nevada. It encompasses extensive primary forests along an altitudinal gradient of 600 to 2,300 m (1,968 to 7,545 ft) and forest patches and secondary forest at elevations between 450 to 600 m (1,476 to 1,968 ft). The reserve is adjacent to the Sierra Nevada de Santa Marta National Park and the Kogi-Malayo Indian reserve (Strewe and Navarro 2003, p. 29).

A conservation project focusing on the coffee zone of the middle Río Frío is ongoing, and its goal is to create a conservation corridor connecting natural habitats and shade-grown coffee plantations (Strewe and Navarro 2004, p. 51). The establishment of the private nature reserve, Buena Vista, was the first step to conserve the foothill forest ecosystems. This was done in close cooperation with a local organization, Grupo Ecologico Defensores de la Naturaleza–Campesinos de Palomino (Strewe and Navarro 2003, pp. 34–35). The Pro-Sierra Nevada de Santa Marta Foundation (FPSNSM) maintains a permanent monitoring station at Buena Vista nature reserve. FPSNSM is working toward sustainable development projects in cooperation with local communities, national park units, and coffee-grower committees in the region. This includes educational campaigns to limit hunting. Habitat management takes place on private lands in the lowlands and foothills of the San Salvador valley to reduce the pressure on the remaining natural forest habitats, including a reforestation program using native tree species. Additionally, forest reserves have been

established as part of a network of private nature reserves in the valley (Strewe and Navarro 2003, pp. 35–36).

Resource management in Colombia is highly decentralized. Colombian environmental management has been divided between the national and regional levels since the 1950s. Governmental institutions responsible for oversight appear to be under resourced (ITTO 2006, p. 222) and unable to adequately manage species such as the military macaw. Resources are managed within local municipalities by one of 33 “Autonomous Regional Corporations” known as CARs (Corporaciones Autónomas Regionales) (Blackman et al. 2006, p. 32). CARs are described as corporate bodies of a public nature, endowed with administrative and financial autonomy to manage the environment and renewable natural resources, implemented through Law 99 of 1993 (p. 32). Each department (analogous to U.S. state designations) within Colombia is managed by a separate local entity. These corporations grant concessions, permits, and authorizations for forest harvesting (ITTO 2006, p. 219).

As of 2005, 40 percent of Colombia’s public resources were managed by local municipalities, making Colombia one of the most decentralized countries in terms of forestry management in Latin America (Blackman et al. 2006, p. 36). Monitoring of resource use and forest development authorized by these corporations is conducted mostly by local nongovernmental organizations. The International Tropical Timber Organization (ITTO) considers the Colombian forestry sector to be lacking in law enforcement and on-the-ground control of forest resources, with no specific standards for large-scale forestry production, no forestry concession policies, and a lack of transparency in the application of the various laws regulating wildlife and their habitats (ITTO 2006, p. 222). Consequently, there is currently no effective vehicle for overall coordination of species management for multijurisdictional species such as the military macaw. Fundación ProAves developed a conservation plan for 2010 to 2020 for several parrot species, including the military macaw (Botero-Delgadillo and Páez 2011, p. 7). However, it is unclear if or when it will be adopted by the Government of Colombia.

Additionally, despite protections, forest loss continues almost unabated in the mountains of the Sierra Nevada, demonstrating that formal protections and regulatory mechanisms are

inadequate. In this area, El Congo Reserve currently may be the only secure nesting site for the military macaw, but it is too small (40 ha; 99 ac) to conserve viable populations.

Efforts are occurring in Colombia to protect and monitor its species, although they do not appear to be adequate to combat the threats to this species. One management tool that Colombia has recently developed is a bird-watching strategy in these protected areas to monitor and report on bird species such as the military macaw, in conjunction with ecotourism (National Natural Parks of Colombia 2011). Despite the efforts in place, there is a lack of information available about the status of this species and its habitat in Colombia. There is no clear information about the status of the species in Colombia, particularly its population trend. We are unable to determine that this conservation strategy will sufficiently mitigate threats to the military macaw, nor are we able to find that the regulatory mechanisms in place in Colombia are adequate. The species population is small in Colombia, and threats to its habitat still exist.

Ecuador

In Ecuador, the military macaw is considered to be very rare (Arcos-Torres and Solano-Ugalde 2008, p. 72). It has been observed in the areas of Sumaco and Zamora-Chinchi (Youth 2009, p. 1; Snyder et al. 2000, p. 125) and recently at Kichwa River Reserve (Reserva Kichwa Río), within the Gran Sumaco Biosphere Reserve Guacamayos (Arcos-Torres and Solano-Ugalde 2008, p. 72). This species is categorized as endangered “en peligro de extinción” (Arcos-Torres and Solano-Ugalde 2008, p. 69) in Ecuador. It is protected by Decree No. 3,516 of 2003 (Unified Text of the Secondary Legislation of the Ministry of Environment) (EcoLex 2003b, pp. 1–2 and 36). This decree summarizes the laws governing environmental policy in Ecuador and provides that the country’s biodiversity be protected and used primarily in a sustainable manner.

Habitat destruction is ongoing and extensive in Ecuador (Mosandl et al. 2008, p. 37; Butler 2006b, pp. 1–3; FAO 2003b, p. 1). Unsustainable forest harvest practices likely continue to impact the military macaw’s habitat. In 2004, Ecuador Law No. 17 (Faolex 2004, pp. 1–29) amended the Forest Act of 1981 (Law No. 74) to include five criteria for sustainable forest management: (i) Sustainable timber production; (ii) the maintenance of forest cover; (iii) the conservation of biodiversity; (iv) co-responsibility in

management; and (v) the reduction of negative social and environmental impacts (ITTO 2006, p. 225; Aguilar and Vlosky 2005, pp. 9–10). In 2001, the Ecuadorian Government worked with the private sector to develop a system of monitoring and control of forest harvest practices. However, in 2003, the Supreme Court of Ecuador declared the control system unconstitutional, and new control systems were being developed (ITTO 2006, p. 225). Approximately 70 percent of the forest products harvested are harvested illegally, or are used as fuel wood, or are discarded as waste (ITTO 2006, p. 226; Aguilar and Vlosky 2005, p. 4). Because the extractive harvesting industry is not monitored, the extent of the impact is unknown; however, the best available information indicates that habitat degradation negatively affects this species in Ecuador.

The Ecuadorian Government recognizes 31 different legal categories of protected lands (e.g., national parks, biological reserves, geo-botanical reserves, bird reserves, wildlife reserves, etc.). The colony in Kichwa River Reserve Macaw receives some legal protections by being in a Reserve. However, a study published in 2002 concluded that, although 14 percent of Ecuador is categorized as national reserve network (Sierra et al. 2002, p. 107), the system does not provide adequate protection for its ecosystems. As of 2006, the amount of protected land (both forested and nonforested) in Ecuador totals approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). However, only 38 percent of these lands have appropriate conservation measures in place to be considered protected areas according to international standards (i.e., areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention) (IUCN 1994, pp. 17–20). The ITTO, as of 2006, considered ecosystem management and conservation in Ecuador, including effective implementation of mechanisms that would protect the military macaw and its habitat, to be lacking (ITTO 2006, p. 229).

Although this colony has persisted for about 150 years (Huatatoca, pers. comm. in Arcos-Torres and Solano-Ugalde 2008, p. 72), it may be affected by logging and the resulting deforestation on nearby land (Arcos-Torres and Solano-Ugalde 2008, p. 72). The best available information indicates that on-the-ground enforcement of Ecuador's laws, oversight of the local jurisdictions,

and implementing and regulating activities are ineffective in conserving the military macaw and its habitat in Ecuador. Researchers suggest that the apparent lack of this species in Ecuador is related to lack of existing suitable sites (large areas containing appropriate feeding, nesting, and breeding habitat) for the formation of breeding colonies. The governmental institutions responsible for natural resource oversight in Ecuador appear to be under-resourced, and to our knowledge, there is a lack of law enforcement on the ground. Despite the creation of a national forest plan, the best available information indicates there is a lack of capacity to implement this plan due to inconsistencies in application of regulations, and discrepancies between actual harvesting practices and forestry regulations. These inadequacies have facilitated logging, clearing for agriculture, subsistence farming, and road development. Habitat conversion and alteration are ongoing within Ecuador, including within protected areas.

Mexico

This species is listed as endangered and is regulated under the general terms of the General Law of Ecological Balance and Environmental Protection (Ley General del Equilibrio Ecológico y Protección al Ambiente (LGEEPA)), the General Wildlife Law (Ley General de Vida Silvestre (LGVS)), and also under CITES (CEC 2003, unpaginated). NOM-059-ECOL-2010 establishes a list of wildlife species classified as either in danger of extinction (endangered), threatened, under special protection, or probably extinct in the wild (Government of Mexico 2002, p. 6). All use of endangered and threatened species requires a special permit from the Secretariat of the Environment and Natural Resources (Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT)). SEMARNAT's main goal is to protect, restore, and conserve its ecosystems and natural resources. Under Mexico's General Wildlife Law, the use of these protected species, including the military macaw, may be authorized only when priority is given to the collection and capture for restoration, repopulation, and reintroduction activities (Comisión Nacional Para El Conocimiento y Uso de la Biodiversidad 2009, unpaginated; CEC 2003, unpaginated).

International trade of Mexico's wildlife is also managed by SEMARNAT. In 2008, Mexico passed Article 60.2 to amend its General Wildlife Law. The article bans the capture, export, import, and reexport of

any species of the Psittacidae (parrot) family whose natural distribution is within Mexico (Cantú and Sánchez 2011, p. 1). It allows authorizations for the removal of individuals from the wild to be issued only for conservation purposes, or to accredited academic institutions for scientific research. However, it does not appear to be adequate based on investigations of trade of Mexico's native parrot species.

The military macaw falls under the jurisdiction of several other laws in Mexico. The General Law on Sustainable Forest Management (Ley General de Desarrollo Forestal Sustentable (LGDFS 2003)) governs forest ecosystems in Mexico, including military macaw habitat. This law formalizes the incorporation of the forest sector in a broader environmental framework. Under this law, harvesting of forests requires authorization from SEMARNAT. It also requires that harvesting forests is based on a technical study and a forest management plan (GOM 2010, p. 24). A number of additional laws complement the 2003 law in regulating forest use. The LGEEPA regulates activities for protecting biodiversity and reducing the impact on forests and tropical areas of certain forest activities; the LGVS governs the use of plants and wildlife found in the forests; the General Law on Sustainable Rural Development (Ley General de Desarrollo Rural Sustentable) provides guidance for activities aimed at protecting and restoring forests within the framework of rural development programs; and the Agrarian Law (Ley Agraria) governs farmers' ability to use forest resources on their land (Anta 2004, in USAID 2011, unpaginated).

Another law regulating portions of the military macaw's habitat is the National System of Protected Natural Areas (Sistema Nacional de Áreas Naturales Protegidas (SINANP)). These protected natural areas are created by presidential decree, and the activities in them are regulated under the LGEEPA, which requires that the protected natural areas receive special protection for conservation, restoration, and development activities (Comisión Nacional de Áreas Naturales Protegidas (CONANP) 2011, unpaginated). These natural areas are categorized as: Biosphere Reserves, National Parks, Natural Monuments, Areas of Natural Resource Protection, Areas of Protection of Flora and Fauna, and Sanctuaries (CONANP 2011, unpaginated).

Conservation strategies in Mexico rely heavily on natural protected areas, and biosphere reserves comprise most of the designated protected area in the country (Figueroa and Sanchez 2008, pp. 3324,

3234). The military macaw occurs in or near at least four biosphere reserves. Although some areas where this species occurs have protected status, Figueroa and Sanchez (2008, entire) found that, for example, the Sierra Gorda Biosphere Reserve was ineffective (as opposed to effective or weakly effective). This study specifically evaluated the effectiveness of Mexico's protected areas for preventing land use and land cover change. It assessed the effectiveness of national protected areas (NPAs) by quantifying (1) the rate of change and (2) the total extent of change, between 1993 and 2002, as well as (3) the percentage, in 2002, of areas transformed by human use; transformed areas included agriculture, cultivated and induced pastures, human settlements, and forestry plantations. The rate of change of transformed areas inside each NPA was also compared with that estimated for an equivalent area surrounding the NPA. They selected 69 federal decreed NPAs (out of 160 NPAs decreed in Mexico) that were 1,000 ha (2,471 ac) or larger, which is the minimum area for conserving ecosystems in Mexico (Figueroa and Sanchez 2008, p. 3,225; Ordóñez and Flórez-Villela 1995, p. 11). The study found that, overall, only approximately 54 percent of protected areas, including 65 percent of biosphere reserves, were effective.

Peru

In Peru, this species is listed as vulnerable under Supreme Decree No. 034-2004-AG (2004, p. 276,855), and its protections fall under the jurisdiction of the National Institute of Natural Resources (Instituto Nacional de Recursos Naturales, INRENA). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation. The military macaw is thought to occur in at least three areas with protected status in Peru. The Peruvian national protected area system includes several categories of habitat protection (refer to Factor A). National reserves, national forests, communal reserves, and hunting reserves are managed for the sustainable use of resources (IUCN 1994, p. 2). The designations of national parks, sanctuaries, and protection forests are established by supreme decree that supersedes all other legal claim to the land and, thus, these areas tend to provide some form of habitat protection (Rodríguez and Young 2000, p. 330). However, limited information is available with respect to the status of this species in Peru. We do not know if the occurrence of the military macaw within protected areas in Peru actually

protects the species or mitigates threats to the species, and to what extent these protections are effective.

Venezuela

In Venezuela, the military macaw is thought to exist in two parks: El Ávila National Park and Henri Pittier National Park. Limited information about the status of this species is available in Venezuela. Henri Pittier National Park (107,800 ha; 266,380 ac) was declared the first national park in Venezuela in 1937. This park is the largest national park of the Cordillera de la Costa (Coastal Mountain Range) region. The principal threats to this park include: fire, human encroachment, solid waste buildup, pollution, hunting, and limited resources for effective park management (ParksWatch 2011g, unpaginated). In many cases, the intensity of threats has increased. Prior to 1994, a team of government representatives, NGOs, universities, and aviculturists in Venezuela had developed both an action plan for the conservation of parrots and a book containing information on parrot biology (Morales et al. 1994, in Snyder 2000, p. 125). However, currently, it is unclear what conservation initiatives are occurring.

El Ávila National Park (81,800 ha; 202,132 ac in size), is located along the central stretch of the Cordillera de la Costa Mountains in northern Venezuela. The most immediate threats to the park are forest fires and illegal settlements, which occur primarily near Caracas (ParksWatch 2011f, unpaginated). ParksWatch notes that the areas closest to the city have experienced more problems in the more isolated northern slope and eastern sector of El Ávila. Other threats in this park include the presence of nonnative plants and poaching.

Summary of Factor D

In Argentina, Ecuador, Peru, and Venezuela, we recognize that conservation activities are occurring, and that these activities may have a positive effect on the species at the local population level. Parrots, in general, are long-lived with low reproductive rates, traits that make them particularly sensitive to poaching and other threats such as habitat loss (Lee 2010, p. 3; Thiollay 2005, p. 1,121; Wright et al. 2001, p. 711). The primary threats to this species historically have been the loss of habitat and capture for the pet trade (Strewe and Navarro 2003, p. 33). Since regulatory mechanisms such as CITES and the WBCA have been put into place, particularly since 1992, much of the legal international trade in the military macaw has declined (see

Factor B discussion, above). However, those pressures prior to the military macaw's listing under CITES and the WBCA contributed significantly to the decline in population numbers for this species. Since then, the species' habitat has become fragmented, its range has reduced, and its populations have more difficulty finding suitable habitat.

Each of these countries has enacted laws to protect its wildlife and habitat. The populations of this species in these four countries are likely to number from fewer than 100 to a few hundred individuals. There are numerous threats acting on this species; its populations have severely declined. In some cases, the actual causes of decline may not be readily apparent and a species may be affected by more than one threat in combination. Habitat conservation measures within these range countries do not appear to sufficiently mitigate future habitat losses. Habitat loss and degradation continue to occur within these countries; the best available information does not indicate that the existing regulatory mechanisms have mitigated these threats in the range of this species. Because these populations of this species are very small in these countries, any impact is likely to have a significant impact on the species; therefore, we are unable to conclude that regulatory mechanisms in place for this species and its habitat are adequate.

Bolivia, Colombia, and Mexico have enacted various laws and regulatory mechanisms for the protection and management of this species and its habitat. Although information available is limited, the best evidence suggests that the military macaw exists in small populations in several large protected areas within these countries. As discussed under Factor A, the military macaw prefers primary forests and woodlands and complex habitat that offers a variety of food sources. Its suitable habitat has been severely constricted due to deforestation. In these three countries, there is evidence of threats to this species due to activities such as habitat destruction and degradation, poaching, construction of roads, and mining, as well as decreased viability due to small population sizes, despite the regulatory mechanisms in place. We acknowledge that research and conservation programs are occurring in these countries. However, based on the best available information, we find that the existing regulatory mechanisms for these countries are either inadequate or inadequately enforced in order to protect the species or to mitigate ongoing habitat loss and degradation, poaching, and the severe population decline of this species.

Habitat conservation measures within these range countries do not appear to sufficiently mitigate future habitat losses.

Based on the best available information, we are unable to conclude that the existing regulatory mechanisms currently in place sufficiently mitigate threats to the military macaw throughout its range. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of the military macaw throughout its range now and into the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

Small, declining populations can be especially vulnerable to environmental disturbances such as habitat loss (O'Grady 2004, pp. 513–514). Removal of a few birds from a population of 100 can have a greater effect than removal of a few birds from larger populations. In order for a population to sustain itself, there must be enough reproducing individuals and habitat to ensure its survival. Conservation biology defines this as the “minimum viable population” requirement (Grumbine 1990, pp. 127–128). This requirement may be between 500 and 5,000 individuals depending on variability, demographic constraints, and evolutionary history. The military macaw occurs in relatively small populations (ranging from a few pairs to approximately 100 individuals, with the total population size that is likely no greater than a few thousand). The military macaw relies on specific habitat to provide for its breeding, feeding, and nesting. Historically, the military macaw existed in much higher numbers in more continuous, connected habitat. Its suitable habitat is becoming increasingly limited, and is not likely to expand in the future.

The combined effects of habitat fragmentation and other factors on a species' population can have profound effects and can potentially reduce a species' respective effective population by orders of magnitude (Gilpin and Soulé 1986, p. 31). For example, an increase in habitat fragmentation can separate populations to the point where individuals can no longer disperse and breed among habitat patches, causing a shift in the demographic characteristics of a population and a reduction in genetic fitness (Gilpin and Soulé 1986, p. 31). This is especially applicable for a species such as the military macaw that was once wide-ranging. It has lost a significant amount of its historical

range due to habitat loss and degradation. Furthermore, as a species' status continues to decline, often as a result of deterministic forces such as habitat loss or overutilization, it will become increasingly vulnerable to other impacts. If this trend continues, its ultimate extinction due to one or more stochastic (random or unpredictable) events becomes more likely. The military macaw's current occupied and suitable range is highly reduced and severely fragmented. The species' small population size, its reproductive and life-history traits, and its highly restricted and severely fragmented range increase this species' vulnerability to other threats.

Climate Change

Consideration of ongoing and projected climate change is a component of our analysis under the ESA. The term “climate change” refers to a change in the mean, variability, or seasonality of climate variables over time periods of decades or hundreds of years (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 78). Forecasts of the rate and consequences of future climate change are based on the results of extensive modeling efforts conducted by scientists around the world (Solman 2011, p. 20; Laurance and Uesche 2009, p. 1,432; Nuñez et al. 2008, p. 1; Margeno 2008, p. 1; Meehl et al. 2007, p. 753). Climate change models, like all other scientific models, produce projections that have some uncertainty because of the assumptions used, the data available, and the specific model features. The science supporting climate model projections as well as models assessing their impacts on species and habitats will continue to be refined as more information becomes available. While projections from regional climate model simulations are informative, various methods to downscale projections to more localized areas in which the species lives are still imperfect and under development (Solman 2011, p. 20; Nuñez et al. 2008, p. 1; Margeno 2008, p. 1). The best available information does not indicate that climate change is impacting this species such that it is a threat.

Summary of Factor E

A species may be affected by more than one threat acting in combination. Impacts typically operate synergistically, particularly when populations of a species are decreasing. Initial effects of one threat factor can later exacerbate the effects of other threat factors (Gilpin and Soulé 1986, pp. 25–26). Further fragmentation of populations can decrease the fitness and

reproductive potential of the species, which will exacerbate other threats. Within the preceding review of the five factors, we have identified multiple threats that may have interrelated impacts on this species. The most significant threats are habitat loss and poaching, particularly because the species has such a small and fragmented population, and it requires a large range and variety of food sources. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, despite the presence of suitable habitat patches. For example, the species' behavior of not nesting in areas where depredation or disturbance is likely may mean that a nest site is “abandoned” before nesting is even attempted. Thus, the species' productivity may be reduced because of any of these threats, either singularly or in combination. These threats occur at a sufficient scale so that they are affecting the status of the species now and will in the future.

