Dated: November 30, 2020.

Edward Messina,

Acting Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.714 to subpart C to read as follows:

§ 180.714 Broflanilide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of broflanilide, including its metabolites and degradates, in or on the commodities to Table 1 of this section. Compliance with the tolerance levels specified in Table 1 is to be determined by measuring only broflanilide, 3-(benzoylmethylamino)-*N*-[2-bromo-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-6-(trifluoromethyl)phenyl]-2-fluorobenzamide, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Amaranth, grain, grain	0.01
Amaranth, grain, stover	0.01
Cañihua, grain	0.01
Chia, grain	0.01
Corn, field, milled byproducts	0.015
Cram-cram, grain	0.01
Grain, cereal, group 15, except rice	0.01
Food and feed commodities (other than those covered by a higher tolerance)	0.01
Grain, cereal, forage, fodder, and straw, group 16, except rice	0.01
Huauzontle, grain	0.01
Potato, wet peel	0.08
Quinoa, forage	0.01
Quinoa, grain	0.01
Quinoa, hay	0.01
Quinoa, straw	0.01
Spelt, grain	0.01
Teff, forage	0.01
Teff, grain	0.01
Teff, hay	0.01
Teff, straw	0.01
Vegetable, tuberous and corm, subgroup 1C	0.04

(2) Tolerances are established for residues of broflanilide, including its metabolites and degradates, in or on the commodities to Table 2 of this section. Compliance with the tolerance levels specified in Table 2 is to be determined by measuring the sum of broflanilide, 3-(benzoylmethylamino)-*N*-[2-bromo-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-6-(trifluoromethyl)phenyl]-2-fluorobenzamide, and its metabolite 3-benzamido-*N*-[2-bromo-4-(perfluoropropan-2-yl)-6-(trifluoromethyl)phenyl]-2-fluorobenzamide, calculated as the stoichiometric equivalent of broflanilide, in or on the commodity.

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Egg	0.02
Goat, fat	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Hog, fat	0.02
Hog, meat	0.02
Hog, meat byproducts	0.02
Horse, fat	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.02
Poultry, fat	0.02
Poultry, meat	0.02
Poultry, meat byproducts	0.02
Sheep, fat	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02

(b)–(d) [Reserved]

[FR Doc. 2020–27906 Filed 12–16–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 20–70, 17–105, 11–131; FCC 20–162; FRS 17261]

Review Procedures; Modernization of Media Regulation Initiative; Program Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises the rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors (MVPDs) and parallel procedural rules, which govern program access, open video system (OVS), and good-faith retransmission consent complaints. Specifically, the document amends the third prong of the statute of limitations for filing program carriage complaints so that it no longer undermines the fundamental purpose of a statute of limitations. To harmonize the rules, the document similarly amends the statutes of limitations for filing program access, OVS, and good-faith retransmission consent complaints. The document also revises the effective date and review procedures for initial decisions issued by an administrative law judge (ALJ) in program carriage, program access, and OVS proceedings to make them consistent with the Commission's generally applicable procedures and adopts an aspirational shot clock to encourage quick resolution of appeals of such decisions. The Commission concludes that these changes will help to ensure a clear and expeditious program access, program carriage, retransmission consent, and OVS complaint process for potential complainants and defendants.

DATES: Effective January 19, 2021.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact John Cobb, *John.Cobb@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket Nos. 20–70, 17–105, 11–131; FCC 20–162, adopted and released on November 18, 2020. The full text of this document is available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.) To request these documents in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

In this *Report and Order* (*Order*), we adopt proposed changes to the rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors (MVPDs) and parallel procedural rules in part 76 of our rules, which govern program access, open video system (OVS), and good-faith retransmission consent complaints. Specifically, we amend the third prong of the statute of limitations for filing program carriage complaints so that it no longer undermines the fundamental purpose of a statute of limitations. To harmonize our rules, we similarly amend the statutes of limitations for filing program

access, OVS, and good-faith retransmission consent complaints. We also revise the effective date and review procedures for initial decisions issued by an administrative law judge (ALJ) in program carriage, program access, and OVS proceedings to make them consistent with the Commission's generally applicable procedures and adopt an aspirational shot clock to encourage quick resolution of appeals of such decisions. We find that these changes will help to ensure a clear and expeditious program access, program carriage, retransmission consent, and OVS complaint process for potential complainants and defendants. With this proceeding, we continue our efforts to modernize our media regulations.

