

Manchin	Risch	Sullivan
McCain	Roberts	Thune
McConnell	Rounds	Tillis
Moran	Rubio	Toomey
Murkowski	Sasse	Wicker
Paul	Scott	Young
Perdue	Shelby	
Portman	Strange	

NAYS—48

Baldwin	Gillibrand	Murray
Bennet	Harris	Nelson
Blumenthal	Hassan	Peters
Booker	Heinrich	Reed
Brown	Heitkamp	Sanders
Cantwell	Hirono	Schatz
Cardin	Kaine	Schumer
Carper	Kennedy	Shaheen
Casey	King	Stabenow
Coons	Klobuchar	Tester
Cortez Masto	Leahy	Udall
Donnelly	Markey	Van Hollen
Duckworth	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Murphy	Wyden

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 48.

The motion is agreed to.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant legislative clerk read the nomination of Gregory G. Katsas, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The majority leader.

ORDERS FOR TUESDAY, NOVEMBER 28, 2017

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon, Tuesday, November 28; further, that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; finally, that following leader remarks, the Senate proceed to executive session and resume consideration of the Katsas nomination, then subsequently recess until 4 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARMS SALES NOTIFICATION

Mr. CORKER. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30

calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee's intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Arlington, VA.

Hon. BOB CORKER,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-59, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Georgia for defense articles and services estimated to cost \$75 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

CHARLES W. HOOPER,
Lieutenant General, USA, Director.

Enclosures.

TRANSMITTAL NO. 17-59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Georgia.

(ii) Total Estimated Value:
Major Defense Equipment* \$50 million.
Other \$25 million.
Total \$75 million.

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

Major Defense Equipment (MDE):
Four-hundred ten (410) Javelin Missiles.
Seventy-two (72) Javelin Command Launch Units (CLUs) (includes two (2) Javelin Block 1 CLUs to be used as spares).

Non-MDE: Also included are ten (10) Basic Skills Trainers (BST); up to seventy (70) simulated rounds; United States Government (USG) and contractor technical assistance, transportation, and other related elements of logistics and program support.

(iv) Military Department: Army.

(v) Prior Related Cases, if any: None.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.

(viii) Date Report Delivered to Congress: November 17, 2017.

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Georgia—Javelin Missile and Command Launch Units

The Government of Georgia has requested to purchase four hundred and ten (410) Javelin Missiles, and seventy-two (72) Javelin Command Launch Units (CLUs) (includes two (2) Javelin Block 1 CLUs to be used as spares). Also included are ten (10) Basic

Skills Trainers (BST); up to seventy (70) simulated rounds; U.S. Government and contractor technical assistance; transportation; and other related elements of logistics and program support. The total estimated cost is \$75 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of Georgia. The Javelin system will provide Georgia with increased capacity to meet its national defense requirements. Georgia will have no difficulty absorbing this system into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon/Lockheed Martin Javelin Joint Venture of Orlando, Florida, and Tucson, Arizona. However, these missiles are being provided from U.S. Army stock and the CLUs will be obtained from on-hand Special Defense Acquisition Fund (SDAF)-purchased stock. There are no known offset agreements proposed in conjunction with this potential sale.

Implementation of this proposed sale will require the assignment of approximately one (1) U.S. Government and two (2) contractor representatives to Georgia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

TRANSMITTAL NO. 17-59

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft and watercraft. The system weighs 49.5 pounds and has a maximum range in excess of 2,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and/or direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The CLU's thermal sight is a second generation Forward Looking Infrared (FLIR) sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the CLU after mating and prior to launch.

4. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for target undercover). An onboard flight computer guides the missile to the selected target.

5. The Javelin Missile System hardware and the documentation are UNCLASSIFIED. The missile software which resides in the CLU is considered SENSITIVE. The sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. The overall hardware is also considered sensitive in that the infrared wavelengths could be useful in attempted countermeasure development.

6. If a technologically advanced adversary obtains knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Georgia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary to further the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed on this transmittal are authorized for release and export to the Government of Georgia.

GAO OPINION LETTER ON EASTERN INTERIOR RESOURCE MANAGEMENT PLAN

Ms. MURKOWSKI. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the U.S. Government Accountability Office, GAO, dated November 15, 2017.

The letter provides notice that the Eastern Interior Resource Management Plan—Eastern Interior Plan—as well as the four resource management plans—RMP—that comprise the Eastern Interior Plan, signed by the Department of the Interior's Bureau of Land Management, and approved in Records of Decision, December 30, 2016, is a rule subject to the Congressional Review Act, CRA, 5 U.S.C. §801 et seq.

I wrote to GAO on April 13, 2017, asking it to determine whether the Eastern Interior Plan, along with the RMPs for the Draanjik Planning Area, the Fortymile Planning Area, the Steese Planning Area, and the White Mountains Planning Area, constitute rules subject to the CRA. In response, as communicated in its letter of November 15, 2017, GAO determined that the Eastern Interior Plan is a rule and does not fall within any of the exceptions provided in the CRA. GAO reached the same conclusion with regard to each of the four RMPs that comprise the Eastern Interior Plan. Accordingly, with this GAO opinion and its publication in the Congressional Record, the Eastern Interior Plan rule, and the rules for each RMP will be subject to a congressional joint resolution of disapproval.