In addition, the species' current range is highly restricted and severely fragmented. The species' small population size, its reproductive and life-history traits, and its highly restricted and severely fragmented range increase the species' vulnerability to adverse natural events and manmade activities that destroy individuals and their habitat. The susceptibility to extirpation of limited-range species can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1,612–1,613). Therefore, we find that the species' small population size, in combination with other threats identified above, is a threat to the continued existence of the military macaw throughout its range now and in the future.

Finding and Status Determination for the Military Macaw

We find that this species is endangered based on the above evaluation, and we are listing this species as endangered due to the threats described above that continue to act on this species. Within the preceding review of the five factors, we identified multiple threats that may have interrelated impacts on the species. For example, the productivity of military macaws may be reduced because of the effects of poaching and habitat loss, which are expected to continue to act on the species in the future. In cases where populations are very small, species mate

for life, and birds produce small clutch sizes, these effects are exacerbated. The susceptibility to extirpation of species with small and declining populations can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable (Harris and Pimm 2004, pp. 1,612–1,613). This species exists generally in very small and fragmented populations, usually in areas with some form of protected status in Mexico, Bolivia, Peru, and Colombia, and to a limited extent Ecuador, Venezuela, and Argentina. Its life-history traits (such as mating for life and small clutch size) make it particularly susceptible to extinction because its populations are so small. Based on our review of the best available scientific and commercial information pertaining to the five factors, we found that many of these threats are similar throughout the species' range.

In four of the countries (Argentina, Ecuador, Peru, and Venezuela), the populations are extremely small, and very little information about the status of the species is available in many parts of its range. It is not necessarily easy to determine (nor is it necessarily determinable) which potential threat is the operational threat. However, we believe that these threats, either individually or in combination, are likely to occur at a sufficient geographical scale to significantly affect the status of the species. Additionally, although we do not have precise genetic information about populations throughout this species' range, it is likely that there is some genetic transfer between populations. We believe this based on its demonstrated ability to fly long distances in search of food sources (Chosset and Arias 2010, p. 5). The most significant threat, habitat loss and degradation, is prevalent throughout this species' range. Its suitable habitat has severely contracted, and habitat loss is likely to continue into the future. We do not find that the factors affecting the species are likely to be sufficiently ameliorated in the foreseeable future. Therefore, we find that listing the military macaw is warranted throughout its range, and we propose to list the military macaw as endangered under the ESA.

Great Green Macaw

Taxonomy

The great green macaw (*Ara ambiguus* or *ambigua*, Linnaeus, 1766; Bechstein, 1811) is in the parrot (Psittacidae) family. It is known by various common names such as lapa verde, Buffon's macaw, Guacamayo verde mayor, Guara verde, and Papagayo de Guayaquil. It occurs as two subspecies. The nominate subspecies, *Ara a. ambiguus*, occurs from Honduras to north-west Colombia. The subspecies *A. a. guayaquilensis* occurs in western Ecuador (Rodríguez-Mahecha et al. 2002, p. 116; Fjeldsa et al. 1987, pp. 28–31). There are believed to be only around 100 individuals of *A. a. guayaquilensis* in two areas in Ecuador. This subspecies has a smaller bill with greener underside of the flight and tail feathers than the nominate subspecies (Juniper and Parr 1998, p. 423). Avibase and ITIS both recognize these subspecies (<http://www.itis.gov> and <http://avibase.bsc-eoc.org/avibase.jsp>, accessed May 5, 2014).

There is no universally accepted definition of what constitutes a subspecies, and the use of the term subspecies varies among taxonomic groups (Haig and D'Elia 2010, p. 29). To be operationally useful, subspecies must be discernible from one another (*i.e.*, diagnosable) and not merely exhibit mean differences (Patten and Unitt 2002, pp. 28, 34). This element of discernibility is a common thread that runs through all subspecies concepts. Regarding the great green macaw, all populations or subspecies of *Ara ambigua* essentially face similar threats, all are generally in the same region (Central and northern South America), and all have small populations. In other words, they are not discernible between populations. For the purpose of this proposed rule and based on the best available information, we recognize all populations of great green macaws as a single species.

Description

This species ranges between 77 and 90 cm (30 and 35 inches) in length and has a red frontal band above a large black bill, bare facial features with black lines, blue flight feathers on the superior feathers and olive inferior feathers, blue lower back, and orange tail (Juniper and Parr 1998, pp. 423–424). It is the second largest New World macaw. This species is not sexually dimorphic, meaning there are no differences in appearance between males and females of the same

species. The great green macaw is very similar in appearance to the military macaw, but the military macaw has more prominent blue coloring on its hind neck, has darker plumage, and is smaller. These two species are also separated geographically.

Range, Observations, and Population Estimates

The great green macaw is patchily distributed in a 100,000-km² (38,610-mi²) area (BLI 2014b, p. 2). In addition to occupying humid tropical forests primarily in Central America (Costa Rica, Honduras, Nicaragua, and Panama), there are small remnant populations in western Ecuador, as well as northern Colombia (Berg et al. 2007, p. 1; Chassot et al. 2006, p. 7). Although there may be some interaction between populations, the great green macaw is fragmented into seven isolated populations throughout its distribution due to habitat loss (Monge et al. 2009, pp. 159, 174).

Deforestation has reduced this species' habitat and concentrated its population into primarily five areas: the border of Honduras and Nicaragua, the border of Nicaragua and Costa Rica, the Darién region of Panama and Colombia, and two very small populations in Ecuador (Hardman 2011, p. 8; Monge et al. 2009, p. 159).

Population estimates were made in the 1990s and early 2000s. In 1993, the population estimate was 5,000 individuals; in 2000, the population was estimated to be between 2,500 and 10,000 birds (BirdLife International 2014b, p. 4; Rodríguez-Mahecha 2002a). The global population is now likely less than 2,500 mature individuals (or less than 3,700 with juveniles included) (Monge et al. 2009, pp. 213, 256); however, the actual population is far from clear. Although historical observations are useful for assessing the range of the species, they may also be biased because surveys may not have sampled randomly. Thus, historical population estimates of this species may not be accurate. Although the population in Costa Rica is increasing, the population continues to be very small (Monge et al. 2010, p. 16), and researchers believe that the global population of this species is decreasing (Botero-Delgadillo and Páez 2011, p. 91). Specific information about the range and population estimate for each country is discussed below.

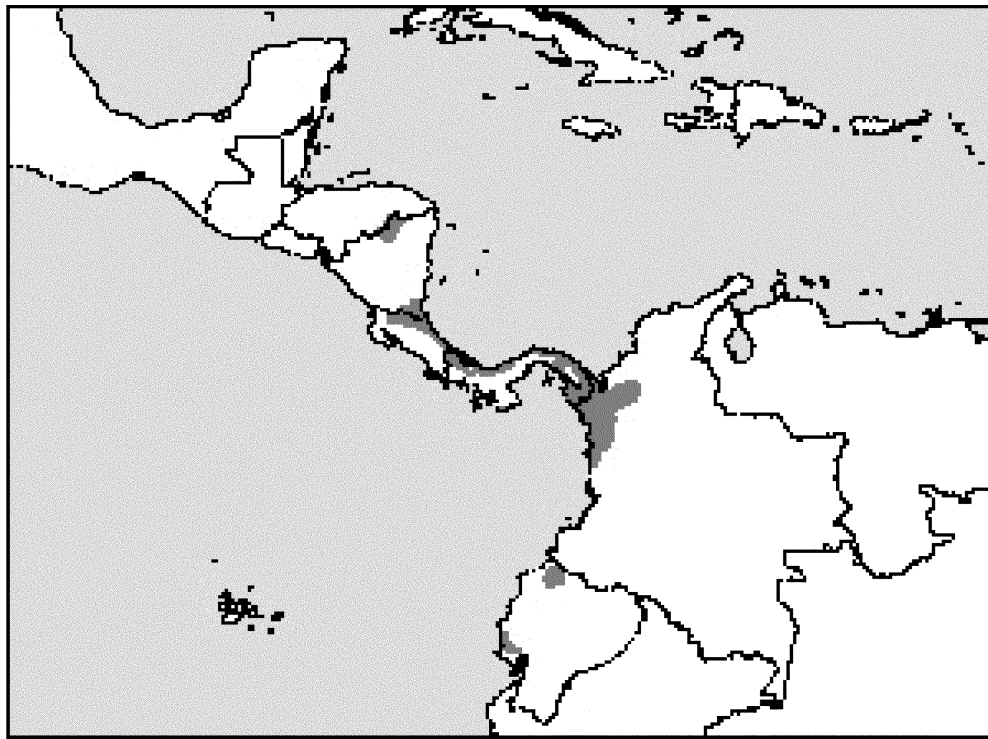


Figure 3. Distribution of *Ara ambiguus*. BirdLife International 2011.

Colombia

Historically in Colombia, it was found in the north of the Serranía de Baudó, the West Andes, and east of the upper Sinú valley (Snyder et al. 2000, pp. 121–123). In the late 1990s, this species was observed in Los Katíos National Park, around Utría National Park in Serranía de Baudó (Salaman *in litt.* 1997), and the Chocó area of western Colombia (Angehr *in litt.* 1996 in Snyder et al. 2000, pp. 121–123; Ridgley 1982). This species' potential geographical range is 51,777 km² (19,991 mi²), which includes two core areas in Sierra Nevada de Santa Marta and in the center of Antioquia Department of Columbia (Salaman et al. 2009, p. 21; Monge et al. 2009, unpaginated; Quevado-Gill et al. 2006, p. 15). The total Colombian population is currently unclear but it is now believed to primarily exist in Los Katíos National Park, which borders the Darién region in Panama. It was also recently observed in the area of Sabanalarga, Antioquia (Quevado-Gill et al. 2006, p. 15). Even though the largest population is thought to be in the northern Darién border region with about 1,700 adults, researchers believe this is an estimate without a strong basis (Botero-Delgadillo and Páez 2011, p. 91). The populations in Colombia are highly localized, and this number could be an

overestimate (Botero-Delgadillo and Páez 2011, p. 91).

Costa Rica

The great green macaw historically inhabited forests along the Caribbean lowlands of Costa Rica (Chosset et al. 2004, p. 32). The population has increased in that area since 1994, when there was an estimate of 210 birds. The population appears to have fluctuated; in 2004, it was estimated that a maximum of 35 pairs were breeding in northern Costa Rica (Chosset et al. 2004, p. 32). A survey conducted in 2009 reported a population estimate of 302 in Costa Rica (Monge et al. 2009, p. 12); another estimate was that there was a total of 275 birds in Costa Rica in 2010 (Chassot 2010 pers. comm. in Hardman 2011, p. 11).

Approximately 67,000 ha (165,561 ac) of great green macaw breeding territory now remains in Costa Rica (Chun 2008, p. v), which is less than 10 percent of its original suitable habitat (Monge et al. 2010, p. 15; Chosset et al. 2004, p. 38). Potential great green macaw breeding habitat, excluding Ecuador, is defined by the density of almendro trees, which this species uses for its primary feeding and nesting substrate. Almendro trees are found only on the Atlantic coast from southern Nicaragua down through Costa Rica and Panama and into Colombia, primarily at altitudes below 900 m (2,953 ft). Based on the

assumption that great green macaw breeding pairs require 550 ha (1,359 ac) of non-overlapping habitat, Chun postulated that northern Costa Rica could support about 120 breeding pairs (2008, p. 110). Chun notes that even the forested areas identified as individual “patches” through a geographic information system (GIS) program do not necessarily represent areas of forest with continuous canopy cover (indicating complex, fairly undisturbed habitat that is likely to contain nutritional needs for this species). Although these patches of forest are technically connected at some level, they are for the most part highly porous and discontinuous, and no analysis was performed to filter out stands that might be porous or discontinuous. There are some areas in its potential range that are above the elevation threshold for almendro trees, and do not meet the criteria for suitable habitat.

Ecuador

In Ecuador, there may only be one viable population. This population exists in the Cerro Blanco Protected Forest, which is 6,070 ha (15,000 ac) outside of Guayaquil in Guayas Province (Villate et al. 2008, p. 19). This population is believed to be approximately 10 individuals. An overall estimate of 60 to 90 individuals in Ecuador in 2011 may be optimistic (Horstman pers. comm. in Hardman

2011, p. 12). Ecuador's population in 2002 was estimated to be between 60 and 90 individuals (Monge et al. 2009, p. 256), but the population was reported to be rapidly decreasing. In addition, this is a decline from 1995, when the population was estimated to be approximately 100 birds in Esmeraldas Province alone (Waugh 1995, p. 10). Between 1995 and 1998, some individuals were observed in the Playa de Oro area along the Santiago River (Jahn 2001, pp. 41–43). In 2005, the species was described as being found in scattered forest remnants in coastal Ecuador from Guayas to Esmeraldas Province (Horstman 2005, p. 3).

In addition to the small population in the Cerro Blanco Protected Forest, recently reported to be about 10 individuals, there may be another small group in the Rio Canande Reserve, which is a humid tropical forest and is located in the Esmeraldas province in coastal northern Ecuador (Horstman pers. comm. in Hardman 2011, p. 12). Rio Canande Reserve (1,813 ha or 4,478 ac) is one of eight reserves managed by another NGO, the Jocotoco Foundation. The most recent population census in Ecuador was conducted in the provinces of Esmeraldas, Santa Elena, and Guayas. Five individuals were recently observed in the Bosque Protector Chongón Colonche; one macaw was observed at the Hacienda El Molino, near the Cerro Blanco Protected Forest; and two macaws were seen at Rio Canande (Horstman 2011, p. 16). The Cordillera (mountain range) de Chongón-Colonche is on the central pacific coast of Ecuador, located in the provinces of Guayas and Manabi. Some individual great green macaws have also been observed at Hacienda Gonzalez 40 km (25 mi) northwest of Guayaquil; however, these individuals may be part of the same population found in Cerro Blanco. In summary, the majority of individuals are believed to be in Esmeraldas Province, and very small numbers remain in the Chongón-Colonche mountain range, Guayas.

Honduras

In 1983, the great green macaw was common in lowland rain forests in the Moskitia (Mosquitia) area and eastern Olancho (Marcus 1983, p. 623). The region known as the Moskitia includes both eastern Honduras and northern Nicaragua. Historically, the species was reported to occur in the areas of Juticalpa and Catacamas in Olancho (Marcus 1983, p. 623). The species was observed daily in the Plátano River area in flocks of more than 10 individuals and almost daily in the Patuca River area, usually in pairs (Barborak 1997 in

Snyder et al. 2000, pp. 121–123). In August 1992, macaws were recorded on the Patuca River at Pimienta upstream from Wampusirpe (Wiendenfeld in Monge et al. 2009, p. 242). Currently, this species exists in the Rio Plátano Biosphere Reserve (800,000 ha or 1,976,843 ac), which has been described as one of the most important reserves in Central America (Anderson et al. 2004, p. 447).

Nicaragua

In Nicaragua, the great green macaw is found primarily in lowland, tropical, and rain forest, as well as pine barrens, primarily in the Bosawas Reserve in the north and around the Indio-Maíz and San Juan rivers in the south (Stocks et al. 2007, p. 1503; Martínez-Sánchez 2007; Chassot 2004, p. 36). The name Bosawas is derived from three significant geographic landmarks that delineate the reserve's core zone limits: The Bocay River, Mount Saslaya, and the Waspuk River. The Bosawas protected area contains habitat that is vital to the species. In the buffer zone of the Indio-Maíz Biological Reserve, great green macaw nesting locations have been identified. The Indio-Maíz Biological Reserve is located in Nicaragua just across the San Juan River at the northern border of Costa Rica, and is nearly 264,000 ha (652,358 ac) in size. The Nicaragua and Costa Rica macaw populations intermix; macaws have been observed crossing the San Juan River, which separates Nicaragua and Costa Rica. As of 2006, in the Quezada, Bijagua, Samaria, and La Juana communities, five macaw nests had been located during surveying. As of 2010, 35 active nests had been documented in the Indio-Maíz Biological Reserve (Monge et al. 2010, p. 16).

In 1999, Powell et al. estimated that the Nicaraguan great green macaw population could be 10 times the size of the population in Costa Rica. In 2008, a population viability analysis was conducted that indicated the size of the great green macaw population in Nicaragua was 661 individuals (Monge et al. 2010, p. 21). In 2009, a population census was conducted, during which 432 macaws were observed. The researchers suggest that the "average population" in Nicaragua is 532 (Monge et al. 2010, p. 13). This 2009 study yielded an estimated population of 834 individuals in Costa Rica and Nicaragua combined (Monge et al. 2010, p. 21).

Panama

In Panama, the great green macaw is believed to inhabit the following areas: Bocas del Toro, La Amistad, northern

Veraguas, Colon, San Blas, Darién, and Veraguas South (Monge et al. 2009, unpaginated). The species has been described as locally fairly common near Cana, Alturas de Nique, in 2005 (Angehr *in litt.* 2005). As of 2009, the historical distribution in Panama was described as not well known due to lack of information (Monge et al. 2009, p. 68). The most viable population is believed to be in Darién National Park, Panama, which borders Colombia (Monge et al. 2009, p. 68; Angehr *in litt.* 1996 in Snyder et al. 2000, pp. 121–123; Ridgley 1982). Researchers believe the Darién area may contain the largest overall population of the great green macaw. However, there is little recent information to confirm this (Monge et al. 2009, p. 68). Darién National Park is the largest national park in Panama, and one of the largest tropical forest protected areas in Central America (The Nature Conservancy (TNC) 2011, p. 1). The Darién region encompasses nearly 809,371 ha (2 million acres) of protected areas, including Darién National Park and Biosphere Reserve, Punta Patiño Natural Reserve, Brage Biological Corridor, and two indigenous reserves (TNC 2011, p. 1). La Amistad, an area that may have a fairly viable population, connects suitable habitat in Panama such as Cerro Punta, Rio Plátano, and the Darién region, and connects the remote hills of Bocas del Toro Province with habitat in Costa Rica. La Amistad is approximately 200,000 ha (500,000 acres) in area.

Summary of Population Estimate

The global population of great green macaws is estimated to be between 2,500 and 3,700 mature individuals (BLI 2014b, p. 4; Chassot and Arias 2012, p. 61; Monge et al. 2009, p. 213; Jahn *in litt.* 2005, 2007, unpaginated). Based on the best available information from experts, the total population is likely between 1,000 and 3,000 individuals (Botero-Delgadillo and Páez 2011, p. 91; Monge et al. 2009, p. 213; Monge et al. 2009b, p. 68). In Ecuador, the population is estimated to be between 30–40 individuals (Horstman *in litt.* in BLI 2014, p. 3). In 2009, a census was conducted in Costa Rica and Nicaragua (Monge et al. 2010, p. 13). A total of 173 individuals were observed in the Costa Rican study area, and 432 individuals were observed in the Nicaraguan study area during the breeding season (Monge et al. 2010, p. 22), with the areas of Mónico, Romerito, and Bartola having the highest estimated abundance at the time of each census. The population of the great green macaw for Costa Rica is currently estimated to be approximately 302 individuals, and the population for

Nicaragua is roughly estimated to be 834 individuals (Monge et al. 2010, p. 22). Species with strict habitat requirements such as the great green macaw are particularly subject to population size overestimation, because they are unlikely to be present in suboptimal habitat despite those habitats being included as part of the species range (Jetz et al. 2008, p. 116–117). Thus, additional surveys are needed, and ground-truthing (gathering data regarding where the species is located) is essential to obtain accurate population estimates for this species.

Habitat and Life History

The great green macaw inhabits humid lowland foothills and deciduous forests generally below 600 m (1,968 ft), but also may occur between 1,000 and 1,500 m (3,281 and 4,921 ft) depending on suitable habitat, which is primarily based on the presence of almendro (*Dipteryx panamensis*) trees. The type of habitat preferred by the great green macaw is an ecosystem where the almendro tree and *Pentacletra macroloba* (oil bean tree) dominate (Chassot et al. 2006, p. 35). This species' nests have been found in *Carapa nicaraguensis* (caobilla), *Enterolobium schomburgkii* (guanacaste blanco), *Goethalsia meiantha*, *Prioria copaifera* (cativo), and *Vochysia ferruginea* (botarrama) trees (Chosset and Arias 2010, p. 14; Powell et al. 1999). Nests have been observed in large trees, with cavities that are nearly 20 m (66 ft) above ground (Rodriguez-Mahecha 2002, p. 119). Great green macaws have been observed to use the same nesting cavity for many years if they are undisturbed, although they may alternate nest sites each year (Chun 2008, p. 102). Reproductive capability is generally reached between ages 5 and 6 years (Chassot et al. 2004, p. 34). The great green macaw mates for life, and nests in deep cavities (usually of almendro trees) from December to June (Chassot et al. in Villate et al. 2008, p. 19; Monge et al. 2002, p. 39). The incubation time is 26 days and the nesting period is 12 to 13 weeks (Rodriguez-Mahecha et al. 2002, p. 119). After the breeding season, individuals disperse from the lowlands to higher forests in the mountains in search of food (Powell et al. 1999 in Chosset et al. 2004, p. 38).