Background. Section 616 of the Communications Act of 1934, as amended (the Act), directs the Commission to adopt regulations governing program carriage agreements between MVPDs and video programming vendors that prohibit certain anti-competitive practices and provide for expedited review of program carriage complaints. Congress passed section 616 as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), which was designed to preserve diversity and competition in the video programming market. Two sets of rules adopted pursuant to the 1992 Cable Act principally are addressed in this *Report and Order*: The statute of limitations for filing a program carriage complaint and the rules governing the effective date and review procedures for initial decisions issued by an ALJ in program carriage cases. We discuss these rules, in turn, below.

First, for a program carriage complaint to be timely filed under our rules, it must be brought within one year of the date on which any of the following events occurs: (1) The defendant MVPD enters into a contract with a video programming vendor that a party alleges to violate the program carriage rules, (2) the defendant MVPD makes a carriage offer that allegedly violates the program carriage rules, and such offer is unrelated to any existing contract between the complainant and the MVPD; or (3) ''[a] party has notified [an MVPD] that it intends to file a complaint with the Commission'' based on a violation of the program carriage rules. As noted in the further notice of proposed rulemaking (*FNPRM*) in this proceeding (85 FR 21131, April 16, 2020), the third prong of the statute of limitations, as originally adopted in the *1993 Program Carriage Order* (58 FR 60390, November 16, 1993), contained additional limiting language that made it functionally identical to the current statutes of limitations governing program access, OVS, and good-faith negotiation of retransmission consent complaints. In particular, the original language provided that a program carriage complaint was timely if filed within one year of the date on which ''the complainant has notified [an MVPD] that it intends to file a complaint with the Commission based on a request for carriage or to negotiate for carriage of its programming on a defendant's distribution system that has been denied or unacknowledged,'' allegedly in violation of the program carriage rules. In a subsequent 1994 amendment (59 FR 43776, August 25, 1994), the Commission modified § 76.1302(h)(3) to eliminate this limiting language without setting forth an explicit rationale for doing so. After several program carriage decisions in which the third prong of the statute of limitations had been interpreted in a manner consistent with the plain meaning of the 1994 rule language, the Commission expressed concern in the *2011 Program Carriage NPRM* (76 FR 60675, September 29, 2011) that the third prong could be read to mean that a complaint would be deemed timely filed under our rules if brought within one year of the date on which a complainant notified the defendant MVPD of its intention to file a complaint, regardless of when the alleged violation of the rules had occurred, thereby ''undermining the fundamental purpose of a statute of limitations.'' In the *FNPRM,* we proposed to reinsert in the program carriage rules statute of limitations language similar to that adopted in the *1993 Program Carriage Order,* which would make the triggering event for the statute of limitations the denial or failure to acknowledge a request for carriage or to negotiate for carriage, and to clarify that the third prong applies only in instances where there is no existing contract or offer of carriage. For consistency, we also proposed to modify the similar third prongs of the statutes of limitations governing program access, OVS, and good-faith retransmission consent complaints to make the triggering event for each the denial or failure to acknowledge a request.

Second, program carriage disputes may be referred by the Chief of the Media Bureau to an ALJ for a hearing on the merits if a complainant establishes that a prima facie violation of § 76.1301 has occurred. A program carriage decision issued by an ALJ becomes effective upon release except in certain circumstances. If a party seeks review, the decision remains in effect pending Commission review, unlike the generally applicable procedures of § 1.276(d) that automatically stay an ALJ's initial decision pending Commission review. In the *FNPRM,* we noted that although Congress instructed the Commission to adopt procedures for the expedited review of program carriage complaints, there is no specific statutory requirement for ALJ decisions to take immediate effect, nor that they remain in effect pending Commission review. We observed that, in the past, the incongruous provisions in parts 76 and 1 of our rules have caused confusion for both parties and adjudicators, and can create inconsistent outcomes pending appeal. Therefore, we proposed to harmonize our parts 76 and 1 rules so that review of an ALJ's initial decision in program carriage, program access, and OVS proceedings is subject to the same procedural rules as other complaints adjudicated by the Commission.

Additionally, the *FNPRM* proposed to make several technical edits to the part 76 rules. The *FNPRM* also sought comment on whether, given the amount of time that has passed, the Commission should consider any of the substantive proposals from the *2011 Program Carriage NPRM,* which considered a range of substantive and procedural revisions to the program carriage rules.