The letter I am now submitting to be printed in the CONGRESSIONAL RECORD is the original document provided by GAO to my office. I will also provide a copy of the GAO letter to the Parliamentarian's office.

For those who may be interested, GAO's determination of the Eastern Interior Plan and the four RMPs can be

accessed at <https://www.gao.gov/assets/690/688420.pdf>.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. GOVERNMENT

ACCOUNTABILITY OFFICE,

Washington, DC, November 15, 2017.

Subject: Eastern Interior Resource Management Plan.

Hon. LISA MURKOWSKI,
U.S. Senate.

This is a response to your letter requesting our opinion whether the Eastern Interior Resource Management Plan (Eastern Interior Plan), issued on December 30, 2016 by the Bureau of Land Management (BLM) of the Department of the Interior, is a rule under the Congressional Review Act (CRA). The Eastern Interior Plan is comprised of the Resource Management Plans (RMP) for four areas in Alaska: the Draanjik Planning Area, the Fortymile Planning Area, the Steese Planning Area, and the White Mountains Planning Area. You also asked us to decide whether these four underlying RMPs are rules for CRA purposes. For the reasons discussed below, we conclude that the Eastern Interior Plan and the four RMP's are rules under CRA.

BACKGROUND

The Resource Management Plan Process

The Eastern Interior Plan was prepared in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA). The FLPMA, as amended, requires the Bureau of Land Management (BLM) to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands” Plans are to “use and observe the principles of multiple use and sustained yield[.]” FLPMA defines “multiple use” to encompass uses such as “recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values[.]” Multiple use management requires balancing various competing uses of land.

All future resource management authorizations and actions, and subsequent more detailed or specific planning, must conform to the approved resource management plan. BLM may amend or revise plans to account for, among other things, new information or changes in circumstances. FLPMA requires BLM to promulgate and follow certain procedures set forth in regulation for the development, amendment, and revision of forest plans. The decision to adopt a land use plan and the rationale for making that decision are made public in a Record of Decision issued pursuant to the National Environmental Policy Act (NEPA).

Below is a brief description of some of the land use and other decisions discussed in each of the four Resource Management Plans (RMP) contained in the Eastern Interior Plan:

White Mountains Planning Area

The White Mountains National Recreation Area comprises over 1 million acres, and had an earlier RMP established in 1986. After analyzing five different alternatives, BLM chose a plan that recommends opening 4,000 acres to new locatable mineral entry and mineral leasing by revocation of public land orders, and identifies lands that are suitable for acquisition, disposal, or retention. The entire area is limited to off-highway vehicles, with snowmobiles permitted in winter months. The plan defers travel management planning to a future rulemaking process to be completed within 5 years.

Steese Planning Area

This planning area comprises about 1.3 million acres, and its RMP replaces an ear-

lier plan approved in 1986. The BLM again considered five alternative plans, and the selected option would designate that 98 percent of the planning area remain closed to mineral leasing and mineral location. A limited off-highway vehicles area designation would be in place for the entire planning area, and a more detailed transportation management plan would be developed within the next 5 years. The Steese Special Recreation Management Area is designated under the Plan, and two Research Natural Areas remain in place.

Fortymile Planning Area

The Fortymile Planning Area comprises nearly 1.9 million acres of land, and the RMP replaces an earlier planning effort approved in 1980. The area includes a Wild and Scenic River designated by statute. Five alternative plans were considered by BLM, and the plan chosen would recommend that 40 percent of the area remain closed to mineral leasing and mineral location, and recommends a new Area of Critical Environmental Concern. A limited off-highway vehicles designation would apply to the entire planning area.

Draanjik Planning Area

This planning area, formerly known as the Upper Black River Area, comprises about 2.4 million acres. There was no prior planning document for this region. After studying five alternative plans, BLM decided, among other things, to designate the Salmon Fork River as an Area of Critical Environmental Concern to protect anadromous fish habitat, bald eagle nesting, and rare plant habitats. The RMP also recommended that 77 percent of the land be closed to mineral leasing and mineral location (previously no mineral leasing or mining claims were allowed). Certain lands near the town of Circle, Alaska, would be available for disposal through exchange and would have limited access to off-highway vehicles; no off-highway vehicles access was designated prior to this planning process.

Congressional Review Act

The CRA, codified at 5 U.S.C. 801–808 (2012), establishes a process for congressional review of agency rules and special expedited procedures whereby the Congress may pass a joint resolution of disapproval to overturn a rule. Congressional review is assisted by the Act's requirement that all federal agencies submit each rule to both Houses of Congress and to the Comptroller General before it can take effect. The report must contain a copy of the rule, “a concise general statement relating to the rule,” and the rule's proposed effective date. In addition, the agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency's actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process. The agencies (Interior and BLM) did not send a report on the Eastern Interior Plan to Congress or the Comptroller General.

ANALYSIS

On October 23, 2017, we issued an opinion on whether the 2016 Amendment to the Tongass National Forest Land and Resource Management Plan (2016 Tongass Amendment), approved on December 9, 2016, is a rule under CRA. In our Tongass opinion, we analyzed the 2016 Tongass Amendment in light of CRA's definition of a rule, found that it fit within that definition, and concluded that it was a rule for CRA purposes. As explained below, we reach the same conclusion with regard to the Eastern Interior Plan and each of the four RMPs it contains.

The first step in analyzing whether the Eastern Interior Plan is a rule is to look at