The great green macaw has been observed in flocks of up to 18 individuals, and has been observed traveling long distances on the Caribbean slope. Macaws are strong fliers and are known to travel hundreds of kilometers (Chosset and Arias 2010, p. 5; Chosset et al. 2004, p. 36). During

a study in the late 1990s, macaws fitted with radio transmitters demonstrated that macaws migrate seasonally based on food availability, and were found to travel between 40 and 58 km (25 to 36 mi) while in search of food (Chosset et al. 2004, p. 35).

Diet

The great green macaw has been observed feeding on fruits of 37 tree species (Berg et al. 2007, p. 2; Chassot et al. 2006, p. 35). While it is closely associated with the almendro tree, its diet varies based on location. In Ecuador, it was observed feeding on the following tree species: *Cordia eriostigma* (totumbo), *Cynometra* sp. (cocobolo), *Ficus trigunata* (matapalo), *Ficus* sp. (higuerón), *Psidium acutangulum* (Guayaba de monte), *Chrysophyllum cainito* (cainito), and *Vitex gigantea* (tillo blanco or pechiche) (Berg et al. 2007, p. 2; Waugh 1995, p. 7). In other parts of its range, it has also been observed feeding on *Cavanillesia platanifolia* (NCN), *Cecropia litoralis* (pumpwood or trumpet tree), *Centrolobium ochroxylum* (amarillo de guayaquil), *Cochlospermum vitifolium* (buttercup tree), *Lecythis ampla* (sapucaia), *Leucaena trichodes* (NCN), *Odroma pyramidalis* (NCN), *Pseudobombax guayasen* (NCN), *Pseudobombax millei* (beldaco), *Rafia* species (believed to be palms), *Sloanea* spp., *Symphonia globulifera* (NCN), and *Terminalia valverdeae* (guarapo) (Berg et al. 2007, p. 6). One preferred plant species, *Cynometra bauhiniifolia* (NCN), produced more food than nine other species (Berg et al. 2007, p. 1). In another study, two of the most important sources of food for the great green macaw, in addition to the almendro tree, were found to be *Sacoglottis trichogyna* (titor, rosita, or manteco) and *Vochysia ferruginea* (NCN) (Herrero-Fernandez 2006, p. 9; Chassot et al. 2006, p. 35). *S. trichogyna* fruits were observed to be its preferred food when *D. panamensis* was scarce or unavailable in Costa Rica (Chassot et al. 2004, p. 34).

Almendro Trees

The great green macaw is closely associated with almendro trees (*Dipteryx panamensis*) for feeding and nesting in the majority of its range (Chun 2008, p. iv; Chosset et al. 2004, p. 34). Because the great green macaw is highly dependent on the almendro tree, we are describing almendro tree habitat, its life history, and factors that affect its habitat. The almendro tree (also known as the tropical almond or mountain almond tree) is a member of the pea family (Fabaceae);

Papilionoideae) and bears compact, single-seeded drupes. The seeds are encased in a thick woody endocarp that has been observed to persist on the forest floor for up to 2 years (Hanson 2006, p. 68). This tree species is only located in southern Nicaragua, Costa Rica, Panama, and Colombia, where it grows primarily in the lowlands of the Atlantic plains. They require an annual rainfall of 3 to 5 m (approximately 10 to 16 ft) (Schmidt 2009, p. 14) for optimal growth. A 2008 study reported that nearly 90 percent of all great green macaw nests identified in northern Costa Rica are located within hollowed cavities of large almendro trees (Chun 2008, p. 109). Additionally, almendro trees were found to provide 80 to 90 percent of both the macaw's food and nesting needs. Great green macaw pairs tend to select nesting trees that are surrounded by relatively dense stands of reproducing almendro trees (Chun 2008). Almendro tree fruit sustains the adults, chicks, nestlings, and fledglings over the course of the breeding and development season, which coincides with the peak production of almendro fruit (November through March).

Likely pollinators of the almendro tree are bees within the genera *Bombus*, *Centris*, *Melipona*, *Trigona*, and *Epicharis* (Thiele 2002 in Hanson 2006, p. 3; Flores 1992, pp. 1–22; Perry et al. 1980, p. 310). These trees are referred to as “emergent” because they are the tallest trees in the forest. Almendro trees can grow to over 46 m (150 ft) and reach a diameter of 1.5 m (4.92 ft). Three hundred-year-old trees have been documented, but research suggests that the almendro tree has a maximum potential age of 654 years (Fichtler et al. 2003 in Schmidt 2009, p. 15).

Wood from the almendro tree is heavy, commercially valuable, and yields the highest prices on local markets (Rodriguez and Chaves 2008, p. 5). It is used for furniture, floorings, bridges, railroad ties, boats, marine construction, handicrafts, veneers, industrial machinery, sporting equipment, springboards, and agricultural tool handles (Schmidt 2009, p. 16). Almendro outsells every other tree species on the Costa Rican timber market (Grethel and Norman 2009 in Schmidt 2009, p. 77; Rodriguez and Chaves 2008, p. 5). It was listed in Appendix III of CITES by Costa Rica in 2003 and by Nicaragua in 2007 (<http://www.cites.org>). A species is unilaterally listed in Appendix III by a country in the native range of that species, at the request of that country. Article II, paragraph 3, of CITES states that “Appendix III shall include all species which any Party identifies as being

subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.” For the export of specimens of an Appendix-III species from a country that has listed the species, the Management Authority in that country of export needs to determine that the specimens were not obtained in contravention of that country’s laws. In addition to CITES protections, a recent decision by the fourth Chamber of Costa Rica’s Supreme Court in 2008 required the Ministry of Environment and Energy (MINAE, or Ministerio de Ambiente y Energía) to abstain from the use, exploitation, or extraction of almendro trees (Chun 2008, p. 113).

Recent research found that this tree species is much more restricted to lowland habitat than previously described; it is predicted to occur between 45 and 125 m (147 to 410 ft) in elevation, in part based on its soil requirements (Schmidt 2009, p. iv; Chun 2008, p. 109). The almendro tree is best adapted to areas with high levels of rainfall and acidic clay soils with good drainage below elevations of 500 m (1,640 ft) such as the Atlantic lowlands of Costa Rica (Schmidt 2009, p. iv). Almendro trees require at least 2,000 millimeters (mm) (79 inches) of rainfall per year for optimal growth (Schmidt 2009, p. 69).

Great green macaw breeding pairs are believed to require a home range of 550 ha (1,359 ac) (Chun 2008, p. 105). Because the great green macaw requires such a large range, and is strongly associated with almendro trees, range countries such as Nicaragua and Costa Rica have developed conservation plans for the almendro tree. Almendro trees commonly occur at a density of less than one adult tree per hectare (Hanson et al. 2008 in Schmidt 2009, p. 14; Hanson et al. 2006, p. 49). The highest density recorded was 4 trees per hectare (Chaverri and López 1998). In one area of Costa Rica that was surveyed for almendro trees, of 140,178 ha (56,728 ac) surveyed, 20 percent exhibited densities of 0.50 almendro trees per hectare or more, and 50 percent had densities of 0.20 trees per ha or more (Chun 2008, p. 103).

Due to their important role in the ecosystem, particularly with respect to the great green macaw, conservation efforts have focused on the almendro tree. These trees not only provide habitat to many wildlife species such as the great green macaw, but they also play a significant role in the ecosystem. One conservation strategy for the great green macaw is to protect 30,159 ha

(74,493 acres) of primary, secondary, and mangrove forest that remains in this species’ nesting habitat. Another conservation strategy has been to establish almendro tree plantations. Due to its open crown structure, almendro has a relatively translucent canopy that produces only moderate shade, which allows for the production of shade canopy crops such as pineapple and cacao (Schmidt 2009, p. 19). These almendro plantations are being researched for several reasons, particularly due to the almendro tree’s ability to resist decay, its ability to capture carbon dioxide, and its role in the ecosystem (Schmidt 2009, p. 11). Additionally, almendro trees have been identified as the most promising species for long-term carbon sink reforestation projects in Costa Rica (Redondo-Brenes 2007, p. 253; Redondo-Brenes and Montagnini 2006, p. 168).

In Ecuador, the great green macaw is not dependant on almendro trees, although it still inhabits humid lowland areas (Juniper and Parr 1998, p. 424). In this habitat, the great green macaw prefers *Lecythis ampla* (salero) in the Esmeraldas rainforest, *Cynometra bauhiniifolia* (cocobolo) as a primary food source, and pigio (*Cavanillesia platanifolia*) as a nest tree (Chassot et al 2007, p. 1; Berg et al 2007, pp. 1–3).

Conservation Status

There are various protections in place for the great green macaw at the international, national, and local levels. At the international level, this species is listed as endangered on the IUCN Red List due to continuous loss of habitat, hunting, and poaching of this species for the pet trade (BLI 2013). IUCN’s Red List classifies species as endangered (extinction probability of 20 percent within 20 years) or critically endangered (extinction probability of 50 percent within 10 years) based on several criteria, including limited or declining ranges or populations. However, the status under IUCN conveys no actual protections. This species is listed in Appendix I of CITES. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Refer to the discussion above for the military macaw for additional information about CITES. The great green macaw’s conservation status in each country is discussed below and in more detail under Factor D.

Colombia

The great green macaw is listed as Vulnerable on Colombia’s Red List (Renjifo et al. 2002, p. 524). It has

protected status in Los Katíos National Park, Utría National Park, Paramillo National Park, and Farallones de Cali National Natural Park (Rodríguez et al. 2002, pp. 120–121). The largest population of the great green macaw is believed to exist in the Darién Endemic Bird Area (EBA) 023, which encompasses southern Panamá and northwestern Colombia. However, there are no reliable population estimates for this area (Botero-Delgadillo and Páez 2011, p. 91; Jahn *in litt.* 2004). Colombia developed a National Action Plan for the Conservation of Threatened Parrots (Plan Nacional de Acción para la Conservación de los Loros Amenazados), which was in effect until 2007. The ProAves Foundation, an NGO in Colombia, has been active in parrot conservation since 2005. Other than NGO involvement, it is unclear what proactive, effective protections are in place for this species.

Costa Rica

The great green macaw is considered to be endangered in Costa Rica (Monge et al. 2010, p. 22; Herrero 2006, p. 6; Executive Order No. 26435–MINAE). Several intense conservation initiatives are underway for this species in Costa Rica. In 2001, a committee was formed to investigate a corridor for the conservation of this species’ habitat. As a result, the San Juan-La Selva Biological Corridor was formed to connect the Indio Maíz Biological Reserve in southeastern Nicaragua with the Central Volcanic Cordillera Range in Costa Rica. This links Costa Rica’s La Selva Biological Station in the north to the Barra del Colorado Wildlife Reserve and National Park and Protective Zone of Tortuguero on Costa Rica’s Caribbean coast. In addition, the conservation team lobbied for the establishment of the Maquenque National Wildlife Refuge to protect the macaw’s breeding habitat (Hardman 2011, p. 10; Chun 2008, p. 98). This corridor makes up a part of the larger MesoAmerican Biological Corridor, which has been proposed to connect protected habitat from the Yucatan Region in southern Mexico and Belize to the Darién National Park in Panama (<http://www.greatgreenmacaw.org/BiologicalCorridor.htm>, accessed October 25, 2011).

The San Juan-La Selva binational corridor links existing protected wild areas. There is also an extended part to the northwest that includes the El Castillo area. The goal of this initiative is to provide linkages to 29 protected areas involving 1,311,182 ha (3,240,001 ac) (Chassot et al. 2006, p. 85). Because macaws are known to move hundreds of

kilometers (Chosset and Arias 2010, p. 5), these linkages should allow this species better access to different habitats so that it is able to meet its nutritional and nesting requirements. In addition to containing key conservation sites for the great green macaw, the corridor connects the vast expanse that includes Punta Gorda Natural Reserve, Cerro Silva Natural Reserve, and Fortaleza Inmaculada Concepción de María Historic Monument (Chassot et al. 2006, p. 85). The corridor also provides connections among unprotected forest patches in Costa Rica in addition to providing connections to protected areas. Many of these areas may not be pristine habitat; some areas are either inhabited by humans or used by local communities to extract resources. However, there are conservation awareness programs in place throughout the corridor, and the great green macaw is being intensely managed and monitored in the San Juan–La Selva Biological Corridor.

Ecuador

This species is categorized as critically endangered in Ecuador (Monge et al. 2009, p. 256), primarily due to deforestation and hunting pressures. In Ecuador, the only potentially population is believed to exist in the Cerro Blanco Protected Forest, which is 6,070 ha (15,000 ac) in size. The Guayaquil subspecies of the great green macaw (*Ara a. guayaquilensis*) is thought to be in imminent danger of extinction (Berg 2007, p. 1). In 2008, the National Preservation Strategy for the Great Green Macaw in Ecuador was described at the Great Green Macaw Population Viability Assessment and Habitat Conservation Workshop held in Costa Rica; however, funding is still lacking for many of the initiatives in Ecuador that have been prescribed as necessary for the conservation of this species.

Honduras

The great green macaw is categorized as endangered in Honduras (List of Wildlife Species of Special Concern, Resolution No. Gg-003-98 APVS). In 1990, the Government of Honduras prohibited the capture and sale of wildlife, including the great green macaw in Honduras. Currently, this species exists in the Rio Plátano Biosphere Reserve (which consists of 800,000 ha or 1,976,843 ac). The official designation of the Biosphere as a reserve is to protect and conserve biodiversity; however, this designation has not halted deforestation within the protected area (UNESCO 2011, p. 1; ParksWatch 2011; Wade 2007, p. 65). Additionally, as of

2009, there were 23 areas in Honduras identified as Important Bird Areas (IBAs) (Devenish et al. 2009, p. 1) that may provide additional protections to this species in part by serving as ecotourism sites that can increase conservation efforts in the areas. For additional information on IBAs, see the discussion above for the military macaw.

Nicaragua

Nicaragua follows the IUCN categorization of endangered for this species (Castellon 2008, pp. 13, 19; Lezama-López 2006, p. 90). The great green macaw exists in the Indio-Maíz Biological Reserve, which has had protected status since 1990, although threats to the species still exist in this Reserve (Herrera 2004, pp. 5–6). Nicaragua is also participating in the binational conservation strategy for this species (Monge et al. 2009, pp. 11, 16).

Panama

There is little information available regarding the status of this species in Panama (Monge et al. 2009, p. 67); however, Panama follows the IUCN categorization for this species (Devenish et al. 2009, p. 294). The great green macaw is believed to be in Darién National Park (Monge et al. 2009, p. 68). Panama's wildlife law of 1995, Law No. 24, establishes the standards for wildlife conservation.

NGO Involvement

There are many nongovernmental organization (NGO), private, and government efforts to protect this species, although not all of the projects and NGOs are identified in this document. NGOs have conducted collaborative efforts, such as training workshops, that are community-focused and aimed at the conservation of the habitat. In Nicaragua, Fundación Cocibolca is active in this species' conservation. This NGO first signed an agreement with Nicaragua's Natural Resources Ministry (MARENA) in 1996, at which time the conservation group was the first NGO to have been granted responsibility to manage a national protected area in Nicaragua (<http://www.marena.gob.ni>; accessed November 9, 2011; <http://www.planeta.com>, accessed November 9, 2011). The Nicaraguan conservation organization, Fundación del Río, works in the buffer zone of the Indio-Maíz Biological Reserve, which borders the San Juan River (Villate 2008, p. 39). In 1999, Fundación del Río began an environmental education program in this buffer zone to promote awareness of the great green macaw and its habitat. In

another area, as a result of conservation efforts, the local government of El Castillo declared this species the official municipal bird, and the city established sanctions to those intending to harm this species (Chassot et al. 2008, p. 23).

Since 2001, Fundación del Río and the Tropical Science Center in Costa Rica have coordinated a binational campaign focused on promoting the awareness of the ecology of the great green macaw in the lowlands of the San Juan River area (Chassot et al. 2009, p. 9). Between 2002 and 2005, at least 11 workshops on great green macaw biology and preservation were held within communities of the buffer zone of Indio-Maíz Biological Reserve in Costa Rica (Chassot et al. 2006, p. 86). Some examples of projects initiated by NGOs include installation of nest boxes to increase nest availability and community heritage festivals that are focused on the great green macaw. Some NGOs are providing training to local communities to monitor populations, and some researchers are studying this species via satellite transmitters to determine the species' home range and specific habitat used (Chosset et al. 2004, p. 35). In Costa Rica and Nicaragua, 20 communities are participating in monitoring and protection activities of the great green macaw (Chosset and Arias 2010, p. 3). The primary objectives of the campaign have been to improve awareness by conducting workshops on the importance, threats, and conservation of the great green macaw and its habitat; to strengthen natural resources management by environmental authorities of both Nicaragua and Costa Rica, focusing on the local and international biological corridors; and to organize joint activities (Chassot et al. 2006, p. 83).

In Colombia, the NGO ProAves has made great progress in forming partnerships at the local, regional, and international levels to carry out bird conservation initiatives (Chassot et al. 2008, p. 23; Quevado-Gill et al. 2006, p. 18). Additionally, reforestation efforts have occurred (Monge et al. 2009, p. 263). These efforts have focused primarily within the reserves of the Colombian Civil Society Association Network (Quevado-Gill et al. 2006, p. 17). Conservation efforts and these workshops have been important because they have trained the community in sustainable development by linking local agricultural activities to the protection of natural resources (Quevado-Gill et al. 2006, p. 17).

Three NGOs are active in the conservation of this species in Ecuador: Pro-Forest Foundation in Guayas

Province, Fundación Natura, and the Jocotoco Foundation at the Rio Canande Reserve in Esmeraldas Province. The Pro-Forest Foundation (Fundación ProBosque) was created in 1992, through a decree of the Ecuadorian Ministry of Agriculture. Its mission is to protect areas with an emphasis in reforestation, agroforestry, investigation, environmental education, and ecotourism programs, all in order to support the conservation of biodiversity.

In Panama, the Asociación Nacional para la Conservación de la Naturaleza (ANCON) began conservation work in 1991. The project has jointly worked on conservation efforts with Panama's Instituto Nacional de Recursos Naturales Renovables (INRENARE). ANCON has worked on training park rangers, marking and patrolling paths and park boundaries, acquiring property around parks and tree nurseries, and improving agricultural techniques (TNC 2011, p. 2).

Additionally, members from several NGOs participated in the great green macaw conservation workshop held in 2008. The purpose of the workshop was to bring together experts, to determine the priorities for the conservation of the species, and to develop a plan for its conservation (Monge et al. 2009, entire). We acknowledge the substantial effort under way by various NGOs in the range countries of this species to protect it and its habitat. Despite many efforts in place, the populations of the great green macaw continue to face many threats to its habitat.

Evaluation of Threat Factors

Introduction

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal List of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the ESA, a species may be determined to be endangered or threatened based on any of the following five factors:

- A. The present or threatened destruction, modification, or curtailment of its habitat or range;
- B. Overutilization for commercial, recreational, scientific, or educational purposes;
- C. Disease or predation;
- D. The inadequacy of existing regulatory mechanisms; and
- E. Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the great green macaw in relation to the five factors in section 4(a)(1) of the ESA is discussed below. In

considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and, during the status review, we attempt to determine how significant a threat it is. The identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors, singly or in combination, are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the ESA.

This rule focuses primarily on where this species has been documented, which is generally in parks and other areas with protected status and the peripheral zones. In some cases, we will evaluate the factor by country. In other cases, we may evaluate the factor by a broader region or context, for example, if we do not have adequate information specific to a particular country about this species. This is because often threats are the same or very similar throughout the species' range.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Throughout the range of this species, the factors impacting the great green macaw are generally very similar. The main factors affecting this species are habitat loss and degradation, and poaching (McGinley et al. 2009, p. 11; Berg et al. 2007; Chassot et al. 2006; Quevado-Gill et al. 2006, p. 16; Guedes 2004, p. 280). Both Central and South America continue to experience high levels of deforestation (FAO 2010, p. xvi). Habitat loss is primarily due to conversion of the species' habitat (generally forests) to agriculture and other forms that are not optimal for this species (Chosset and Arias 2010, p. 3; Monge et al. 2009, entire).