As further discussed below, MVPDs responding to the *FNPRM* generally support our proposals and advocate for simplifying the regulatory framework for program carriage disputes. MVPDs assert that the rationale for protecting consumers from vertically-integrated distributors is outdated, given the increased competition in the video marketplace. On the other hand, independent video programming vendors oppose the rule revisions proposed in the *FNPRM.* In general, such programmers advocate for program carriage rules more favorable for programmers, citing the practical and financial hardships they face when bringing a complaint under our rules and alleging that the negotiation practices of vertically-integrated MVPDs continue to restrain their ability to compete.

Discussion. For the reasons discussed below, we adopt our proposals to amend the third prong of the statute of limitations for program carriage, program access, OVS, and good-faith retransmission consent complaints, as well as the rules governing the effective date and review procedures for initial decisions issued by an ALJ in program access, program carriage, and OVS proceedings. Additionally, in order to

ensure prompt resolution of appeals in program access, program carriage, and OVS proceedings, we adopt an aspirational 180-day shot clock for circulating a final Commission decision of ALJ initial decision appeals in such proceedings. We also make other revisions to our part 76 rules to ensure consistency among parallel provisions, clarify existing language, and eliminate inoperative language. Finally, we decline at this time to adopt other proposals from the *2011 Program Carriage NPRM.* We find that the rule revisions adopted herein will serve the public interest by clarifying and harmonizing the Commission's rules and encouraging the timely resolution of program carriage disputes.

Program Carriage Statute of Limitations. We adopt our proposal to revise the third prong of the program carriage statute of limitations to clarify that it applies only in circumstances where there is not an existing program carriage contract or carriage offer and the defendant MVPD has denied or failed to acknowledge either a request for program carriage or a request to negotiate for program carriage. We find that this rule revision will provide certainty to both MVPDs and prospective complainants and foreclose the possibility that the third prong could be read to allow the filing of a program carriage complaint at essentially any time, regardless of when the alleged violation of the rules occurred.

As explained above, the third prong of the program carriage statute of limitations currently provides that a complaint must be filed within one year of the date on which ''[a] party has notified [an MVPD] that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.'' We agree with those commenters who assert that we should adopt our proposal because the current rule could be read to ''undermine[ ] the fundamental purpose of a statute of limitations 'to protect a potential defendant against stale and vexatious claims by ending the possibility of litigation after a reasonable period of time has elapsed.' '' NCTA asserts, for example, that under the existing statute of limitations a complainant could file a program carriage complaint years after a contract is entered into with the goal of ''belatedly modify[ing] the agreed-upon terms of a contract.'' As explained previously, the third prong originally contained language limiting its application to circumstances in which there is an unreasonable refusal to negotiate, and this language was stricken by the Commission in 1994 without explanation. We agree with Comcast that this limiting language made clear that the statute of limitations contained ''three distinct and mutually exclusive paths for a program carriage complaint'' and that the ''ambiguity in the language of the revised rule has led to . . . interpretations of the third prong as an exception that swallows the other two prongs of the rule.'' We therefore clarify that the third prong applies only in circumstances where there is no existing contract or carriage offer, and the MVPD has denied or failed to acknowledge a request for carriage or a request to negotiate for program carriage allegedly in violation of the program carriage rules, consistent with the program carriage rules as originally adopted and with Congress's directive in section 616.

We are not persuaded that the public interest would be better served by abandoning our proposed changes in favor of alternative revisions advocated for by commenters. As an initial matter, we affirm our tentative conclusion from the *FNPRM* that reincorporating the limiting language originally contained in the third prong is preferable to adopting a single provision that would run for one year from the date on which a violation of the program carriage rules allegedly occurred. No commenter supported this latter option. Rather, we conclude that revising the third prong of the rule strikes an appropriate balance between the interest of MVPDs in ensuring that program carriage complaints are brought in a timely manner, unaffiliated programmers' interest in securing relief for alleged violations of the program carriage rules, and the interest of all parties in having greater procedural certainty.