Almendo habitat, this species' primary food and nesting source, has declined significantly (Schmidt 2009, p. 16), particularly since the 1980s. Almendo and other tree species used by the great green macaw have been selectively cut down and removed from this species' habitat. Selective logging is the practice of removing one or two generally large, mature trees and leaving the rest. Throughout the range of the great green macaw, its habitat has declined primarily due to competition

for resources and human encroachment (Guedes 2004, p. 279; Rodríguez-Mahecha and Hernández-Camacho 2002; Chassot and Monge 2002 in Rothman 2008, p. 509). Its habitat has continuously been clear-cut and converted to agriculture or human establishments, which is discussed in more detail below.

Logging

Tree species used by macaws tend to be large, mature trees with large nesting cavities. The practice of selective logging often targets old, large trees that macaws depend upon for nesting. In selective logging, the most valuable trees from a forest are commercially extracted (Asner et al. 2005, p. 480; Johns 1988, p. 31), and the forest is left to regenerate naturally or with some management until being subsequently logged again. Johns (1988, p. 31), looking at a West Malaysian dipterocarp forest, found that mechanized selective logging in tropical rainforests, which usually removes a small percentage of timber trees, causes severe incidental damage. He found that the extraction of 3.3 percent of trees destroyed 50.9 percent of the forest. Selective logging can cause widespread collateral damage to remaining trees, subcanopy vegetation, and soil, and the practice impacts hydrological processes, erosion, fire, carbon storage, and plant and animal species (Chomitz et al. 2007, pp. 117, 119; Asner et al. 2005, p. 480). Forests that were selectively logged 15 years prior became an open forest with skeletons of incidentally killed trees, serious gully erosion, and vegetation on waterlogged sites that had been compacted by heavy vehicles (Edwards 1993, p. 9). Additionally, the availability of food sources for frugivores (fruit-eaters, such as the great green macaw) is reduced because the trees that contain nutritional sources are no longer there.

Selective logging is particularly devastating to the almendo tree, which is slow growing and may take centuries to reach sufficient size to harbor cavities (Schmidt 2009, p. 15), and which great green macaws need for both food and shelter. The almendo tree's wood is of great commercial value due to its strength and durability for flooring, roofing, and irrigation systems (Madriz-Vargas 2004, p. 8). Concern for this tree species was significant enough that the species was listed as CITES Appendix III by both Costa Rica and Nicaragua. Listing species in Appendix III enhances conservation measures enacted for the species by regulating international trade in the species. In general, shipments containing CITES-

listed species receive greater scrutiny from border officials in both the exporting and importing countries. The elimination of almendro trees is possibly the most severe threat for the species in its range countries with the exception of Ecuador, where the decrease in availability of other tree species used by the great green macaw is a concern.

Although the nest cavities that the macaws prefer (deep and dry) may take 10 to 20 years to form, the nests themselves can last for several decades (Chun 2008, p. 101). Even in undisturbed forests, suitable tree cavities are usually limited. As a result, each loss of a nest site can represent the loss of potentially many future chicks that could have been raised in each tree cavity.

Agriculture

Habitat degradation, particularly due to conversion of forest habitat to agriculture or plantations, is a major factor affecting great green macaws. The clearing of forests and buffer zones for the development of plantations for bananas, oil palms, cacao, coffee, soybeans, and rice destroys great green macaw nesting sites and exposes chicks to poaching for the pet trade (Botero et al. 2011, p. 92; Monge et al. 2009, pp. 26, 29, 43, 54; Waugh 1995, p. 2). By 2005, the world's tropical forest biomes had decreased to less than 50 percent tree cover (Donald et al. 2010, p. 26), in part due to the above activities. Tropical forest fragmentation due to these activities continues to be a concern. A discussion of habitat loss and degradation for each country follows.

Colombia

Very little information is available about the great green macaw's status in Colombia (Botero-Delgadillo and Páez 2011, pp. 86, 90; Monge et al. 2009; Jahn *in litt.* 2004). A large population is believed to exist in Los Katíos National Park, which borders the swampy and sparsely populated Darién region in Panama; however, there are no recent reported observations of the species in this area. Population surveys need to be conducted (Botero-Delgadillo et al. 2011, pp. 88, 90; Monge et al. 2009). At least 40 percent of the great green macaw's original distribution area in northwestern Colombia was deforested by 1997 (Etter 1998 in Jahn *in litt.* 2004). Threats to this species in Colombia have been identified as: Agriculture (particularly illegal coca cultivation), agroindustrial farms, large forest plantings of exotic trees, wood extraction, development of infrastructure, and hunting, capturing,

and harvesting of this species (Botero-Delgadillo and Páez 2011, pp. 91–92). Threats specific to Los Katíos National Park are illegal deforestation and hunting (UNEP–WCMC 2009, p. 1). In 2009, the threats in this park were so severe that the park was added to UNESCO's List of World Heritage Sites in Danger (<http://whc.unesco.org/en/list/711>, accessed January 17, 2012).

Deforestation

Colombia has experienced extensive deforestation in the last half of the 20th century as a result of habitat conversion for human settlements, road building, agriculture, and timber extraction (FAO 2010, p. 233; Armenteras et al. 2006, p. 354). A 23-year study, conducted from 1973 to 1996, found that these activities reduced the amount of primary forest cover in Colombia by approximately 3,605 ha (8,908 ac) annually, representing a nearly one-third total loss of primary forest habitat (Viña et al. 2004, pp. 123–124). More than 70 percent of rural land of Colombia located in former forestlands is now devoted to cattle grazing (Etter and McAlpine 2007, pp. 89–92). Beginning in the 1980s, habitat loss increased dramatically as a result of influxes of people settling in formerly pristine areas (Perz et al. 2005, pp. 26–28; Viña et al. 2004, p. 124). More recent studies indicate that the rate of habitat destruction is accelerating (FAO 2010, p. xvi). Between the years 1990 and 2005, Colombia lost approximately 52,800 ha (130,471 ac) of primary forest annually (Butler 2006a, pp. 1–3).

Primary forest habitats such as those used by the great green macaw throughout Colombia have undergone extensive deforestation. Viña et al. (2004, pp. 123–124) used satellite imagery to analyze deforestation rates and patterns along the Colombian-Ecuadorian border (in the Departments of Putumayo and Sucumbios, respectively) and found that between 1973 and 1996, a total of 829 km² (320 mi²) of tropical forests within the study area were converted to other uses. This corresponds to a nearly one-third total loss of primary forest habitat, or a nearly 2 percent mean annual rate of deforestation within the study area. Habitat loss and degradation, including conversion of this species' habitat to other forms of use such as agriculture, plantations, or harvesting of this species' plant food sources, continue to occur and affect the quality of this species' habitat.

In addition to the direct detrimental effect of habitat loss, there are several indirect effects of habitat disturbance and fragmentation, such as road

building (Brooks and Strahl 2000, p. 10). Roads increase human access into habitat, facilitating further exploitation, erosion, and habitat destruction (Chomitz et al. 2007, p. 88; Hunter 1996, pp. 158–159). Research has documented that road building and other infrastructure developments in areas that were previously remote forested areas have increased accessibility and facilitated further habitat destruction and human settlement (Etter et al. 2006, p. 1; Álvarez 2005, p. 2,042; Cárdenas and Rodríguez-Becerra 2004, pp. 125–130; Viña et al. 2004, pp. 118–119; Hunter 1996, pp. 158–159). A study conducted on the effects of habitat fragmentation on Andean birds within western Colombia determined that 31 percent of the historical bird populations in western Colombia had become extinct or locally extirpated by 1990, primarily as a result of habitat fragmentation from deforestation and human encroachment (Kattan and Álvarez-Lopez 1996, p. 5; Kattan et al. 1994, p. 141). Greater exposure of soil to direct sunlight leads to factors such as drier soils and also creates a different growing environment. For example, the creation of roads changes the habitat by altering the distance of nesting and feeding habitat to the forest “edge,” increasing the amount of light exposure, and creating stress on (breeding) individuals in part due to noise and visual stimuli (Benítez-López et al. 2010, p. 1,308).

Coca Cultivation

Ongoing coca cultivation has had a significant impact on forest cover in Colombia (Armenteras et al. 2006, p. 355; Fjeldsø et al. 2005, p. 205; Page 2003, p. 2; Álvarez 2002, pp. 1,088–1,093). Colombia is one of the leading producers of coca, the plant species that provides the main ingredient of cocaine. Between 1998 and 2002, cultivation of illicit crops increased by 21 percent each year, with a parallel increase in deforestation of formerly pristine areas of approximately 60 percent (Álvarez 2002, pp. 1,088–1,093). Much of Colombia's coca is grown by farmers because it generates more income than any other crop (Butler 2006, pp. 1–2). Illegal drug crops are cultivated within the great green macaw's range (BLI 2014b, p. 4). Large-scale coca production has moved into the extensive rainforests of the Chocó state, which is considered to be a biodiversity hotspot in northwest Colombia and in the range of the great green macaw.

A 1990 United Nations study estimated that coca growers can make about \$4,000 U.S. dollars per hectare (Tammen 1991, p. 12 in Page 2003, pp.

15–16). A farmer can only earn about \$600 per hectare growing an alternative crop such as coffee, which is the most often cited potential substitute crop for coca (Page 2003, pp. 15–16). Page (2003, pp. 15–16) notes that production of coffee and tea requires 3 to 4 years from planting to first harvest and then can only be harvested once per year, while coca can be harvested 8 months after it is planted and can be harvested every 90 days thereafter. The coca bushes themselves do not require much care and can be cultivated on plots of land that are much smaller than those required for crops other than coca (Tammen 1991, p. 6 in Page 2003, p. 16). Unfortunately, not only do coca crops displace native habitat and species assemblages that are important for the great green macaw, but they also deplete the soil of nutrients, which hampers regeneration following abandonment of fields (Van Schoik and Schulberg 1993, p. 21).

Drug eradication efforts in Colombia have further degraded and destroyed primary forest habitat by using nonspecific aerial herbicides to destroy illegal crops (BLI 2007d, p. 3; Álvarez 2005, p. 2,042; Cárdenas and Rodríguez Becerra 2004, p. 355; Oldham and Massey 2002, pp. 9–12). For example, in 2006, eradication efforts were undertaken on over 2,130 km² (822 mi²) of land, which included spraying of 1,720 km² (664 mi²) and manual eradication on the remaining land. These eradication efforts occurred over an area 2.7 times greater than the net cultivation area (UNODC et al. 2007, p. 8). Herbicide spraying has introduced harmful chemicals into great green macaw habitat and has led to further destruction of the habitat by forcing growers to move to new, previously untouched forested areas (Álvarez 2007, pp. 133–143; BLI 2007d, p. 3; Álvarez 2005, p. 2,042; Cárdenas and Becerra 2004, p. 355; Oldham and Massey 2002, pp. 9–12; Álvarez 2002, pp. 1,088–1,093).

The ecological impacts of coca production are significant. Farmers clear forest to plant coca seedlings. Not only does each hectare of crop production result in the clearing of roughly 1.6 ha (4 ac) of forest, this practice also results in secondary effects such as the pollution of land and local waterways with the chemicals used to process coca leaves, including kerosene, sulfuric acid, acetone, and carbide (Butler 2006, pp. 1–2).

Costa Rica

Most of the research on this species has been conducted in Costa Rica, where a very small population of this

species remains. Despite Costa Rica's progress in conservation of this species, the historical breeding area for this species in Costa Rica has been reduced by 90 percent (Villate et al. 2008, p. 19; Chosset et al. 2004, p. 38). In 2004, approximately 30 reproductive pairs remained in the wild in Costa Rica (Madriz-Vargas 2004, p. 4). Up until the 1960s, Costa Rica's human population was growing by approximately 4 percent annually (World Bank 2011, unpaginated; Chun 2008, p. 6). Logging in the 1960s and 1970s decimated this species' habitat (Hardman 2011, p. 8). In the 1980s, the area near Puerto Viejo de Sarapiquí experienced severe deforestation and conversion to banana and pineapple plantations. By 1996, 52,000 ha (128,495 ac) of lowland forest had been converted to banana plantations (Brewster 2009, p. 8). The loss of forested area in the north has primarily been due to the production of livestock, forestry products, sugar cane, and (in more recent years) pineapple (Villate et al. 2008, p. 15).

In the mid-1980s, policies changed from granting incentives for livestock and cattle ranching to reforestation for forest management. However, these incentives led initially to the clearing of forests for conversion to exotic species plantations. As a result, forestry in Costa Rica (and Panama) has been dominated by the use of exotic species such as *Tectona grandis* (teak) or *Gmelina arborea* (melina) (Schmidt 2009, p. 10). This trend changed in 1986 with the Forestry Act 7472. In the 1990s, the government began to create incentives for small farm owners to establish and maintain native tree species plantations (Piotto et al. 2003, p. 427). By 1992, a project was implemented to improve the use of forested areas; however, it estimated that by this time only 5 percent of original forest area remained intact (Chassot et al. 2001 in Villate et al. 2008, p. 15). Reforestation projects began initially through an agreement between Costa Rica and Germany. The program was implemented by the Agribusiness Association and Forestry Producers (APAIFO) and the Cooperation for Forestry Development San Carlos (CODEFORSA).

In Costa Rica's border zone with Nicaragua, Landsat TM satellite images from 1987, 1998, and 2005 showed a fragmented landscape with remnants of natural ecosystems, which has implications for the conservation of this species. The images identified several classes of cover and land use (natural forest, secondary forest, water, agriculture and pasture, banana and pineapple plantations, and bare ground) (Chassot et al. 2009, pp. 8–9). These

researchers noted that the annual rate of deforestation was 0.88 percent for the 1987–1998 period, and 0.73 percent for the 1998–2005 period, taking into consideration recovery of secondary forest. The researchers also noted that, in the area studied, deforestation rates were higher than national averages for the same time span (Chassot et al. 2009, p. 9).

In the 1990s, plans to form the San Juan-La Selva Biological Corridor began in response to the significant decrease in habitat available to the great green macaw and its decline in population numbers. In 1993 and 1994, about 1,000 km² (386 mi²) were identified as important nesting areas for this species in Costa Rica. In 2002, the San Juan-La Selva Biological Corridor, an area of 60,000 hectares (148,263 ac), was established to protect the nesting sites and migration flyway of the great green macaw in Costa Rica, up to the Nicaragua border (Guedes 2004, p. 280). Although this corridor is in place, recent reports indicate that habitat degradation and other factors continue to affect the great green macaw (Monge et al. 2009, p. 121).

Costa Rica was the only country in Central America that had a positive overall increase in forest area during the period 2000–2005 (FAO 2010, p. 19; FAO 2007). Intense efforts are under way in Costa Rica to conserve and recover this species, in part by addressing habitat degradation. In some areas, the commercial use of the almendro tree is now being replaced by synthetic material due to conservation efforts focused on the great green macaw. In some areas, landowners are being paid to protect and “adopt” almendro trees, and several ecotourism projects have developed using these trees and the macaws as part of the ecotourism attraction. As of 2009, 12 nesting trees had protection agreements (Brewster 2009, p. 10). Still, habitat degradation continues to impact the great green macaw (Villate et al. 2008, p. 14), and even trees that are designated as protected are either cut down or targeted for poaching (Chun 2008). Logging still occurs in the remnant forests of both the northern zone of Costa Rica and southeast Nicaragua (Chassot and Arias 2011, p. 1; Monge et al. 2009, pp. 128–129). Logging, while it may be illegal, has also been documented in the buffer zone of the Indio-Maíz Biological Reserve (Monge et al. 2006, p. 10). The buffer zone is within the breeding range of the great green macaw and likely affects the species' viability. Additionally, both primary and regrowth forest in the San Juan-La Selva Biological Corridor

continue to be threatened by timber extraction and agricultural expansion (Chassot and Arias 2011, p. 1; Monge et al. 2009, pp. 128–129).

Mining

Gold mining may also affect conservation efforts for the great green macaw in Costa Rica. In 2001, the Ministerio del Medio Ambiente y Energía (MINAE) granted a mining concession (Resolution R–578–2001–MINAE) in San Carlos to clear nearly 202 ha (500 ac) of old-growth rainforest for a project (Villate 2009, p. 57; <http://www.infinito.co.cr> and <http://www.nacla.org>, both accessed November 15, 2011). The Crucitas mining project is located in the Northwest Corridor of San Juan–La Selva, a few miles from the San Juan River (which separates Costa Rica from Nicaragua). The Crucitas area is part of a major zone for bird conservation initiatives, partly implemented by BLI, that includes both the Water and Peace Biosphere Reserve and the San Juan–La Selva Biological Corridor (Chassot et al. 2009, p. 9), including the El Castillo extension. It is reported that 72 percent of the area that had been proposed for implementation of the project is forested and contains almendro tree (and consequently great green macaw) habitat. The company proposed to clearcut the area in order to establish the open pit mine.

In adjacent Nicaragua, the area of influence of the mining project is also part of the buffer zone of the two reserves: San Juan River Biosphere Reserve and the Indio-Maíz Biological Reserve. These areas contain features of endemism and species compositions that are unique (Sistema Nacional de Áreas de Conservación (SINAC) 2007 in Villate et al. 2008, p. 58). Although Crucitas is not part of the current nesting area of the great green macaw, it is only about 10 km (3 mi) southeast of the historical distribution of the species. The mining activities are likely to affect the current population of the great green macaw by impacting its habitat as well as ongoing conservation efforts. The project lies within a geographical area that is of critical importance to the conservation of this species. Additionally, the removal of more primary forest cover would further reduce the ability to maintain connectivity along the San Juan–La Selva Biological Corridor, which continues to be subjected to fragmentation (Villate 2008, p. 58). As of November 2010, a court ruled that the open-pit gold mine was improperly permitted (<http://centralamericadata.biz/en/article/>

home/Crucitas_Mining_Concession_Cancellation_Confirmed, accessed January 12, 2012). However, prior to the court ruling, 121 ha (300 ac) of primary forest had already been cleared (http://www.santuariolapas.com/profile_003.html, accessed December 14, 2011). The ultimate impacts and outcome of the mining project are unclear; however, the species is and will continue to be impacted by pressures for resources that affect its habitat.

Ecuador

Although the population of great green macaw is reported to be stable and slowly increasing in the Cerro Blanco Protected Forest, it is an extremely small population (Monge et al. 2009, p. 256). There are likely fewer than 100 individuals remaining in Ecuador. In this part of its range, three tree species are noted as crucial for the survival of the species: *Lecythis ampla* (salero) and *Cynometra bauhiniaefolia* (cocobolo) as primary food sources, and *Cavanillesia platanifolia* (pigio) as a nest tree (Horstman 2011 pers. comm. 2011). Logging, poaching, and illegal land settlements continue to occur in the great green macaw's range and are threats to the population in Ecuador, particularly in the Cerro Blanco Protected Forest (<http://www.worldlandtrust-us.org>, unpaginated; World Wildlife Fund 2011, p. 5; Horstman 2011, p. 12). Between 1960 and 1980, the human population in Ecuador grew from 4 to 10.2 million, which resulted in more than 90 percent of Pacific lowland and foothill forest below 900 m (2,953 ft) being converted to agriculture (Dodson and Gentry 1991, p. 279). Much of the species' habitat was converted to plantations of bananas, oil palms, cacao, coffee, soybeans, and rice (ELAW 2005, p. 1; Dodson and Gentry 1991, p. 279).

In 2002, the Government of Ecuador authorized the conversion of 50,000 ha (123,553 ac) of tropical forest in the Choco region of western Ecuador into oil palm plantations (ELAW 2005, pp. 1–2). As of 2005, 374 ha (924 ac) of native forests were being cut daily (Horstman 2005, p. 8). Clearing forests for this monoculture crop has threatened thousands of endemic species and introduced dangerous pesticides to local ecosystems (Albán and Cárdenas 2007, p. 43). For example, in Esmeraldas Province, pesticides are used intensively in a 36,000-ha (88,958-ac) area of oil palm plantations (ELAW 2005, pp. 1–2). Local villages cite problems from the pesticides and effluents from the processing plants.

The Food and Agriculture Organization of the United Nations

(FAO) reported in 2010 that, in Ecuador, “planted forests are predominantly composed of introduced species,” such as rubber plantations and other nonnative species (FAO 2010, p. 93), which do not provide appropriate habitat and nutritional needs for the great green macaw. Despite these activities, due to the efforts of the ProForest Foundation—the NGO in charge of the reserve—the population in the Cerro Blanco forest preserve is reported to be stable (Horstman 2011, p. 17). The Cerro Blanco forest preserve is a small area that is being managed particularly for this species. It is jointly owned by the ProForest Foundation and a cement company, Holcim, as mitigation for its nearby limestone quarries. Reserve managers are converting former cattle pasture to native tree farms, which they use to help restore dry tropical forest in other locations, including a corridor to nearby patches of forested areas (Horstman 2009 pers. comm.). Despite the conservation efforts in place, logging, poaching, and illegal land settlement continue to affect the population in the Cerro Blanco Protected Forest (Horstman 2011, p. 17; Fundación ProBosque, undated, p. 3). A conservation strategy for this species recommends that a ban be instituted on the cutting and commercialization of the three tree species described above that were noted as crucial for the great green macaw's survival (Monge et al. 2009, pp. 256–258). However, deforestation, encroachment, and habitat degradation activities such as these continue (Horstman 2011, p. 17).

Another threat to the macaw's population in this reserve is the rapid expansion of the city of Guayaquil. Squatter settlements develop on the city's outskirts and encroach the forest (Fundación ProBosque undated, p. 3). Illegal settlements are a problem, and squatter communities have attempted to take over property within Cerro Blanco. The local NGO conducts educational awareness programs to mitigate these activities. An example of awareness campaign activities is educating the local communities about the effect on their water supply when they destroy forested areas (Horstman pers. comm. in Hardman 2011, p. 13). However, pressures to this species' habitat continue to impact the species.

Honduras

In Honduras, threats have included illegal trafficking of this species and deforestation due to agriculture, cattle grazing, and logging (Devenish et al. 2009, p. 256). The threat of deforestation is particularly important because a

recent study found that 87 percent of Honduras is only suitable for forest (Larios and Coronado 2006, p. 13) due to its generally mountainous terrain. There is very little information available on the status of this species in Honduras, particularly scientific literature (Monge et al. 2009, p. 122). Only six papers on avian diversity and avian population surveys in Honduran forests were published between 1968 and 2004 (Anderson et al. 2004, p. 456). However, we do know that the threats in Honduras are similar to those in other countries within the range of this species (McCann et al. 2003, pp. 321–322), and the most significant threat is deforestation. In 2008, the Departamento de Áreas Protegidas y de Vida Silvestre (DAPVS) in Honduras estimated that 80,000 ha (197,684 ac) of natural areas were being destroyed annually (DAPVS 2008 in Devenish et al., 2009 p. 256).

The great green macaw is believed to exist in the Río Plátano Biosphere Reserve within the watershed of the Plátano River (Monge et al. 2009, p. 8). The area is also known as the “Mosquitia Hondureña,” which is 500,000 ha (1,235,527 ac) in size. The reserve serves as protection to the 100-km (62-mi) long Plátano River watershed in addition to protecting parts of the Paulaya, Guampu, and Sibre rivers (Devenish 2009, p. 256). Several indigenous tribes such as the Miskito, Tawahka, Pech, Garífunas, and “Mestizos” use this area for their traditional livelihoods. Although this reserve was designated as a World Heritage Site, pressures to the reserve area for its resources continue (TNC 2011, unpaginated). In 2011, the Río Plátano Biosphere Reserve was added to the list of World Heritage Sites in danger due to encroachment (UNEP–WCMC 2011, p. 1).

In the Río Plátano Biosphere Reserve of Honduras, the unregulated extraction of timber and mass production of bananas has caused an alarming decline of great green macaw populations (Devenish et al. 2009, p. 256). The deforestation in Honduras is occurring as a result of an increase in the human population, which requires clearing areas for home development as well as wood products (Devenish et al. 2009, p. 256). The annual human population growth rate as of 2011 was estimated to be 1.09 percent (U.S. Department of State 2011, unpaginated). Palacios and Brus Laguna, towns on the coast approximately 5 km (3.1 mi) from the park on either side of the reserve, are likely contributing to the pressures such as agriculture and logging that are occurring illegally in the reserve.

Nicaragua

In Nicaragua, great green macaws face reductions in populations due to illegal extraction of timber and agricultural expansion (McGinley et al. 2009, pp. 13, 33, 35; Jeffrey 2001, pp. 1–5). Overall, there is a lack of information about the status of the great green macaw population and its habitat in Nicaragua (Monge et al. 2010; Monge et al. 2009, pp. 52–53). However, a population of the great green macaw is known to occur in the Indio-Maíz Biological Reserve, located in Nicaragua just across the San Juan River at the northeastern border of Costa Rica (Monge et al. 2009, p. 51), where suitable habitat for this species remains. This reserve, which is believed to be one of the few strongholds for the great green macaw, is nearly 264,000 ha (652,358 ac) in size. It is likely that the Indio-Maíz Biological Reserve contains extensive forest areas with high densities of almendro trees (Chun 2008, p. 94) and, therefore, is critical to this species’ survival. Chun suggests that many areas in Nicaragua may exceed the minimum great green macaw nesting requirement of 0.20 trees per hectare within the breeding territory. Although the Indio-Maíz Biological Reserve is considered one of Nicaragua’s best preserved forested areas and has limited access, its buffer zone has recently been under assault from activities such as loggers in search of lumber and illegal farming of *Elaeis guineensis* (African palm) trees for biofuel (Chosset and Arias 2010, p. 3; Ravnborg et al. 2006, p. 2). As resources become scarcer in the buffer zones, illegal activities push farther into the lesser disturbed and lesser accessible areas. Despite the existence of this protected area, deforestation continues to occur.

Deforestation is one of the major threats to biodiversity in this region; one steadily increasing form is the conversion of forest into agricultural or pastoral lands (Chassot et al. 2006, p. 84). In Nicaragua, between 1990 and 2005, 1.35 million ha (3.34 million ac) of forested areas were converted to agriculture or were deforested due to other reasons such as logging (FAO 2010, p. 232; FAO 2007). Much of Nicaragua has protected status. In 2005, approximately 36 percent of Nicaragua’s forested area was designated as protected or in some form of conservation status (FAO 2007). Additionally, in 2007, there were 72 protected areas in Nicaragua’s National System of Protected Areas (Castellon 2008, p. 19). However, 88 percent of Nicaragua’s area designated as forest is privately owned (FAO 2010, p. 238)

and, therefore, is not protected. Additionally, much of the logging that occurs is illegal and is not monitored (Pellegrini 2011, p. 21; Richards et al. 2003, p. 283).

As an example, the Bosawas Reserve is one of the areas believed to contain great green macaws as well as suitable habitat for a viable population. It was designated a reserve in 1979, in response to the advance of the agricultural frontier (Cuéllar and Kandel 2005, p. 9). However, during the 1980s, the area was not managed; it was the battleground for the armed conflict between the Sandinistas and the Contras (Cuéllar and Susan Kandel 2005, p. 9). In October 1991, Bosawas was declared a National Natural Resource Reserve through Executive Decree No. 44–91. Despite its designation as a protected area, encroachment and habitat degradation still occur (McCann et al. 2003, p. 322). In Bosawas, indigenous tribal communities have rights to use the forests under the Autonomy Statute of 1987 (Cuéllar and Kandel 2005, p. 11). As of 1998, the indigenous population was approximately 9,200 in or near the Bosawas reserve (Stocks et al. 2007, p. 1,497). In 2005, the Nicaraguan Government granted land titles to 86 indigenous Miskitu and Mayangna groups in Bosawas and contiguous indigenous areas (Stocks et al. 2007, p. 497). Generally, these indigenous communities manage the forests well and want to maintain their traditional way of life. However, “mestizo” communities were encouraged to settle in the area that is now the reserve’s buffer zone during the period when lands were being converted to plantations. Both the mestizo and indigenous communities depend on access to land to ensure their livelihoods. However, the mestizo communities convert primary forest to agricultural or livestock uses (Cuéllar and Kandel 2005, p. 13), while the indigenous communities have less impact on the ecosystem. Land rights disputes are common in these areas, and land use rights are often unclear. The Government of Nicaragua is attempting to manage these issues (Pellegrini 2011, p. 21), but conflict and practices that degrade the great green macaw’s habitat persist both in the Bosawas Reserve and in other areas within the range of the species.

One of the factors contributing to deforestation in this area is a high rate of poverty (Pacheco et al. 2011, p. 4). Nicaragua is the poorest country in Central America (CIA World Factbook 2014). In part, due to the high rate of poverty, the great green macaw continues to face threats to its habitat.

Communities living within the range of the great green macaw practice unsustainable activities, such as conversion of habitat to agriculture or logging, which contribute to deforestation of the species' remaining habitat in Nicaragua (McGinley 2009, p. 36; Castellon 2008, pp. 21, 30; Richards et al. 2003, p. 282). Much of the Indio-Maíz Biological Reserve is described as being intact and unlogged (Chun 2008, p. 116). Despite this, some loggers cross the border into Nicaragua to harvest the almendro tree (Schmidt 2009, p. 16; Chassot et al. 2006, p. 84). Anecdotal reports indicate that Costa Rican loggers pay Nicaraguan farmers about \$15 for each almendro tree, bring the logs to Costa Rica, and sell them for about \$1,450 in Costa Rica (Arias 2002, p. 4). Because incomes in the Bosawas region of Nicaragua were found to average under \$800 per family per year (Stocks et al. 2007, p. 1,498), the almendro trees are quite valuable. Consequently, a binational biological corridor between Nicaragua and Costa Rica was proposed in an attempt to prevent the extinction of the almendro tree (Chassot et al. 2006, p. 84). Although this corridor exists and efforts are in place (refer to discussion under Factor D, below) to mitigate border issues (Hernandez et al., undated, pp. 1–14) in this region, habitat degradation continues.

Panama

In Panama, this species is believed to primarily exist in the Darién region, which borders northern Colombia (Angehr 2004, *in litt.*). Deforestation was estimated to exceed 30 percent of the species' original range in Panama (Angehr 2004, *in litt.*). Although there is limited information available on the threats affecting great green macaw populations in Panama, deforestation is known to occur within this species' range (Monge et al. 2009, p. 68; Angehr 2004, *in litt.*). Conflict regarding land rights of indigenous communities has become one of the most critical issues in the Darién region. The most significant threats to tropical forests in Panama overall include road construction and road improvement, especially in the Darién region, and agricultural expansion, particularly in the Darién and Bocas del Toro regions, which results in increased access to forests (Parker et al. 2004, p. V–2). Roads have been found to be one of the leading causes of global biodiversity loss (Benítez-López et al. 2010, p. 1,307). The construction of the Pan-American Highway and other roads are affecting the Darién forest area (TNC 2011, p. 1). When roads are constructed, they increase access to previously

inaccessible areas. This leads to more pressures on the forested areas, such as conversion to agriculture, competition for resources (such as the extraction of plant species that may be consumed by the great green macaw), and more logging.

A 2006 report indicated that the advance of the agricultural frontier and “spontaneous colonization” occurring at a rate of 50,000 to 80,000 ha (123,500 to 197,700 ac) per year is rapidly shrinking Panama's forests and protected areas (McMahon et al. 2006, p. 8). Prior to its formal designation in 1990, La Amistad National Park, which spans the border between Costa Rica and Panama, experienced impacts from cattle ranching, timber extraction, burning, and illegal settlements (UNEP–WCMC 2011, p. 7). Trails, human encroachment, roads, grazing, and hunting continue in this area and affect this species' habitat (TNC 2012, unpaginated; UNEP–WCMC 2011, p. 7). Soil and water resources have been depleted due to traditional agricultural practices and inadequate conservation measures. Indigenous production systems, with their low-intensity land use, long rotation periods, and plentiful forests for hunting and gathering, are increasingly becoming unsustainable due to economic pressures. These indigenous production systems are being replaced by farming systems that emphasize monoculture without rotation, which leads to depleted soils and encourages greater expansion of the agricultural frontier. These threats are exacerbated by rural poverty that drives populations in search of areas with high levels of globally significant biodiversity (Pacheco et al. 2011, pp. 4, 18). As a result of competition for resources, many farmers and indigenous people have emigrated to the Darién and Bocas del Toro provinces, where the great green macaw is believed to exist in larger numbers than in other parts of the species' range. Unsustainable land practices, the lack of capacity by both public and private stakeholders to encourage sustainable land use, infrastructure development, and the lack of management plans further exacerbate the degradation of this species' habitat.

Darién forests are under pressure from the expanding agricultural frontier and related colonization (TNC 2011, p. 1; McMahon 2006, p. 8). The region's human population is growing at a rate of about 5 percent a year. Loss of forest cover is often linked to agricultural expansion, which often follows new or improved roads, and which results in increased access to forests. Slash-and-burn agriculture has resulted in huge

tracts of deforested land. Other factors that affect the stability of great green macaw populations include the National Authority for the Environment's (ANAM) inability to fund programs for protected areas and buffer zones, and the extraction of other minerals and building materials, whether legal or illegal (Angehr et al. 2009, p. 291). Logging and mining is legally restricted in the area; however, logging still occurs outside the Darién reserve, and the practice encroaches on remaining forest cover in the buffer zone. Problems in or adjacent to protected areas include illegal clearing for development, agriculture, and cattle grazing; road construction; and extraction of minerals or construction materials (Devenish et al. 2009b, p. 291).

The presence of gold mines in the Darién Region, particularly the Cerro Pirre area, was also indicated to be a threat to the species. Significant mining activities in this area were conducted prior to the 18th century. The clearing of forests to create roads for mining facilitates the transport of materials and personnel in and out of the mining zones (Robbins et al. 1985, pp. 200, 202). Roads exacerbate deforestation practices such as logging and conversion to agriculture or other land uses, as well as colonization. This area is now an ecotourism site; as of 1985, there is now second-growth forest recovery from the gold mines that had been abandoned during the 18th century. It does not appear that mining in this area still occurs, and, therefore, mining is not currently impacting the species.

Summary of Factor A

The global population of great green macaws is decreasing due to the loss of much of the older forested areas, thus reducing high-quality habitat for this species, and relegating it to relatively small and isolated patches throughout its range; however, suitable habitat remains in some protected areas in Central and South America. Habitat degradation poses a significant threat throughout the range of the great green macaw, which is especially vulnerable to the effects of isolation and fragmentation because it tends to mate for life, it has a small clutch size and specialized habitat requirements, and its populations are small and decreasing.

The great green macaw is naturally associated with unfragmented, mature, forested landscapes, and is considered a habitat specialist that selects areas of contiguous mature forest in Central America and parts of northern South America (Monge et al. 2009; Madriz-Vargas 2004, p. 7). This species requires

large areas for its feeding requirements and is not well adapted to fragmented landscapes. Deforestation results in fragmented forests with high ratios of edge to forested area, and the original biodiversity upon which this species depends is lost. Greater exposure of soil to direct sunlight leads to factors such as drier soils and also creates an altered growing environment. Because there are fewer remaining older, complex forest stands providing adequate habitat for breeding, feeding, and nesting, great green macaw populations are in decline. The great green macaw is threatened by the impacts of both past and current habitat loss, including ongoing habitat modification that results in poor quality and insufficient forest habitats, habitat fragmentation, and isolation of small populations. The ability of the great green macaw to repopulate an isolated patch of suitable habitat following decline or extirpation is particularly unlikely due to the species' large home range requirements, and this is exacerbated by its small overall population size and the large distances between the remaining primary forest fragments. Despite the existence of the binational corridor in Nicaragua and Costa Rica and a multitude of conservation efforts, we find that the present or threatened destruction, modification, or curtailment of habitat is a threat to the great green macaw now and in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because this species has an extremely small and fragmented population, poaching, while apparently uncommon, remains a concern (Botero-Delgadillo and Páez 2011, p. 13; Monge et al. 2009, pp. 26, 40, 106). Removal of this species from the wild has a significant detrimental effect to this species because this species tends to mate for life and only produces 1 or 2 eggs annually. The species has been heavily poached in the wild historically and is still trafficked for the pet trade in Honduras and Nicaragua (Anderson 2004, p. 453; <http://www.lafeberconservationwildlife.com/?p=1714>, accessed December 14, 2011). Although there are no known current reports of poaching in all parts of its range, poaching was raised as a concern at the 2008 workshop held in Costa Rica on this species (Monge et al. 2009, various). After regulatory mechanisms such as CITES and the WBCA were put into place, particularly since 1992 when the WBCA went into effect, much of the legal trade in the great green macaw declined (see discussion of military

macaw for more information about WBCA) (UNEP–WCMC CITES trade database, accessed September 6, 2011). The great green macaw was listed in CITES Appendix II, effective June 6, 1981, and was transferred to Appendix I, effective August 1, 1985. Most of the international trade in great green macaw specimens consists of live birds.

Data obtained from the United Nations Environment Programme–World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that, during the 4 years the great green macaw was listed in Appendix II, 26 live great green macaws (and an additional eight feathers) were reported to UNEP–WCMC as (gross) exports. In analyzing the data, it appears that several records may be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of live great green macaws in international trade during this period was 22. All of the live birds were reported with the source “unknown.” Exports from range countries included six live birds from Panama and five live birds from Nicaragua (UNEP–WCMC 2011).

During the more than 28 years following the transfer of the species to Appendix I (August 1985 through December 2013, the last year for which complete data were available at the time the following numbers were compiled), the UNEP–WCMC database shows 920 live birds in international trade. However, because it is some over-counts likely occurred in the database due to slight differences in the manner in which the importing and exporting countries reported their trade, it is likely that the actual number of live great green macaws in international trade during this period was 831 (U.S. CITES Management Authority 2015). Of these, 776 were reported to be captive-bred or captive-born, 5 were reported as wild, and 15 were reported as “pre-Convention.” The source of the remaining live birds is unknown. Exports of live birds from range countries included 17 from Costa Rica, 10 from Ecuador, 12 from Nicaragua, and 6 from Panama. Note also that some of these birds may be personal pets that are counted more than once.

Historically, the pressure to remove this species from the wild for the pet trade has contributed significantly to the decline in population numbers for this species. Poaching continues to occur in this species' range, particularly in Nicaragua (Castellon 2008, pp. 20, 25; Kennedy 2007, pp. 1–2; BLI 2007, p. 1). The majority of information available for Central America regarding poaching

and the sale of parrot species were focused in Nicaragua (Herrera-Scott 2004, pp. 1–2). A study published in 2004 assessed the origin and local sale and export of parrots and parakeets in Nicaragua (Herrera-Scott 2004, pp. 1–2), and focused on the buffer zone of the Indio-Maíz Biological Reserve, a critical area for the great green macaw. The study followed the marketing chain from rural areas to the capital city. Most of the wildlife trade was found to occur in Managua. As of 2000, poaching was still occurring in the buffer zone of the Indio-Maíz Biological Reserve (Herrera-Scott 2004, p. 6). An estimated 7,205 parrots were sold during that year (Herrera-Scott 2004, p. 1). The legal export of wildlife species from Nicaragua in general decreased significantly between 2002 and 2006 (McGinley 2009, p. 16). Despite the decrease in legal trade, in 2007, a number of parrot species could be still found for sale along roads to tourists (Kennedy 2007, pp. 1–2; BLI 2007, p. 1). Nicaragua is the poorest country in Central America and the second poorest in the Hemisphere, and has widespread underemployment and poverty (CIA World Factbook 2011, unpaginated; FAO 2011, p. 1). Approximately 17 percent of its population lives in extreme poverty (Castellon 2008, p. 21). Many of Nicaragua's citizens live in rural areas where they usually earn a living from agriculture and fishing, and the sale of a parrot can significantly increase their earnings. As mentioned above under the Factor A discussion, incomes in the Bosawas region of Nicaragua were found to average under \$800 per family per year as of 2007 (Stocks et al. 2007, p. 1,498). The great green macaw was found for sale at an average of \$200 to \$400 U.S. dollars (USD) (Fundacion Cocibolca in BLI 2007, p. 1). For perspective, in the United States, captive-bred specimens can sell for up to \$2,500 USD (Basile 2009, p. 6). The high commercial value, especially in relation to the average family income, indicates that it is still worthwhile to poach and sell this species. Due to the extreme poverty in Central America, particularly in Nicaragua, and due to the high commercial value of great green macaws, poaching continues to be a significant concern for this species.

Poaching can be intertwined with habitat destruction (Factor A). Some poachers still cut down trees to obtain nestlings (Hardman 2011, p. 13; Chun 2008, p. 105). This practice of cutting down trees to remove nestlings is particularly devastating to small populations reliant upon certain types

and sizes of nesting trees. Not only are poachers removing vital members of the population, they are destroying a nest site that may have taken a breeding pair several years to find and cultivate. One study looked at 51 nest sites that had been identified between 1994 and 2003 (Chun 2008, p. 105). The study evaluated potential habitat by examining the presence and density of almendro trees by aerial survey. It examined portions of two protected areas—the San Juan-La Selva Biological Corridor and the Maquenque National Wildlife Refuge (Chun 2008, p. 117). Of 51 nest sites, 10 trees had been cut by the end of the survey period. In some cases, the nests had been deliberately cut even after the tree had received protection status and had been distinguished as a nesting tree with a plaque. Nest destruction has also been reported in Ecuador (Bergman 2009, pp. 6–8), where it is estimated to have an extremely small population. Another study confirmed the presence of nest destruction, although this was a different parrot species, and found an average of 21 nests was destroyed per poaching trip (Gonzalez 2003, p. 443).