We also decline to adopt alternative proposals raised by commenters in the record because we find that none would provide greater certainty to parties and adjudicators. First, Independent Programmers oppose our proposal, asserting that instead we should revise the statute of limitations to permit claims submitted within one year of the date that a programmer becomes aware, or should have become aware through the exercise of reasonable diligence, of an alleged program carriage violation. They assert that MVPDs often ''do not clearly decline or refuse carriage proposals'' during negotiations, making it difficult to determine when a denial of carriage occurs. However, given the inherent uncertainty in determining whether and when a potential complainant knew or should have known of an alleged violation of the program carriage rules, we agree with NCTA and AT&T that this option would not provide greater certainty and finality to the parties. Independent Programmers also assert that limiting the third prong to instances where a contract does not exist opens the door for MVPD misconduct in pre- or post-offer renewal negotiations. However, as noted in the *FNPRM,* our intent is that this revised third prong will ''encompass instances where an MVPD refuses to renew or to negotiate for renewal of a contract.'' Accordingly, we revise the rule to make clear that the third prong also applies in such instances. Other commenters do not directly oppose revising the third prong as proposed, but assert that if we were to do so, we should adopt a new fourth prong that would run from the date that a potential complainant learns that a contractual right has been exercised in a discriminatory manner by an MVPD. Commenters supporting this proposal contend that such a fourth prong is necessary because a contract provision may be consistent with the rules at the time it is entered into, but subsequently may be exercised by an MVPD in a manner that is unlawfully discriminatory. We decline to adopt this proposal. We agree with Comcast that such a proposal, if adopted, would create ''ongoing uncertainty and litigation risk for material decisions [MVPDs] make pursuant to existing agreements,'' and would fail to provide finality to the parties as virtually any conduct by an MVPD during the course of a carriage agreement could become the basis for a claim of allegedly impermissible discrimination. We also find merit in Comcast's assertion that allowing claims based on an MVPD's exercise (or non-exercise) of rights that a programmer has agreed to contractually would deprive the MVPD of the ''benefit of its bargain.''

We also reject beIN's proposal that we amend the rules so that the one-year period is separately triggered by each materially different offer made by an unaffiliated programmer to a vertically integrated MVPD. beIN contends that this would reflect the reality that program carriage negotiations often run longer than a single calendar year, and thus a programmer absent such an amendment may feel that it needs to resort to filing a program carriage complaint before necessary. However, we are persuaded that such a rule appears to give programmers the unilateral power to restart the limitations period at any point by making a new offer to an MVPD on whose platform they are seeking carriage. Thus, we find that such a rule

would be administratively unworkable and be susceptible to gaming by programmers seeking carriage.

We also conclude that determining when an MVPD has denied or failed to acknowledge a request for carriage or a request to negotiate for carriage is an inherently fact-specific exercise and, therefore, such a determination should be made on a case-by-case basis. beIN asks that we amend the rule so that ''the third prong of the statute of limitations does not begin to run until the vertically integrated MVPD provides a written and substantiated rejection of the unaffiliated programmer's carriage offer or request to negotiate.'' beIN suggests that such a rule is necessary to encourage MVPDs to ''be responsive to the offers and requests of unaffiliated programmers'' and to provide clarity about where such programmers stand in carriage negotiations. To the extent that it may be unclear whether an MVPD has denied or failed to respond to a request for carriage or to negotiate for carriage, we agree with commenters who assert that it would be appropriate for a programmer to request an answer by a reasonable date, after which it may consider an MVPD's failure to respond to constitute a denial of its request for purposes of triggering the third prong of the statute of limitations. We are not persuaded, however, that MVPDs should be required to substantiate in writing their denial of a request for carriage or to negotiate for carriage in order to trigger the third prong, as beIN requests. Because, as noted, an MVPD's failure to respond to a carriage request within a reasonable date specified by the programmer would be deemed a denial of such request, we find that requiring MVPDs to provide denials in writing is unnecessary and that the burdens imposed by such a requirement would outweigh any purported benefits.

Finally, we adopt our proposal to amend the parallel prongs in the statutes of limitations for program access, OVS, and good-faith retransmission consent complaints so that they run from the date that a potential defendant has denied or failed to acknowledge an offer or a request to negotiate, rather than from the date a potential complainant provides notice of its intent to file on that basis. Every commenter who addressed this proposal voiced support for maintaining consistency between the statutes of limitations for program carriage, program access, OVS, and good-faith retransmission consent complaints, and also ensures a finite limitations period.

Part 76 ALJ Initial Decision Effective Date and Review Procedures. We also adopt our proposal to harmonize the procedures governing the effective date and review of initial ALJ decisions in program carriage, program access, and OVS proceedings with the generally applicable procedures in part 1 of the Commission's rules. In practice, this means that rather than taking immediate effect and remaining in effect pending Commission review, ALJ initial decisions in these contexts will not take effect for at least 50 days following release and will be stayed automatically upon the filing of exceptions. We find that this action will simplify and streamline the Commission's procedures, which in turn will reduce uncertainty and confusion for both parties and adjudicators. Further, we agree with Comcast and AT&T that this action will benefit consumers by avoiding ''carriage whipsaw'' in the event that an ALJ initial decision mandating carriage is reversed by the Commission.