Poaching for the pet bird trade can destroy pair bonds, remove potentially reproductive adults from the breeding pool, and have a significant effect on small populations (Kramer and Drake 2010, pp. 511, 513). This is in part because this species mates for life, is long-lived, and has low reproductive rates. These traits make them particularly sensitive to the effects of poaching (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright et al. 2001, p. 711). In some areas in Costa Rica, there were no recent reports of nest poaching due to conservation efforts (Villate et al. 2008, p. 23). However, despite conservation efforts in place, the conservation workshop for *Ara ambiguus* held in 2008 indicated that poaching of this species is still a concern throughout its range (Monge et al. 2009, pp. 18, 26, 29, 40).

Summary of Factor B

Conservation efforts by various entities working to ensure the long-term conservation of the great green macaw may result in its population slowly increasing (Monge et al. 2010, pp. 12–13). However, overall, the best available information indicates that the population is still declining (Botero-Delgadillo and Páez 2011, p. 91; Monge et al. 2009). The species still faces threats such as habitat loss and poaching. Often, there is a lag time after factors have acted on a species (*i.e.*, poaching and habitat loss) before the effect is evident (Sodhi et al. 2004, p. 325). Even though the great green macaw is listed as an Appendix-I species under CITES and commercial international trade is now significantly reduced, there is still concern about the illegal capture of this species in the wild. This species is desirable as a pet, and its native habitat is in impoverished countries, where the sale of an individual bird can significantly increase an individual's income. Despite regulatory mechanisms in place, poaching is lucrative and still occurs. Additionally, because each population of great green macaws is small, with possibly between 10 to 500 individuals (Monge et al. 2010, pp. 21, 22), poaching is likely to have a significant effect on the species. The populations are distributed widely throughout the range of the species (see Figure 3) and are highly fragmented, and the amount of interaction between populations is unknown but likely infrequent. Based on the best available information, we find that overutilization, particularly due to poaching, is a threat to the great green macaw throughout its range now and in the future.

C. Disease or Predation

We have no evidence of significant adverse impacts to wild populations of great green macaws due to disease. Diseases are a normal occurrence within wild populations. They do not occur to an extent that they are a threat to this species, particularly because the

populations are widely dispersed, which provides an element of resiliency to the overall population. We conclude, based on the best available scientific and commercial information, that disease is not a threat to the great green macaw now or in the future.

In addition, we have no information indicating that predation threatens the great green macaw. This is the second largest New World macaw, and the best available information does not indicate that predation is a factor that negatively affects this species. While predators undoubtedly have some effect on fluctuations in great green macaw numbers, there is no evidence to suggest that predation has caused or will cause long-term declines in the great green macaw population. Therefore, we have determined that this factor does not pose a threat to the great green macaw, now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms affecting this species that we evaluated could potentially fall under categories such as wildlife management, parks management, or forestry management. We primarily evaluated these regulatory mechanisms in terms of nationally protected parks because this is where this species generally occurs. A summary of the status of forest policies, regulatory mechanisms, and laws in the range countries of the great green macaw is below. The most authoritative source for assessing the state of forests is the United Nations Food and Agriculture Organization's Forest Resources Assessment (FAO) (Chomitz et al. 2007, p. 42). FAO's 2010 study found that each range country for this species has a national forest law, policy, or program in place, and Table 1 indicates the year it was last evaluated. However, the study found that few forest policies at the subnational level (such as jurisdictions equivalent to states in the United States) exist in these countries.

TABLE 1—ADAPTED FROM FAO GLOBAL FOREST RESOURCE ASSESSMENT 2010, PP. 302–303

Country	National forest policy		National forest program			Forest law national		
	Exists	Year	Exists	Year	Status	National-type	Year	Sub-national exists
Colombia	Yes	1996	Yes	2000	Under revision	Incorporated in other law.	1974	No.
Costa Rica	Yes	2000	Yes	2001	Under revision	Specific forest law	1996	No.
Ecuador	Yes	2002	Yes	2002	In implementation	Specific forest law	1981	No.
Honduras	Yes	1971	Yes	2004	In implementation	Specific forest law .....	.....	No.
Nicaragua	Yes	2008	Yes	2008	In implementation	Specific forest law	2003	Yes.
Panama	Yes	2003	Yes	2008	Unclear	Specific forest law	1994	No.

In 2007, FAO noted that many countries (in the range of the great green macaw) had enacted new forest laws or policies within the past 15 years, or had taken steps to strengthen their existing legislation or policies. Among countries that had enacted new forest legislation were Costa Rica, Honduras, Nicaragua, Panama, Colombia, and Ecuador (FAO 2007, p. 43). Despite the existence of these laws and policies, the populations of the great green macaw are still negatively affected by habitat loss, encroachment, and, to a lesser extent, poaching.

Parks and Habitat Management

Throughout this species' range, we found that many of the threats that occur to this species are the same or similar. Threats generally consist of various forms of habitat loss or degradation (see Factor A discussion, above). Each range country for this species has protections in place, but for reasons such as limited budgets and limited enforcement capabilities, the laws and protections are generally not able to adequately protect the species. Our analysis of regulatory mechanisms is discussed essentially on a country-by-country basis, beginning with Colombia, and is summarized at the end.

Colombia

Colombia has enacted numerous laws to protect species and their habitats. This species exists predominantly in areas that are protected, and Colombia has several laws that pertain to protected areas. Some of these laws include:

- Natural Resources and Decree Law number 2811/74.
- Decree 1974/89: Regulation of Article 310 of Decree 2811, 1974, on integrated management districts of natural renewable resources.
- Law number 99/93: Creates the Ministry of the Environments and the National Environmental System.
- Law number 165/94: Biological Diversity Treaty.
- Decree 1791/96: Establishment of the Forest Use Regime.

A list of legislation that applies to protected areas in Colombia is available at <http://www.humboldt.org.co/ingles/en-politica.htm> and at <http://www.regulations.gov> in Docket No. FWS-R9-ES-2011-0101. A discussion of Colombia's regulatory mechanisms with respect to the great green macaw follows.

The great green macaw is listed as vulnerable on Colombia's Red List (Renjifo et al. 2002, p. 524). Resolution No. 584 of 2002 provides a list of

Colombian wildlife and flora that are considered "threatened." Colombia defines threatened as those species whose natural populations are at risk of extinction if their habitat, range, or the ecosystems that support them have been affected by either natural causes or human actions. Threatened species are further categorized as critically endangered, endangered, or vulnerable. Colombia defines a critically endangered species as one that faces a very high probability of extinction in the wild in the immediate future, based on a drastic reduction of its natural populations and a severe deterioration of its range. An endangered species is one that has a high probability of extinction in the wild in the near future, based on a declining trend of its natural populations and a deterioration of its range. A vulnerable species is one that is described as not in imminent danger of extinction in the near future, but it could be if natural population trends continue downward and deterioration of its range continues (EcoLex 2002, p. 10).

Colombian Law No. 99 of 1993 created the Ministry of the Environment and Renewable Natural Resources and the National Environmental System (SINA). SINA sets out the principles governing environmental policy in Colombia, and provides that the country's biodiversity is protected and used primarily in a sustainable manner (Humboldt Biological Resources Research Institute 2011, unpaginated; EcoLex 1993, p. 2). SINA is a set of activities, resources, programs, and institutions that allow the implementation of environmental principles. Consistent with the Constitution of 1991, this management system was intended to be decentralized. However, an environmental assessment study conducted for the World Bank in 2006 found that Colombia's current decentralized system is inadequate as implemented (Blackman et al. 2006, p. 15). Although Law 99 assigns the role of leading and coordinating environmental management in Colombia to the Ministry of Environment (Ministerio del Medio Ambiente, MMA), Colombia's Autonomous Regional Corporations (CARs) have the role of implementing environmental laws (Blackman et al. 2006, pp. 39–40, 42). CARs have responsibility for both management of natural resources and economic development (Ministry of Environment et al. 2002).

In 2006, an analysis of the effectiveness of Colombia's CARs was conducted for the World Bank. In Blackman et al. 2006's analysis, they reported that many individuals both

inside and outside the government felt there was a lack of effectiveness of SINA. For example, Colombia's efforts to eradicate the coca trade has not been effective at reducing the amount of coca being cultivated (Page 2003, p. 2; also see *The present or threatened destruction, modification, or curtailment of its habitat or range*). In addition to not adequately addressing the coca cultivation, which destroys the great green macaw's habitat, aerial fumigations of the coca crop have destroyed banana fields and polluted the environment (Page 2003, p. 2). The effectiveness of these regional management groups varied; the study found that the effectiveness was correlated with the CARs' age, geographic size, and level of poverty (Blackman et al. 2006, p. 16). Due to the decentralized structure, CARs were found to be ineffective at environmental management in Colombia (Blackman et al. 2006, p. 14).

This species' habitat occurs to some extent in areas designated as protected by SINA, including five national parks (Rodríguez-Mahecha 2002a). Two parks are particularly significant: Katíos National Park and Utría National Park. Although this species likely exists in at least these two parks (Botero-Delgadillo and Páez 2011, p. 92), no protective measures have been actually implemented to curb human impacts on the species' habitat by the indigenous and farming residents within these protected parks (Botero-Delgadillo and Páez 2011, p. 92). Cultivation of plants for cocaine production is known to occur within the boundaries of Katíos National Park. The cultivation of illegal crops (particularly coca) poses additional threats to the environment beyond the destruction of montane forests (Balslev 1993, p. 3). Coca crop production destroys the soil quality by causing the soil to become more acidic, depletes the soil nutrients, and ultimately impedes the regrowth of secondary forests in abandoned fields (Van Schoik and Schulberg 1993, p. 21; also see *The present or threatened destruction, modification, or curtailment of its habitat or range* discussion, above). As of 2007, Colombia was the leading coca producer (United Nations Office of Drugs and Crime (UNODC) et al. 2007, p. 7). Since 2003, cocaine coca cultivation has remained stable at about 800 km² (309 mi²) of land under cultivation (UNODC et al. 2007, p. 8). This activity continues to degrade and destroy great green macaw's habitat. With respect to Utría National Park, little to no information is known about the status of the species in

this area (Botero-Delgadillo and Páez 2011, p. 91). Although it is extremely remote, human communities reside within and around the park, and continue to use the resources within the park.

Despite Colombia's numerous laws and regulatory mechanisms to administer and manage wildlife and their habitats, the great green macaw continues to face many threats to its habitat. There is little information available about the species (Botero-Delgadillo and Páez 2011, p. 90), and the most recent information indicates that no conservation action has been proposed for this species (Botero-Delgadillo and Páez 2011, p. 88). On-the-ground enforcement of existing wildlife protection and forestry laws, and oversight of the local jurisdictions implementing and regulating activities, are ineffective at mitigating the primary threats to the great green macaw. As discussed under *The present or threatened destruction, modification, or curtailment of its habitat or range* (above), habitat destruction, degradation, and fragmentation continue throughout the existing range of the great green macaw. Therefore, we find that the existing regulatory mechanisms currently in place are inadequate to mitigate the primary threats of habitat destruction to the great green macaw in Columbia.

Costa Rica

In Costa Rica, there are more than 30 laws related to the environment (Peterson 2010, p. 1). A list of the environmental laws in Costa Rica is available at: <http://www.costaricalaw.com/costa-rica-environmental-laws.html>. As deforestation is the most significant factor affecting the great green macaw, some laws applicable to the conservation of the great green macaw are:

- Law No. 2790 Wildlife Conservation Law ("Ley De Conservación De La Fauna Silvestre," July 1961).
- Law No. 7317 Wildlife Conservation Law ("Ley De Conservación De La Vida Silvestre," December 1992).
- Law 7554 Law of the Environment ("Ley Orgánica del Ambiente," October 1995).
- Law No. 7575 Forestry Law ("Ley Forestal," February 1996).
- Law 7788 Biodiversity Law (In 1998, the National System of Conservation Areas (SINAC) was created through this law (Canet-Desanti 2007 in Villate et al. 2008, p. 24).

In the early 1990s, Costa Rica had one of the highest deforestation rates in

Latin America (Butler 2012, p. 3). Forest cover in Costa Rica steadily decreased from 85 percent in 1940, to around 35 percent today, according to the FAO's State of the World's Forests (Butler 2012, unpaginated; FAO 2010, pp. 227, 259; FAO 2007). Historically, clearing for agriculture, particularly for coffee and bananas, in addition to cattle pastures was the main reason for Costa Rica's rainforest destruction. During the 1970s and early 1980s, vast expanses of rainforest had been burned and converted to cattle pastures. Today, although deforestation rates of natural forest have dropped considerably, Costa Rica's remaining forests still experience illegal timber harvesting (in protected areas) and conversion to agriculture (in unprotected zones) (Butler 2012, unpaginated; Monge et al. 2009, p. 121; FAO 2007). Despite its abundance of conservation legislation, Costa Rica has undergone significant periods of deforestation (Butler 2012, unpaginated; FAO 2007, p. 38), which have had a severe effect on the great green macaw.

Almendro Tree Protection

In Costa Rica and Nicaragua, the great green macaw is highly dependent on the almendro tree. This tree species is now protected by law in Costa Rica; cutting any almendro tree over 120 cm (47.2 in) or less than 70 cm (27.6 in) in diameter is prohibited (Rainforest Biodiversity Group 2008, p. 1). The remaining Costa Rican populations of almendro trees are concentrated in the northeastern corner of the country from the San Juan River south to Braulio Carrillo National Park (Hanson 2006, p. 3). Although little forest remains undisturbed in this region, many almendro trees were left standing in fragments or pastures, partly due to the extremely dense nature of the tree's wood and the difficulty in cutting down these trees.

As a result of the great green macaw's dependence on almendro trees, conservation efforts for the great green macaw have focused on this tree species. A decree was enacted in 2001 to limit extraction of the almendro tree. Harvest was temporarily suspended until a study could be conducted to evaluate the status of this primary food and nesting source in relation to the great green macaw (Chosset et al. 2002, p. 6). According to Costa Rican legislation (Decree No 25167-MINAE), the removal or logging of almendro trees had been illegal in the area between the San Carlos and Sarapiquí Rivers (Madriz-Vargas 2004, p. 9). The objective of the restrictions placed on extraction of almendro trees was to increase the number of nesting sites for the great green macaw and to prevent

the tree from becoming extinct; however, forest clearings continued to occur at an alarming rate due to the lack of resources to protect biological reserves (Madriz-Vargas 2004, p. 8). For example, researchers reported in 2003 that, of the 60 great green macaw nests identified since the great green macaw conservation project was initiated in 1994, 10 had been cut down by forest engineers working in forest management plans (Monge and Chassot 2003, p. 4). In 2008, Costa Rica's Supreme Court stated that MINAE must abstain from the continuation or initiation of the use, exploitation, or extraction of the almendro tree (Chun 2008, p. 113). In Costa Rica, fines for those who cut down almendro trees have been proposed as a measure, although penalties reportedly have not been instituted (Botero-Delgadillo and Páez 2011, p. 92).

Great Green Macaw Conservation

In the two core areas where the great green macaw exists in Costa Rica, conservation activities are under way, and the breeding populations are being closely monitored. Quebrada Grande is a community-operated, 119-ha (294-ac) reserve in the center of great green macaw habitat. Additionally, the National Green Macaw Commission was formed in 1996 to protect and manage this species' habitat. This commission was formed in response to the severe decline of the great green macaw population, and included 13 government agencies, NGOs, and the Sarapiquí Natural Resources Commission (CRENESA). This conservation effort was formalized by Executive Order No. 7815-MINAE of 1999. The group served as an advisory body to MINAE regarding environmental issues in the northern zone of Costa Rica that affect the great green macaw (Chassot and Monge 2008 in Villate et al. 2008, p. 22). Conservation efforts are still in progress; in 2008, a workshop was held to bring together species experts and government officials to identify priorities and goals in order to conserve the species (Monge et al. 2009, entire).

Additionally, a corridor was created in 2001, with the goal of maintaining connectivity and biodiversity between protected areas in southeastern Nicaragua, the Protected Conservation Area Arenal Huetar North (ACAHN), and Conservation Area of the Central Volcanic Cordillera (ACCVC) in Costa Rica. The primary purpose was to promote the creation of protected wilderness and encourage habitat protection necessary to preserve and

increase the great green macaw population (Villate et al. 2008, p. 24).

In 2005, the Maquenque National Wildlife Refuge (MNWR) was established primarily to protect breeding habitat for the great green macaw. Approximately 43,700 ha (107,985 ac) of land identified as potential great green macaw breeding habitat lies within the boundaries of MNWR (Chun 2008, p. 113). This region was targeted because it contains several large nesting trees used by great green macaw breeding pairs. MNWR protects foraging habitat that may be critical during the great green macaw's breeding season. MNWR is within the larger San Juan La Selva (SJLS) Biological Corridor, and its goal is specifically to connect protected areas in southern Nicaragua to those in central Costa Rica (Chun 2008, p. 98). However, even in this refuge, habitat degradation continues to occur. A RAMSAR (the Convention on wetlands) report on this refuge (which is a RAMSAR site), indicated that the main threats there are agricultural and forestry activities, which are most prevalent near the Colpachí and Manatí lagoons (RAMSAR 2012, p. 1).

In summary, as of 2002, less than 10 percent of the great green macaw's original range was estimated to exist in Costa Rica (Chosset et al. 2002, p. 6). The great green macaw greatly depends on the almendro tree as its primary food and nesting resource. However, due to Costa Rica's complex deforestation history, the great green macaw remains imperiled primarily due to habitat fragmentation, degradation, and habitat loss. In 2004, a maximum of 35 pairs were estimated to be breeding in northern Costa Rica (Chosset et al. 2004, p. 32), and the population in this country appears to have increased since a conservation program and regulatory mechanisms have been in place. Costa Rica's population was estimated to be approximately 300 birds in 2010 (Chassot 2010 pers. comm. in Hardman 2011, p. 11; Monge et al. 2010, pp. 13, 22). Despite the apparent increase in the population in Costa Rica, the population is extremely small and has experienced significant decline in available habitat over the past 60 years.

Habitat Degradation

In addition to the historical loss of habitat, the species continues to face threats such as habitat degradation. This species requires a complex suite of plant species over the course of a year for its nutritional needs. Pressures to its habitat such as logging, encroachment, habitat degradation, and likely other factors continue within this species' range. Despite conservation efforts in

place, such as conservation awareness programs, research, and monitoring, the population has declined significantly over time and is still only estimated to be approximately 300 individuals.

Because this species mates for life and has a small clutch size, the loss of any one individual can have a significant effect on the population. Costa Rica has implemented many environmental laws in conjunction with conservation efforts to protect species, particularly the great green macaw and its habitat. The situation of this species is still precarious, and any of the threats acting on the species, such as habitat loss and degradation, poaching, or other unknown factors, could have a significant effect on the population in Costa Rica because it is so small, and because of its life-history characteristics. The existing regulatory mechanisms, as implemented, are insufficient in Costa Rica to adequately ameliorate the current threats to this species.

Ecuador

As of 2006, the Ecuadorian Government recognized 31 various legal categories of protected lands (e.g., national parks, biological reserves, geobotanical reserves, bird reserves, wildlife reserves, etc.). The amount of protected land (both forested and non-forested) in Ecuador as of 2006 was approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). However, only 38 percent of these lands had appropriate conservation measures in place to be considered protected areas according to international standards (i.e., areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention) (ITTO 2009, p. 1). Moreover, only 11 percent had management plans, and less than 1 percent (13,000 ha or 32,125 ac) had implemented those management plans (ITTO 2006, p. 228).

In 2004, the Ecuadorian Minister of the Environment signed a ministerial decree forming the National Strategy for the In-Situ Conservation of the Guayaquil Macaw (*Ara a. guayaquilensis*) into law (ProForest 2005, p. 3). The strategy included the following components to be implemented within 10 years. Aspects of this conservation plan, which focuses on the Cerro Blanco Protected Forest, a stronghold for great green macaw, include:

- Applied investigation for the conservation of the species;
- Management of the conservation areas where the presence of the

Guayaquil macaw has been confirmed, incorporating new areas that are critical for conservation of the species, and providing connecting corridors between the areas;

- Reforestation with appropriate tree species in its habitat;
- Incentives and sustainable alternatives for communities and private property owners within its range; and
- Conservation of the Guayaquil macaw.