Although programmers express concern that any additional delays in implementing ALJ initial decisions would harm unaffiliated programmers, we disagree that this concern is best remedied by abandoning our proposal. Specifically, Independent Programmers contend that further delaying an order for mandatory carriage amplifies the harms to programmers by extending the length of time during which their programming is not carried. Independent Programmers further suggest that delaying the effectiveness of an ALJ initial decision pending appeal would incentivize MVPDs to pursue frivolous appeals for the purpose of delay. We are not persuaded that the potential harms to programmers from delaying the effectiveness of ALJ initial decisions justify retaining the existing effective date and review procedures. As noted by AT&T and Comcast, the rules provide that if the Commission upholds a mandatory carriage decision that is stayed pending review in certain instances, the MVPD will be required to carry the relevant programming for an additional period of time equal to the length of the delay caused by the review. Further, the Commission generally has the discretion to ''order appropriate remedies'' upon completion of program carriage proceedings. We find that these remedies adequately address the potential harm to unaffiliated programmers from delaying the effectiveness of ALJ initial decisions pending appeal.

Recognizing ''the logic'' in harmonizing the part 76 review procedures, but expressing concern about the effect of prolonged program carriage disputes on unaffiliated programmers, AMC Networks (AMCN) proposes that the Commission adopt a six-month ''shot clock'' for the Commission to review and issue an order upholding or overturning an ALJ initial decision when a party seeks review. We note that no other commenters addressed AMCN's proposal. Although the Commission is under no statutory obligation to review ALJ initial decisions within a specified timeframe, we agree with AMCN that such a timeframe would serve the public interest by limiting the harms to those programmers with finite litigation resources and expediting the resolution of complaints. We, therefore, establish a 180-day aspirational shot-clock for circulating to the Commission a proposed ruling on review of an initial ALJ decision in program access, program carriage, and OVS proceedings that commences from the date that an aggrieved party appeals such initial decision. We believe that creating this aspirational shot-clock will establish clearer expectations for all parties involved and facilitate prompt review of ALJ initial decisions. As in other contexts where the Commission has established such shot clocks, ''we intend to apply it in the ordinary course and only anticipate suspending it under special circumstances.''

Other Proposals. Standstill Rule. We decline to reimpose the standstill provision in the program carriage rules, as requested by beIN. In 2013, the Second Circuit vacated this provision without prejudice, which provides that ''[a] program carriage complainant seeking renewal of an existing programming contract may file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint.'' The Second Circuit found that the public did not have adequate notice under the APA when the Commission adopted the provision. beIN asks that we initiate a notice-and-comment rulemaking to readopt this provision consistent with the APA. Comcast opposes this request, asserting that such a rule would be inconsistent with the goal of expeditious resolution of program carriage complaints. Because the absence of explicit standstill procedures in the program carriage rules does not preclude parties from filing a request for temporary injunctive relief with the Commission, we find it unnecessary to pursue readopting the standstill rule at this time. As the rule was vacated by the Second Circuit, we will take this opportunity to delete the standstill

provision, § 76.1302(k), from the text of the CFR.

2011 Proposals. We decline to address any of the remaining program carriage proposals put forth in the *2011 Program Carriage NPRM* at this time, but may consider them in a future order. As content and speaker neutral regulations on protected speech, the program carriage rules must advance an important government interest—here, fair competition and a diversity of voices in the video market—and be narrowly tailored to advance that interest. The Commission has recently found that the video programming market has vastly changed in the past decade. Congress enacted section 616 to promote competition in the marketplace at a time when most Americans had access to only a single MVPD and their local broadcast stations for video programming. Today, most Americans have access to at least three MVPDs, in addition to broadcast and online video distributor (OVD) offerings. Consumers now have a competitive choice of multiple delivery systems offering more programming options of more diverse types from more diverse sources than was envisioned when the 1992 Cable Act was enacted nearly 30 years ago. Significantly, in 2013, the last time the program carriage statute was considered in federal court, the Second Circuit observed that ''there is no denying that the video programming industry is dynamic and that the level of competition has rapidly increased in the last two decades.'' The court elaborated that in light of these changes ''some of the Cable Act's broad prophylactic rules may no longer be justified'' and that it considered the ''possibility more real than speculative'' that developments in the market would erode the justification for the program carriage regime.

Commenters disagree starkly on the degree of competition and vertical integration in today's video programming market and the need for these proposals. On one hand, MVPDs assert that competition is at an all-time high in the video programming market as a result of the advent of alternative video programming options since the passage of the 1992 Cable Act, and therefore generally oppose the adoption of any additional program carriage rules. On the other hand, programmers contend that MVPDs retain outsized market power in the video marketplace and thus have the ability to engage in behavior detrimental to programmers. Accordingly, programmers voice support for several of the 2011 proposals that they claim would create a more competitive video programming market, including: Adopting an anti-retaliation rule; allowing for the award of damages in successful program carriage complaints; implementing limited automatic discovery at the prima facie stage; shifting the burden of proof after the prima facie stage; and applying a good-faith negotiation rule to vertically integrated MVPDs in program carriage negotiations. Given the lack of consensus in the record, we are not persuaded that this procedure-focused proceeding is the appropriate vehicle through which to fully consider these proposals that, if adopted, would substantially alter the existing program carriage framework. Therefore, we decline to address these proposals at this time and instead may consider them in a future order.

Other Proposals. Commenters urge that we consider broader amendments to the program carriage rules to address, among other things, the imposition of most favored nation clauses by MVPDs, the challenges faced by smaller stations seeking to obtain carriage on virtual MVPDs (vMVPDs), and the effect of the retransmission consent rules on the program carriage market. We concur with those commenters who suggest that these other proposals fall outside the scope of this narrow procedure-focused proceeding, and therefore we decline to consider those proposals here.

Procedural Matters. Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order. The FRFA is set forth in Appendix B of the *Report and Order.*

Paperwork Reduction Act Analysis. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain 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, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Act Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM,* including comment on the IRFA. We received no comments specifically directed toward the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objective of, the Report and Order. In this *Report and Order,* we adopt changes to the rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors (MVPDs). Specifically, we amend the statute of limitations for program carriage complaints to make clear that the third triggering event applies only when a party seeks renewal of an existing contract or when there is not an existing program carriage contract or contract offer, and a defendant MVPD has denied or failed to acknowledge either a request for carriage or a request to negotiate for program carriage. This third prong of the program carriage statute of limitations originally contained similar limiting language concerning an unreasonable refusal to deal that appears to have been inadvertently stricken by the Commission in 1994. The Commission has previously expressed concern that without that language this provision could be read to mean that a complaint would be timely within one year of the date on which a complainant notified the defendant MVPD of its intention to file a complaint, regardless of when the actual violation of the rules had occurred, undermining the fundamental purpose of a statute of limitations. For consistency, we similarly amend parallel provisions in the statutes of limitations for filing program access, open video system (OVS), and good-faith retransmission consent complaints so that they run from the date that a potential defendant denied an offer or a request to negotiate, rather than from the date a potential complainant provides notice of its intent to file on that basis. We find that these changes will help ensure an expeditious program access, program carriage, retransmission consent, and OVS complaint process and provide additional clarity to both potential complainants and defendants, as well as adjudicators.

We also revise the effective date and review procedures for initial decisions issued by an administrative law judge (ALJ) in program carriage, program access, and OVS proceedings to make them consistent with the Commission's

generally applicable procedures. In practice, this means that rather than taking immediate effect and remaining in effect pending review, ALJ initial decisions in these contexts will not take effect for at least 50 days following release and will be stayed automatically upon the filing of exceptions. As discussed fully in the *FNPRM,* the incongruous provisions concerning the effective date and review procedures for ALJ initial decisions in parts 76 and 1 of our rules have caused confusion for both parties and adjudicators and can create inconsistent outcomes pending appeal. We find that this action will simplify and streamline the Commission's procedures, which will reduce uncertainty and confusion for both parties and adjudicators. The rest of the existing rules governing the resolution of program carriage, program access, OVS, and good-faith retransmission consent complaints remain unchanged by this *Report and Order.*

Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed in response to the IRFA.

Response to comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, 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.

The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Cable Companies and Systems (Rate Regulation Standard). The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicates that, of the 777 cable companies currently operating in the United States, 766 serve 400,000 or fewer subscribers. Additionally, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. According to industry data, there are currently 4,336 active cable systems in the United States. Of this total, 3,650 cable systems have fewer than 15,000 subscribers. Thus, the Commission believes that the vast majority of cable companies and cable systems are small entities.