Despite the existence of this strategy, the great green macaw still faces significant threats in Ecuador (Horstman 2011, p. 12). There are likely fewer than 100 individuals of this subspecies remaining in Ecuador. Ecuador recognizes that threats exist to its natural heritage, not only to this species, but to all of its wildlife. In 2008, Ecuador approved Article 71 of its Constitution, which states, "Nature has a right to integrally respect its existence as well as the maintenance and regeneration of its vital cycles, structures, functions and evolutionary processes." Article 73 also mandates, "measures of precaution and restriction for all activities that could lead to the extinction of species, the destruction of ecosystems, or the permanent alteration of natural habitats."

Ecuador has made significant strides in conservation. Ecuador's Article 103 of Book IV on Biodiversity decreed that: "It is prohibited, on any day or time of the year, to hunt species, whether birds or mammals, that constitute wildlife and that are listed in Appendix 1 of the present Record that are qualified as threatened or endangered. Hunting is likewise prohibited in certain areas or zones while the bans are in effect" (Monge et al. 2009, p. 256; Unified Text of the Secondary Legislation of the Ministry of the Environment). Despite the recent advances made in conservation efforts, Ecuador has gone through periods of devastating habitat loss and degradation, which affected the great green macaw's habitat such that it only remains in two fragmented and small areas. It is unclear how sustainable the remaining habitat is, particularly because this species has specialized feeding requirements and requires a large range to provide its nutritional needs.

The National Strategy for the In-Situ Conservation of the Guayaquil Macaw was revised in 2009. As a result, the first national census of great green macaw was conducted in Ecuador in late 2010 (Horstman 2011, pp. 16–17). The Cerro Blanco Protected Area has been managed by the Pro-Forest Foundation, an NGO, for approximately 20 years (Horstman 2011, unpaginated).

Horstman indicated that, at the Cerro Blanco Reserve, the resident population of approximately 15 macaws travels widely outside of the 6,475-ha (16,000-ac) reserve (http://blogs.discovery.com/animal_news/2009/11/help-for-ecuadors-great-green-macaws.html, accessed October 28, 2011). Horstman, who has worked in this area since the early 1990s, indicated the need to establish a conservation corridor between Cerro Blanco and adjacent patches of suitable forest, and most are less than 40.5 ha (100 ac) in size. During the past 20 years, at least 2,000 ha (4,942 ac) have been reforested (Monge et al. 2009, p. 9). Although reforestation projects have occurred, encroachment is still occurring (Horstman 2011, p. 12). Despite conservation efforts and regulatory mechanisms in place, there is still limited funding available for conservation efforts. Encroachment and other forms of habitat degradation continue to occur within its habitat (see Factor A discussion, above). Therefore, we find that the regulatory mechanisms are inadequate to ameliorate the loss and degradation of great green macaw habitat in Ecuador.

Honduras

The National Conservation and Forestry Institute (ICF) (formerly the Protected Areas and Wildlife Department, established in 1991) is responsible for regulating natural resources and management of protected areas. The National Protected Areas System includes 17 national parks created between 1980 and 2007. As of 2009, there were 79 protected areas (Triana and Arce 2012, p. 1). In 1991, the Protected Areas and Wildlife Department (which is now the National Conservation and Forestry Institute (ICF)) was designated to manage natural resources and protected areas (Devenish et al. 2009, p. 257; Decree no. 74–91, 1991). Prior to 1991, wildlife was managed by the Honduran Department of Wildlife and Ecology (RENARE).

Decree 98–2007, the Forest Law of Honduras, repealed Decree 163–93 of 1993, which contained the Law on Incentives for Forestation, Reforestation, and Forest Protection. The Forest Law sets forth the purposes of the law, and regulates the use of forestry areas, the rational and sustainable management of forestry resources, protected areas, and wildlife. The law contains definitions and created a series of administrative agencies charged with the implementation of forestry regulations, including the National Forestry Consultative Council. This law also formed the National Forestry Research System and the National Institute for

Forestry Conservation and Development (211 provisions; pp. 1–17).

Before the 2007 Forest Law was approved, at least 38 laws governed the sector, creating a confusing policy framework. The situation is further complicated because, in many cases, forest tenure (ownership, tenancy, and other arrangements for the use of forests) is unclear. Although most forest is officially state-owned (FAO 2007), states have little practical authority over forest management, and individuals exercise de facto ownership. Corruption is a barrier to legal logging because it facilitates illegal operations and creates obstacles to legal ones (Pellegrini 2011, p. 18; Rodas et al. 2005, p. 53). Bribes are extorted from certified community forestry operations, and, reportedly, without bribes, transport of legal wood becomes impossible (Pellegrini 2011, p. 18; Rodas et al., 2005, p. 53).

The new 2007 Forest Law was supported by environmental groups, but its implementation was delayed. The law included the abolition of the Honduran Forest Development Corporation (COHDEFOR) (which received unanimous support), more resources for enforcement, and harsher penalties against those who commit forest-related crimes. Previously, the director of COHDEFOR and other political leaders were owners or employees of logging companies, an apparent conflict of interest (Pellegrini 2011, p. 20). Also at that time, the army was involved in enforcement. Out of the resources that were spent for the forestry sector, the military absorbed 70 percent without producing any evidence that enforcement had improved (Pellegrini 2011, p. 20).

Currently in Honduras, the great green macaw is believed to exist in eastern Honduras in suitable habitat distributed from Olancho to the Río Plátano Biological Reserve, the Tawahka Biological Reserve, and Patuca National Park (Monge et al. 2009, p. 39). Its range encompasses both unprotected and protected areas; however, timber exploitation occurs even in areas designated as protected. This practice has created conflicts in protected areas such as the Río Plátano Biosphere Reserve, an area that is considered critical for its conservation (Lopez and Jiménez 2007, p. 26). Demand for mahogany, which has been one of the most extracted species in the area (Lopez and Jiménez 2007, p. 26), has also put pressure on this species' habitat. Selective logging creates openings in forest canopies and changes the ecosystem dynamics and composition of plant species. Income from logging is higher than that earned

for crops and cattle, making logging far more lucrative for locals. However, after areas are logged, they become more accessible and are then often converted to uses such as crops and cattle grazing.

Indigenous communities have rights to use many protected areas. Article 107 of the Honduran Constitution protects the land rights of indigenous people. It is the duty of the government to create measures to protect the rights and interests of indigenous communities in the country, especially with respect to the land and forests where they are settled (Article 346). As an example of land use by Honduran indigenous communities, between 15 and 40 percent of the total value of consumption for two indigenous Tawahka communities was found to be derived directly from the forest (Godoy et al. 2002, p. 404). Struggle over land rights is a difficult issue for indigenous communities in Honduras. Logging and mining are some of the biggest threats not only to the great green macaw, but also to the indigenous communities. Indigenous cultures generally have a low impact on the forests (Stocks et al. 2007, pp. 1,502–1,503). Because indigenous communities want their lands protected for their traditional way of life, NGOs are working with these communities to protect reserves in Honduras, which should ultimately benefit the great green macaw.

In 1996, the Río Plátano Biosphere Reserve was placed on the "World Heritage Site in Danger" list, but it was removed from the list in 2007, due to a significant improvement in conservation efforts by NGOs. Several NGOs are working in this area including the Mosquitia Paquiza (MOPAWI) and the Río Plátano Biosphere Project (UNEP–WCMC 2011, p. 5). However, investigations in 2010 and 2011 indicate that there are still problems within the reserve (UNESCO 2011, pp. 1–3). UNESCO, as recently as 2011, conducted a survey in the Río Plátano Reserve and found illegal activity within the core zone (UNESCO 2011, pp. 1–3). Clearing of land for cattle grazing and illegal fishing and hunting along the river is ongoing. The area is protected by policy by the Department of Protected Areas and Wildlife, State Forestry Administration in Honduras. The reserve management plan, implemented in 2000, included zoning and specific plans for conservation issues. One of the goals of the reserve's conservation plan is to integrate local inhabitants with their environment in part via sustainable agricultural practices. This practice has been found to be a good tool in forest conservation (Pellegrini 2011, pp. 3–8). The reserve

plan established buffer zones, cultural zones, and nucleus zones. Indigenous communities living in the reserve and buffer zone are allowed to use the resources within the reserve. The integration of indigenous populations plays a large part in the success of the conservation plan, both inside the reserve and outside the reserve in the buffer and peripheral zones (Pellegrini 2011, p. 3; Stocks et al. 2007, pp. 1502–1503). This reserve also receives some funding from the World Wildlife Fund and other private organizations that assist in the management of the reserve. However, there are currently no park guards or any official entity actively patrolling or guarding the reserve to enforce restrictions.

There is a complex history concerning the balance of land rights of indigenous communities and preservation of habitat for species such as the great green macaw. In Honduras, there is a gap between forestry policy objectives and the state of forestry. The policy frameworks exist to manage timber extraction, but tools are not implemented (Pellegrini 2011, p. 1). COHDEFOR had been responsible for forestry development and enforcement of laws. The Honduran Government began to decentralize COHDEFOR beginning in 1985 (Butler 2012, unpaginated) due to its ineffectiveness. As of 2001, the management of Honduran forests was administered by the Administración Forestal del Estado (AFE, Government Forestry Administration), Corporación Hondureña de Desarrollo Forestal (COHEFOR Honduran Forestry Development Corporation) (Moreno and Maríneros 2001, p. 2). Land use planning occurs at the national level; however, identifying the best use of areas has not been implemented (Pellegrini 2011, p. 17). In addition, estimates of illegal logging are approximately 80 percent of the total volume extracted for broadleaf and 50 percent for coniferous species (Richards et al. 2003, p. 1).

Honduras is making progress in managing its forested resources. In 2010, Honduras implemented Agreement number 011–2010 (Ecolex 2011), the Forestry Reinvestment Fund and Plantation Development, and its goal is to recover areas of degraded or denuded forests. In 2010, Honduras also put into place Decision No. 31/10, the General Regulation of Forestry Law, Protected Areas and Wildlife (Ecolex 2011). This covers the administration and management of forest resources, protected areas, and wildlife. Despite the progress made in Honduras with respect to laws and regulatory

mechanisms that affect the great green macaw and other wildlife, the species continues to face habitat loss and degradation in Honduras.

Nicaragua

Nicaragua's General Environmental and Natural Resources Law No. 217, issued in 1996, is considered the legal framework that defines the standards and mechanisms in regard to the use, conservation, protection, and restoration of the environment and natural resources in a sustainable manner. It recognizes the sustainable development concept. By 2004, Nicaragua had enacted 10 environmental laws and was a member of regional and international environmental agreements (Moreno 2004, p. 9). As of 2004, Nicaragua was moving towards the consolidation of a National System of Protected Areas (SINAP) in order to preserve the country's biological wealth (Moreno 2004, p. 9). SINAP consists of National Protected Areas, Municipal Ecological Parks, and Private Wildlife Reserves of "ecological and social relevance at the local, national, and international level, defined in conformance with the law, and designated according to management categories that permit compliance with national policies and objectives of conservation" (McGinley 2009, p. 19; Protected Areas Regulations: Article 3). However, the overall protection and administration of SINAP is hindered by an inability to administer its financial and human resources (McGinley 2009, p. 20). Of the 72 national protected areas, only 23 had approved management plans in 2008, another 19 were in some phase of the approval process, and 30 protected areas had no management plan at all (McGinley 2009, p. 20). Despite protections in place, enforcement has been lacking in protected areas, and poverty continues to be a huge concern in Nicaragua (FAO 2011, pp. 1–2; McGinley et al. 2009, p. 16).

Three assessments of the effectiveness of Nicaragua's laws and regulations with respect to wildlife and forestry laws were recently conducted (Pellegrini 2011; McGinley et al. 2009; Castellón et al. 2008). The first explored the relationship between forest management and poverty (Pellegrini 2011). The research published in 2009 evaluated Nicaragua's Tropical Forests and Biological Diversity (McGinley et al. 2009, entire). The other report evaluated the effectiveness of Nicaragua's wildlife trade policies (Castellón et al. 2008, entire). In Nicaragua, the organization responsible for regulation and control of the forestry sector is the National Forest Institute (INAFOR), which is under the

Ministry of Agriculture, Livestock and Forestry (MAGFOR). The other relevant ministry is the Nicaraguan Ministry of Environment and Natural Resources (MARENA), which supports conservation awareness programs for this species. In early 2003, MARENA created the Municipal Environmental Unit in order to decentralize environmental functions. Although a good legal framework exists in Nicaragua to protect its natural resources, there are still on-the-ground problems that affect this species. For example, in the Indio-Mañá Biological Reserve, one of the strongholds for this species, each forest guard in the control posts along the border of the reserve is responsible for monitoring a stretch of 8 km (5 mi) of the border and an area of 70 km² (27 mi²) (Rocha 2012, pp. 3–6; Ravnborg et al. 2006, p. 6). There are communication and perception problems that are prevalent within the reserve that perpetuate the inability to adequately manage the resources within the reserve. These resources are used both legally and illegally by Costa Ricans who cross the San Juan River and the local communities who live in Nicaragua (Rocha 2012, pp. 3–6).

In 2008, the Government of Nicaragua published a report on the status of its wildlife laws and mechanisms (Castellón et al. 2008, entire). It reported the following findings (p. 9):

- Nicaragua's current laws are inadequate to protect and sustain domestic and international trade in CITES species. They are unfocused and lack provisions on habitat degradation and biological productivity.
- Nicaragua does not have a written wildlife trade policy or laws to underpin sustainable species management in domestic and international trade. The regulatory instruments pertaining to sustainable management of wildlife trade are relevant and coherent and provide a basis for the formulation of such a policy.
- The nonregulatory instruments for measuring the commercial sustainability of wildlife trade are rarely used. The most important of them are: monitoring, research, education, and information.
- Study of wildlife harvesting shows that the income from trade in harvested species goes principally to external actors, with little or no benefit to rural communities or populations.

The 2008 study also reported that the Government of Nicaragua was unable to find a single case in which the application of its laws led to actual fines or penalties for harvesting or trading banned species (McGinley 2009, p. 22). It found that nonregulatory instruments

such as monitoring, research, education, and information are poorly used in the oversight of commercial wildlife trade in Nicaragua (McGinley 2009, p. 22). Despite these findings, a review undertaken by the CITES Secretariat found that the legislation of Nicaragua has been determined to be sufficient to properly implement the CITES Treaty (see discussion below). The country has made an effort to protect its resources and is attempting to address the management of its natural resources.

In addition, specific, targeted conservation measures are occurring. An NGO in Nicaragua, with the support of MARENA, is promoting conservation of this species. They have initiated a campaign to educate communities in part by posting messages on buses on three highly traveled public routes in Managua. For example, one message describes why buying endangered species as pets is not a good idea; rather, they should remain in the wild. Additionally, in 2003, Nicaragua and Costa Rica participated in the First Mesoamerican Congress for Protected Areas. Senior representatives of both countries discussed ways to explore the framework of connectivity between protected areas (Villate et al. 2008, p. 52). As a result, several active conservation measures for the great green macaw in Nicaragua are under way, such as the development of connected habitat corridors, and the great green macaw conservation workshop was held in 2008. In Nicaragua's Indio-Maíz Biological Reserve, training measures for monitoring the great green macaw have been implemented. For example, technicians associated with Fundación del Río have been trained in great green macaw research (Chassot et al. 2006, p. 86). The species' population is estimated to be only 871 individuals in Nicaragua and Costa Rica combined (Monge et al. 2010, p. 21), and pressures continue to occur to the species and its habitat. Despite regulatory mechanisms in place and the existence of many strategies in Nicaragua to combat threats to the species such as deforestation, habitat loss, and poaching for the wildlife trade, these activities continue.

The impoverished rely strongly on forest products (Pellegrini 2011, pp. 21–22). In an attempt to reduce poverty and at the same time conserve forested areas, analyses addressing poverty reduction were conducted prior to 2002. Strategies, described as Poverty Reduction Strategy Papers (PRSPs), recommended approving a forestry law by 2002 (which actually was approved at the end of 2003) and addressing deforestation as a source of ecological

vulnerability. As part of its poverty reduction strategy, Nicaragua developed a National Development Plan (Government of Nicaragua 2005 in Pellegrini 2011, pp. 21–22), the goal of which was to strengthen the whole forestry production chain. However, the plan was reported not to have been effectively implemented (Pellegrini 2011, p. 22). The main policy instruments that set the framework for forestry were the Forest Law and the logging ban. The Forest Law establishes the system of forest management (Pellegrini 2011, pp. 21–22). The law includes incentives for sustainable practices; however, Pellegrini noted that it is virtually impossible to take advantage of the law's provisions without support by external organizations such as NGOs (Pellegrini 2011, p. 22; TNC 2007, pp. 3–7).

Nicaragua is focusing efforts on the restoration and protection of forested areas, and its goal was to reduce the deforestation rate from 70,000 ha (172,974 ac) to 20,000 ha (49,421 ac) per year by 2010 (McGinley 2009, p. 28). Recently, the Associated Foresters of Nicaragua (FORESTAN), in cooperation with a local NGO, the Instituto de Investigaciones y Gestión Social (INGES), began an initiative to increase forest cover. Their goal is to incorporate conservation and production areas over 5,000 ha (12,355 ac), and more effectively use commercially valuable tree species while at the same time creating permanent jobs (INGES–FORESTAN 2005 in Sinreich 2009, p. 63). In 2006, a logging ban was put in place. The ban prohibited extraction of six species of wood and any logging operation in protected areas or within 15 km (9 mi) of all national borders, and it put the army in charge of enforcement (Government of Nicaragua 2006 in Pellegrini 2011, p. 23). However, deforestation rates may have increased even after the ban's approval (Guzmán 2007, pp. 1–2). Although Nicaragua attempts to manage its natural resources, it has a large challenge due to the pressures for its forest resources in combination with extreme poverty (FAO 2011, p. 1; McGinley et al. 2009, p. 11). Despite these efforts, pressure on the great green macaw's habitat continues.

Panama

In Panama, the great green macaw's stronghold is believed to be in Darién National Park, which borders Colombia (Monge et al. 2009, p. 68; Angehr *in litt.* 1996 in Snyder et al. 2000, pp. 121–123; Ridgley 1982). The Darién region encompasses nearly 809,371 ha (2 million ac) of protected areas, including Darién National Park and Biosphere

Reserve, Punta Patiño Natural Reserve, Brage Biological Corridor, and two reserves for indigenous communities (TNC 2011, p. 1). Panama's National System of Protected Areas (SINAP) is managed by the National Environmental Authority (ANAM) and consists of 66 areas, totaling 2.5 million ha (6.18 million ac) (Devenish et al. 2009b, pp. 1–2). Of these, 19 have management plans, and 36 have been through a process of strategic planning (ANAM 2006, unpaginated).

ANAM was established in 1998, through the General Environmental Law of Panama (Law 41). ANAM is the primary government institution for forest and biodiversity conservation and management. ANAM plans, coordinates, regulates, and promotes policies and actions to use, conserve, and develop renewable resources of the country. Its mission statement is to guarantee a healthy environment through the promotion of rational use of natural resources, the organization of environmental management, and the transformation of Panamanian culture to improve the quality of life (Virviescas et al. 1998, p. 2). Law 41 also provides the framework for SINAP. Environmental protection in Panama falls under the jurisdiction of three government agencies, the Institute for Renewable Natural Resources, the Ministry of Agricultural Development, and the Ministry of Health. There are 17 management categories of protected areas that were established through INRENARE's Resolution 09–94. A later law, the Forest Law of 2004, established protections for three types of forest, which covers 36 percent of the country.

There are political and economic pressures to develop many areas (Devenish et al. 2009b, p. 291). Deforestation, in addition to the lack of management, and lease periods for these concessions of 2 to 5 years, have left only an estimated 250,000 to 350,000 ha (617,763 to 864,868 ac) of production forests in Panama (Gutierrez 2001a in Parker et al. 2004, p. I–10). Additionally, many protected areas in Panama lack adequate staff and resources to patrol the areas or enforce regulations (Devenish et al. 2009b, p. 291). In 1986, Panama initiated a national forest strategy (Plan de Acción Forestal de Panama or PAFPAN) supported by FAO; however the plan reportedly did not directly tackle the causes of deforestation. Between 1980 and 1990, concessions for 77,800 ha (192,248 ac) of production forests were awarded to 23 companies, for periods ranging from 2 to 5 years (Parker et al. 2004, p. II–4). In 1994, a new forestry law was approved, which

institutionalized forest management. Now, concessions exist only in the Darién Province (Parker *et al.* 2004, p. II–4). Between 1992 and 2000, the Darién Province was one of Panama's provinces that experienced the greatest declines (11.5 percent) in forest cover (Parker *et al.* 2004, p. 32). However, there are activities in place to combat these pressures. For example, a training program exists to increase capacity in issues such as planning, geographic information systems, sustainable tourism, trail construction and management for park staff, community groups, and other stakeholders in the protected area system.