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 one 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.'' As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States. Accordingly, an operator serving fewer than 486,460 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. Based on available data, we find that all but five cable operators are small entities under this size standard. 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. Therefore, 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.

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. For the purposes of economic classification, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in the Wired Telecommunications Carriers industry. The Wired Telecommunications Carriers 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 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. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. According to industry data, DIRECTV and DISH serve 14,831,379 and 8,957,469 subscribers respectively, and count the third and fourth most subscribers of any multichannel video distribution system in the U.S. Given the capital required to operate a DBS service, its national scope, and the approximately one-third share of the video market controlled by these two companies, we presume that neither would qualify as a small business.

Motion Picture and Video Production. This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials. The SBA has established a small size standard for businesses operating this industry, which consists of all such firms with gross annual receipts of $35 million dollars or less. U.S. Census Bureau data for 2012 show that there were 8203 firms operated for the entire year. Of that number, 8,075 had annual receipts of less than $25 million per year. Based on this data, we conclude that the majority of firms operating in this industry are small.

Motion Picture and Video Distribution. This industry ''comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television

networks and stations, and exhibitors.'' The Small Business Administration has developed a size standard for firms operating in this industry, which is that companies whose annual receipts are $34.5 million or less are considered small. U.S. Census Bureau data for 2012 indicate there were 307 firms that were operational throughout the entire year. Of those, 294 firms had annual receipts of less than $25 million. Based on this data, we conclude that a majority of firms operating in the motion picture and video distribution industry are small.

Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast 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 has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of less than $25 million, 25 had annual receipts ranging from $25 million to $49,999,999, and 70 had annual receipts of $50 million or more. Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

Additionally, the Commission has estimated the number of licensed commercial television stations to be 1374. Of this total, 1,282 stations (or 94.2%) had revenues of $38.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 388. The Commission does not compile and 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.

We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations 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, another element of the definition of ''small business'' requires that an 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 broadcast 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.

There are also 387 Class A stations. Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,892 LPTV stations and 3,621 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. As discussed fully above, this *Report and Order* adopts revisions to the part 76 procedural rules. These amendments do not create any new reporting or recordkeeping requirements.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 an 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 such small entities.''

The *Report and Order,* as stated in Section A of this FRFA, minimizes the burdens associated with the resolution of program carriage, program access, OVS, and good-faith retransmission consent complaints by amending the rules governing two procedural aspects of the complaint process. First, we clarify that the third prong of the statute of limitations for all four types of complaints is triggered by an MVPD's denial or failure to acknowledge either a request for program carriage or a request to negotiate for program carriage, rather than delivery of a notice of intent to file a complaint on that basis. Second, we amend the rules to provide that initial decisions by an ALJ in program carriage, program access, and OVS proceedings will be automatically stayed upon the filing of exceptions, consistent with the Commission's generally applicable procedures. The rest of the procedures governing the resolution of these complaints—*e.g.,* deadlines for filing answers and replies, adjudication procedures, etc.—remain unchanged. We find that these revisions will aid in the expeditious resolution of program access, program carriage, OVS, good-faith retransmission consent complaints consistent with the Act. These changes will reduce the costs associated with litigating program access, program carriage, OVS, good-faith retransmission consent complaints before the Commission by eliminating any confusion surrounding the statute of limitations in all four contexts and by eliminating the need to seek a stay of an initial decision issued by an ALJ pending review for program carriage, program access, and OVS complaints. This change will benefit both small and large entities.

Report to Congress. 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. 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**.

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303(r), 325, 616, 628, and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 325, 536, 548, and 573, this *Report and Order is adopted. It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix A of the *Report and Order* and such amendments shall be effective 30 days after publication in the **Federal Register**. *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. *It is further ordered* that the Commission will send a copy of this Report and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA). *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 20–70 *shall be terminated* and its docket *closed*.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable Television, Communications, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission amends part 76 of title 47 of the Code of Federal Regulations 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, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.10 by revising paragraph (c)(2) to read as follows:

§ 76.10 Review.

* * * * *

(c) * * *

(2) Any party to a proceeding under this part aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with §§ 1.276(a) and 1.277(a) through (c) of this chapter.

■ 3. Amend § 76.65 by revising paragraph (e)(3) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

* * * * *

(e) * * *

(3) The television broadcast station or multichannel video programming distributor has denied, unreasonably delayed, or failed to acknowledge a request to negotiate retransmission consent in violation of one or more of the rules contained in this subpart.