Darién National Park

Darién National Park extends along about 80 percent of the Panama-Colombia border and includes part of the Pacific coast. The area has been under protection since 1972, with the establishment of Alto Darién Protection Forest. It was declared a national park in 1980. The park is zoned as a strictly protected core zone of over 83,000 ha (205,097 ac). Another zone consists of 180,000 ha (444,789 ac) and contains indigenous Indian populations that have maintained their traditional way of life and culture. Approximately 8,000 ha (19,768 ac) is designated for tourism and environmental education, and the last zone is described as an "inspection zone" which is 40-km (25-mi) wide, and spans the Panama-Colombia border. The Darién forests are threatened from logging, agriculture expansion, burning, and hunting and gathering (TNC 2011, pp. 1–2; Monge *et al.* 2009, p. 68). Other threats to forest in the region include the development of projects such as dams and highways (Parker *et al.* 2004, pp. II–7–II–8).

Since 1986, the Asociación Nacional para la Conservación de la Naturaleza (ANCON) has been actively involved in conservation of the park in conjunction with INRENARE, the World Wildlife Fund, and other conservation entities. In 1995, a biodiversity conservation project was initiated. The project's goal was to involve local communities in conservation and sustainable use activities, and was funded by the United Nations Environment Programme (UNEP) and the Global Environment Facility. The Nature Conservancy (TNC) is also active in conservation efforts in this area through its Parks in Peril program (TNC 2011, pp. 1–2).

Panama has also initiated reforestation efforts. For example, beginning in the 1960s, Panama began to plant *Pinus caribaea* (pine species) in degraded areas of the Cordillera of the central region. Additionally, in 1992, a

law was passed to provide incentives for the establishment of plantations; however, these were mainly exotic species (Parker *et al.* 2004, p. III–6). Panama is now implementing reforestation and timber production projects that focus on native species. This initiative is known as the "Native Species Reforestation Project" (Proyecto de Reforestación con Especies Nativas; PRORENA) (Schmidt 2009, p. 10). Forestry managers have realized that, in some cases, native species are better adapted and perform better than introduced species. Since 2001, the joint Native Species Reforestation Project between the Smithsonian Tropical Research Institute and the Yale School of Forestry has conducted ongoing research on trees native to Panama. The almendro tree, which is vital to the great green macaw's habitat, has been the subject of research projects in Panama because of its high commercial value (Schmidt 2009, p. 17). Despite efforts to reduce deforestation activities, management problems remain. A study conducted in 2004 suggested that the Forestry Department needs increased autonomy, funding, and staff, and a more appropriate mandate (Parker *et al.* 2004, pp. 10–11). The study suggested that strengthening the Parks and Wildlife Service through increased staffing and resources would enable them to protect and manage protected areas (Parker *et al.* 2004, pp. 10–11).

In summary, Panama has a suite of environmental laws in place, and conservation measures are being implemented by the government in collaboration with some NGOs. However, there is very little information available about the great green macaw in Panama (Monge *et al.* 2009, p. 68), and the information indicates that this species continues to face pressures to its habitat. Despite Panama's participation in conservation initiatives and Panama's regulatory mechanisms in place, there are still significant pressures for resources in the great green macaw's habitat.

International Wildlife Trade (CITES)

The CITES Treaty requires Parties to have adequate legislation in place for its implementation. A complete discussion on CITES is found under Factor D for the military macaw. Within the recent past (since 2000), 261 live great green macaws were reported to have been imported by CITES reporting countries, and none of these live specimens were reported as wild origin (UNEP–WCMC CITES Trade Database, accessed December 8, 2011). Under CITES Resolution Conference 8.4 (Rev. CoP15), and related decisions of the Conference

of the Parties, the National Legislation Project evaluates whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2011a). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether or not a Party:

- Has domestic laws that prohibit trade contrary to the requirements of the Convention;
- Has penalty provisions in place for illegal trade, and has designated the responsible Scientific and Management Authorities; and
- Provides for seizure of specimens that are illegally traded or possessed.

The CITES Secretariat determined that the legislations of Colombia, Costa Rica, Honduras, Nicaragua, and Panama are sufficient to properly implement the Treaty (<http://www.cites.org>, SC58 Doc. 18 Annex 1, p. 1). These governments were determined to be in Category 1, which means they meet all the requirements to implement CITES. Ecuador was determined to be in Category 2, with a draft plan, but not enacted (<http://www.cites.org>, SC59 Document 11, Annex p. 1, accessed December 16, 2011). This means the CITES Secretariat determined that the legislation of Ecuador meets some, but not all, of the requirements for implementing CITES. Based on the limited amount of reported international trade for this species, particularly in wild-caught specimens, the range countries, including Ecuador, have effectively controlled legal international trade of this species. Therefore, we find CITES is an adequate regulatory mechanism.

Summary of Factor D

In the range countries for this species, we recognize that conservation activities are occurring, and each country has enacted laws with the intent of protecting its species and habitat. For example, in 2002, the San Juan—La Selva Biological Corridor, an area of 60,000 ha (148,263 ac), was implemented to protect the nesting places and migration flyway of the great green macaw in Costa Rica, as far as the Nicaragua border, where very little is known about the species. However, most of the suitable habitat is restricted to protected areas in clustered locations. Oliveira *et al.* (2007) found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira *et al.* 2007, p. 1,235). Despite regulatory mechanisms established by this species' range countries and despite the species' existence in areas designated as protected, this species has experienced

threats such that its populations are now so small that any pressure has a more significant effect. Parks, without management, are often insufficient to adequately protect the species.

The information available with respect to the species' population numbers is extremely limited in its range countries, and the populations of this species in these countries all likely range from a few individuals to a few hundred individuals (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2010, p. 22; Monge *et al.* 2009, p. 256). The populations are all in relatively disconnected areas. Its suitable habitat has been severely constricted due to deforestation. In all of the range countries, there is clear evidence of threats to this species due to activities such as habitat destruction and degradation, and poaching, and there is decreased viability due to small population sizes, despite the laws and regulatory mechanisms in place. Given that the species' habitat continues to be fragmented and degraded, it is unlikely that any conservation measures are adequately mitigating the factors currently acting on the species.

Based on the best available information, despite protections in place by the respective governments, we find that the existing regulatory mechanisms are either inadequate or inadequately enforced to protect the species or to mitigate ongoing habitat loss and degradation, poaching, and severe population declines. Habitat conservation measures within these range countries do not appear to be sufficient to adequately mitigate future habitat losses. This is due to a suite of factors, such as high rates of poverty in the range of the great green macaw and subsequent pressures for resources, and conflicting management goals (such as economic development and protection of its resources) of its range countries. Therefore, we find that the existing regulatory mechanisms are inadequate to mitigate the current threats to the continued existence of the great green macaw throughout its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size and Stochastic Events

There have been few quantitative studies of great green macaw populations (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2010, p. 12; Monge *et al.* 2009.). In 2009, the combined estimate for Costa Rica and Nicaragua was 871 individuals (Monge *et al.* 2010, p. 21), and the estimate for Ecuador was fewer than 100 (Horstman

2011, p. 17). There are no current population estimates for Panama, Honduras, and Colombia, but the global population is believed to be fewer than 3,700 individuals (Monge *et al.* 2009, pp. 68, 79, 213). Small, declining populations can be especially vulnerable to environmental disturbances such as habitat loss (Harris and Pimm 2008, pp. 163–164; O'Grady 2004, pp. 513–514; Brooks *et al.* 1999, pp. 1,146–1,147). In Costa Rica, the great green macaw has been eliminated from approximately 90 percent of its former range, and one estimate indicated that there were only 275 birds remaining in 2010 (Chassot 2010 pers. comm. in Hardman 2011, p. 11). Isolated populations are more likely to decline than those that are not isolated (Davies *et al.* 2000, p. 1,456), as evidenced by the Ecuadorian population. Additionally, the great green macaw's restricted range, combined with its small population size and low prospect for dispersal (Chosset *et al.* 2004, p. 32), makes the species particularly vulnerable to the threat of any adverse natural (e.g., genetic, demographic, or stochastic) and manmade (e.g., habitat alteration and destruction) events that could destroy individuals and their habitats.

The government of Costa Rica, in cooperation with Zoo Ave Wildlife Conservation Park, located in Garita de Alajuela, has participated in a captive bird breeding program (Herrero 2006, pp. 2–3) since 1994. Some of the birds produced have been released in protected areas. However, captive breeding is a controversial issue, mainly due to the reintroduction of individuals. One of the concerns is that the reintroduced birds introduce infectious diseases (which may be in dormant phase for a period of time) into the wild (Brightsmith *et al.* 2006 in Herrero 2006, pp. 2–3).

There are multiple features of this species' biology and life history that affect its ability to respond to habitat loss and alteration, as well as to stochastic environmental events. Due to its current restricted distribution and habitat requirements, stochastic events could further isolate individuals. An example of a stochastic event impacting the species occurred in 2010, and the death of several nestlings was recorded (Chosset and Arias 2010, p. 15). One nestling fell out of a tree, and, in another case, a branch fell on a nestling while it was actually in the nest and it died (Chosset and Arias 2010, p. 15). Losses such as these can have a significant effect on the population. Additionally, limited available suitable habitat makes it difficult for the species

to recolonize isolated habitat patches, which presently exist in a highly fragmented state. This, in combination with the species' nutritional needs, results in the species requiring large home ranges.

Border Conflict

One of the difficulties in the conservation of this species that may not be readily apparent is border conflict. For example, at the border of Nicaragua and Costa Rica, despite cooperation efforts; conflict continues (U.S. Department of State 2012, unpaginated; Berrios 2004, entire). The Nicaraguan-Costa Rican border is one of the most conflict-heavy frontiers in Central America (Lopez and Jimenez 2007, p. 21). Migration issues, navigation rights in border rivers, border delineation, and cultural differences all affect these countries' relations (Lopez and Jimenez 2007, p. 21). Additionally, this area has historically experienced exploitation of its natural resources. Since the beginning of last century, foreign companies have engaged in logging, rubber extraction, and mining (Lopez and Jimenez 2007, pp. 24–25). After these resources were depleted and these activities were no longer profitable, some companies left, leaving behind harmful environmental impacts (Lopez and Jimenez 2007, pp. 24–25). These activities have resulted in polluted rivers, high levels of sedimentation in coastal lagoons, and deforested areas (Lopez and Jimenez 2007, pp. 24–25). These activities all subsequently affect the habitat of the great green macaw.

Deforestation in Nicaragua has a complex history. After a civil war throughout the 1980s, land tenure policies inadvertently encouraged farming techniques that led to deforestation, soil erosion, and general land degradation (Sinreich 2009, p. 11). Later, during the 1990s, COHDEFOR opened up timber extraction opportunities to local community organizations, mainly cooperatives, to help mitigate the economic situation for local people. Licenses allowed the use of fallen wood and timber extraction for sale at local markets. However, a study conducted between 1998 and 2000 found that local groups had extracted an enormous amount of timber and there was no monitoring (Colíndres and Rubí 2002). Although the government offered support to communities in its border regions during the period of 1994–1999, tensions continue to affect the Bosawas region of Nicaragua, one of the areas believed to contain a great green macaw population (Lopez and Jiménez 2007, p. 26). Land rights disputes continue to

occur in Bosawas, and land use rights are often unclear. Although the Government of Nicaragua is attempting to manage these issues (Pellegrini 2011, p. 21), conflict and practices that degrade the great green macaw's habitat persist both in the Bosawas Reserve and the Indio-Maíz Biological Reserve.

Climate Change

Our analysis under the ESA includes consideration of ongoing and projected changes in climate (see discussion under the military macaw). The 2008 workshop in Costa Rica addressed environmental disasters in the evaluation and assessment of the great green macaw, although climate change was not specifically addressed. Researchers describe environmental disasters as events that occur infrequently but that can drastically affect reproduction or survival. Monge *et al.* reported that in Costa Rica, the number of active nests in 2000 was well below the average of other years. The researchers linked this with the strong El Niño event that occurred during 1997–1998 (Monge *et al.* 2009, p. 149). The researchers stated that in the last 50 years there were two major El Niño events, and, therefore, one would expect that in 100 years there would be four events of this nature, which could subsequently reduce reproduction by 30 percent (Monge *et al.* 2009, p. 149). However, this correlation between the low number of active nests and the El Niño event is not strongly supported, nor do we have supporting evidence that this is directly related to climate change. We are not aware of any information that indicates that climate change threatens the continued existence of the great green macaw.

Summary of Factor E

A species may be affected by more than one threat. Impacts typically operate synergistically, and are particularly evident when small populations of a species are decreasing. Initial effects of one threat factor can exacerbate the effects of other threat factors (Laurance and Useche 2009, p. 1,432; Gilpin and Soulé 1986, pp. 25–26). Further fragmentation of populations can decrease the fitness and reproductive potential of the species, which can exacerbate other threats. Lack of a sufficient number of individuals in a local area or a decline in their individual or collective fitness may cause a decline in the population size, even with suitable habitat patches. Within the preceding review of the five factors, we have identified multiple threats that have interrelated impacts on this species. Thus, the species'

productivity may be reduced because of any of these threats, either singularly or in combination. These threats occur at a sufficient scale such that they are affecting the status of the species now and in the future.

This species' current range is highly restricted and severely fragmented. Each breeding pair requires a large home range to meet its nutritional requirements; it is a large macaw, and its sources of food are becoming scarcer and farther apart, which requires more energy consumption to locate. The susceptibility to extirpation of limited-range species can occur for a variety of reasons, such as when a species' remaining population is already too small or its distribution too fragmented such that it may no longer be demographically or genetically viable. The species' small and declining population size, reproductive and life-history traits, and highly restricted and severely fragmented range together increase the species' vulnerability to any other stressors. Based on the above evaluation, we conclude that the effects of isolation and its small, declining population size, combined with the threats of continued fragmentation and isolation of suitable forest habitats, pose a threat to the great green macaw.

Finding and Status Determination for the Great Green Macaw

Although precise quantitative estimates are not available, the best available information suggests that populations of great green macaws have substantially declined, and this species likely persists at greatly reduced numbers relative to its historical abundance. The factors that threaten the survival of the great green macaw are: (A) Habitat destruction, fragmentation, and degradation; (B) Overutilization via poaching; (D) inadequacy of regulatory mechanisms to reduce the threats to the species; and (E) small population size and isolation of remaining populations.

The direct loss of habitat through widespread deforestation and conversion of primary forests to human settlement and agricultural uses has led to the fragmentation of habitat throughout the range of the great green macaw and isolation of the remaining populations. The species has been locally extirpated in many areas and has experienced a significant reduction of suitable habitat. The current suitable habitat in Costa Rica is now less than 10 percent of its original suitable habitat (Chosset *et al.* 2004, p. 38). This species exists generally in small and fragmented populations, and in many cases, the population is so small that intense monitoring and management of the

population is under way. The San Juan–La Selva Biological Corridor was established to connect forest patches and join 20 protected areas (Chosset and Arias 2010, p. 5) specifically to preserve habitat for this species.

We have very little information about the species in many parts of its range (Botero-Delgadillo and Páez 2011, p. 91; Monge *et al.* 2009, p. 68). In 2008, experts from this species' range countries attended a conference to evaluate the viability of its populations and its habitat (Monge *et al.* 2009, entire). In general, they concluded that populations are viable but they still face threats. The workshop also addressed goals for the conservation of the species; in some parts of its range, conservation efforts are intensive. Based on our review of the best available scientific and commercial information pertaining to the five factors, the threats to the species are generally consistent throughout its range. In many of the range countries, its populations are very small, and specific information about the status of the species is not available in all countries. However, habitat loss and degradation is prevalent throughout this species' range; its suitable habitat has severely contracted, and habitat loss is likely to continue into the future due to pressures for resources. Poaching is known to occur within many parts, if not all parts, of its range. Despite conservation awareness programs, poverty is prevalent within the range of the species, and the species is quite valuable commercially, so poaching continues to occur. We do not find that the effects of current threats acting on the species are being ameliorated by regulatory mechanisms. Therefore, we find that listing the great green macaw as endangered is warranted throughout its range, and we propose to list the great green macaw as endangered under the ESA.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and interest groups, and individuals.

The ESA and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction

of the United States to “take” (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the ESA. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and

special purposes consistent with the ESA.

National Environmental Policy Act (NEPA)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the ESA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at <http://www.regulations.gov> or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT.**)

Authors

The primary authors of this final rule are Amy Brisendine and Natchanon Ketram, Branch of Foreign Species,

Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for “Macaw, great green” and “Macaw, military” in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* BIRDS	*	*	*	*		*	*
* Macaw, great green.	* <i>Ara ambiguus</i>	* Costa Rica, Honduras, Nicaragua, and Panama.	* Entire	* E	* 797	* NA	* NA
* Macaw, military	* <i>Ara militaris</i>	* Argentina, Bolivia, Colombia, Ecuador, Mexico, Peru, Venezuela.	* Entire	* E	* 797	* NA	* NA
*	*	*	*	*		*	*

* * * *

Dated: September 17, 2015.

Stephen Guertin,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–24820 Filed 10–1–15; 8:45 am]

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FEDERAL REGISTER

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Part V

The President

Proclamation 9332—National Energy Action Month, 2015

Presidential Documents

Title 3—

Proclamation 9332 of September 29, 2015

The President

National Energy Action Month, 2015

By the President of the United States of America

A Proclamation

As Americans, we have a profound obligation to our children and our grandchildren—to help them live better lives than we did, and to ensure the choices we make do not limit the range of their dreams. The key to realizing a future in which our young people are not held back by choices of the past lies in the promise of a clean, sustainable America. During National Energy Action Month, we rededicate ourselves to bolstering energy efficiency, investing in innovative clean power, and working together to preserve our planet for generations to come.

My Administration remains committed to securing a stable, energy-independent future for our Nation—and while there is much work to be done, we have made significant advances in recent years. The United States is now the world's top producer of oil and natural gas, and we have set strict fuel efficiency standards for cars and light trucks, which are helping to wean us off our decades-old addiction to foreign oil. We are transitioning away from energy sources that contribute to climate change and threaten our health and safety—instead moving toward clean energy sources and ambitiously investing in alternatives like wind and solar. Taking our place as a major player in clean energy, we are harnessing over 3 times as much electricity from wind and 20 times as much from the sun as we did in 2008. We also remain dedicated to ensuring the safe and secure use of nuclear power, which generates over 60 percent of our carbon-free electricity. And we will continue working to improve our energy efficiency, double our energy productivity, and explore any and all ways of saving consumers money while reducing our total energy consumption. These efforts are vital to preserving our way of life and will help protect our environment and boost our Nation's economy.

As the world's second-largest emitter, America must recognize the role we play in contributing to our planet's changing climate and do all we can to make our air cleaner and safer for our children to breathe. Through our historic announcement with China last November, the United States agreed to double the pace at which we cut our emissions, while China committed for the first time to limiting theirs. In addition, this past summer, as part of our Clean Power Plan, I announced the first set of nationwide standards aimed at reducing the carbon emitted from our country's existing power plants. This plan will aid in our fight against climate change while strengthening our economy and helping fulfill our moral obligation to leave our kids and grandkids with a stable planet. And we are leading by example in Washington: I signed an Executive Order earlier this year that aims to cut the Federal Government's greenhouse gas emissions by 40 percent and increase its share of electricity consumption from renewable sources to 30 percent over the next 10 years.

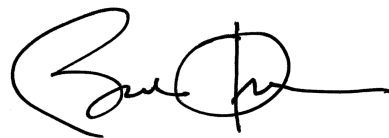
Last year, the global economy grew while global emissions remained flat for the first time ever, and we have seen that our goals of addressing energy challenges and driving economic progress are mutually compatible. In that spirit, I will keep fighting to build a more sustainable society for all people by investing in clean sources of energy—including wind, which

could provide as much as 35 percent of our electricity and supply renewable power in all 50 States by 2050—as well as solar, which has added jobs 10 times faster than any other sector of our economy. Additionally, I recently committed to getting 20 percent of our country’s energy from renewables—beyond hydroelectric power—by 2030. My Administration will continue supporting technology, including new and advanced nuclear technology, that moves us closer to a brighter energy future, advances energy efficiency, and develops cleaner fuels.

Though we may never see the full realization of our ambition in our time, we can still have the satisfaction of knowing we did everything within our power to leave this world better than it was. During National Energy Action Month, let us recommit to forging the future that is within our capacity to reach by supporting clean, renewable, and independent means of energy production and by taking control of our own energy consumption. Everything we have is at stake—and we must fight for it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2015 as National Energy Action Month. I call upon the citizens of the United States to recognize this month by working together to achieve greater energy security, a more robust economy, and a healthier environment for our children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a stylized circular flourish at the end.

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