* * * * *

■ 4. Amend § 76.1003 by revising paragraphs (g)(3) and (h)(1) to read as follows:

§ 76.1003 Program access proceedings.

* * * * *

(g) * * *

(3) A cable operator, or a satellite cable programming vendor or a satellite broadcast programming vendor has denied or failed to acknowledge a request to purchase or negotiate to purchase satellite cable programming, satellite broadcast programming, or terrestrial cable programming, or a request to amend an existing contract pertaining to such programming pursuant to § 76.1002(f), allegedly in violation of one or more of the rules contained in this subpart.

(h) * * *

(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission, Commission staff, or Administrative Law Judge shall order appropriate remedies, including, if necessary, the imposition of damages, and/or the establishment of prices, terms, and conditions for the sale of programming to the aggrieved multichannel video programming distributor. Such order shall set forth a timetable for compliance. Such order issued by the Commission or Commission staff shall be effective upon release. See §§ 1.102(b) and 1.103 of this chapter. The effective date of such order issued by the Administrative Law Judge is set forth in § 1.276(d) of this chapter.

* * * * *

■ 5. Amend § 76.1302 by:

■ a. Revising paragraphs (h)(1) and (3) and (j)(1);

■ b. Removing paragraph (k).

The revisions read as follows:

§ 76.1302 Carriage agreement proceedings.

* * * * *

(h) * * *

(1) The multichannel video programming distributor enters into a contract with a video programming vendor that a party alleges to violate one or more of the rules contained in this section; or

* * * * *

(3) In instances where there is no existing contract or an offer for carriage, or in instances where a party seeks renewal of an existing contract, the multichannel video programming distributor has denied or failed to acknowledge a request by a video programming vendor for carriage or to negotiate for carriage of that video programming vendor's programming on defendant's distribution system, allegedly in violation of one or more of the rules contained in this section.

* * * * *

(j) * * *

(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission, Commission staff, or Administrative Law Judge shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance. The effective date of such order issued by the Administrative Law Judge is set forth in § 1.276(d) of this chapter. Such order issued by the Commission or Commission staff shall become effective upon release, see §§ 1.102(b) and 1.103 of this chapter, unless any order of mandatory carriage issued by the staff would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff decision, the order for carriage of a video programming vendor's programming will not become effective unless and until the decision of the staff is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or Administrative Law Judge in its entirety, the defendant MVPD will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or Administrative Law Judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

* * * * *

■ 6. Amend § 76.1513 by revising paragraphs (g)(3) and (h)(1) to read as follows:

§ 76.1513 Open video dispute resolution.

* * * * *

(g) * * *

(3) An open video system operator has denied or failed to acknowledge a request for such operator to carry the complainant's programming on its open video system, allegedly in violation of one or more of the rules contained in this part.

(h) * * *

(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission, Commission staff, or Administrative Law Judge shall order appropriate remedies, including, if necessary, the

requiring carriage, awarding damages to any person denied carriage, or any combination of such sanctions. Such order shall set forth a timetable for compliance. Such order issued by the Commission or Commission staff shall be effective upon release. See §§ 1.102(b) and 1.103 of this chapter. The effective date of such order issued by the Administrative Law Judge is set forth in § 1.276(d) of this chapter.

* * * * *

[FR Doc. 2020–26259 Filed 12–16–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2020–0103; FF09E21000 FXES11110900000 212]

Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Monarch Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the monarch butterfly (*Danaus plexippus plexippus*) as a threatened species under the Endangered Species Act of 1973, as amended. After a thorough review of the best available scientific and commercial information, we find that listing the monarch butterfly as an endangered or threatened species is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We will develop a proposed rule to list the monarch butterfly as our priorities allow. However, we ask the public to submit to us any new information relevant to the status of the species or its habitat at any time.

DATES: The finding in this document was made on December 17, 2020.

ADDRESSES: A detailed description of the basis for this finding is available on the internet at *http://www.regulations.gov* under docket number FWS–R3–ES–2020–0103.

Supporting information used to prepare this finding is available for public inspection, by appointment, during normal business hours, by contacting the person specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the person specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Barbara Hosler, Regional Listing Coordinator, Ecological Services, Great Lakes Region, telephone: 517–351–6326, email: *monarch@fws.gov*. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is (1) not warranted, (2) warranted, or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the petitioned action is 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 species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that, when we find that a petitioned action is warranted but precluded, we treat the petition as though it is resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists (found in 50 CFR part 17). The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)) and ''threatened species'' as any species that 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(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only