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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

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RIN 2590–AA56

Relocation of Regulations

AGENCY: Federal Housing Finance Agency and Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is relocating six Federal Housing Finance Board (Finance Board) regulations to new locations within the FHFA chapter of the Code of Federal Regulations (CFR). The regulations relate to: Community Investment Cash Advance Programs (CICA); Federal Home Loan Bank (Bank) collection, settlement, and processing of payment instruments; miscellaneous Bank authorities; Bank requests for information from the federal banking regulators; Financing Corporation (FICO) operations; and Bank assistance for the Resolution Funding Corporation (RefCorp). This final rule relocates those regulations without any substantive modification and removes and designates as reserved several empty subchapters in the Finance Board chapter of the CFR. This final rule also creates a general definitions section to be located at the beginning of the FHFA chapter to facilitate the use of common terms found throughout the chapter.

DATES: This rule is effective on February 11, 2013.

FOR FURTHER INFORMATION CONTACT: Michou H.M. Nguyen, Assistant General Counsel, (202) 649–3081, Office of General Counsel, Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661–62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663–64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board, respectively, until such regulations are superseded by regulations issued by FHFA. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794–95, 2797–98.

B. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations ''of general applicability and future effect'' relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* section 1201, Public Law No. 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513(f)). That provision exempts from this requirement any Finance Board regulation that FHFA reissues as its own, which is what FHFA is doing in this rulemaking. For that reason, FHFA has determined that a section 1201 analysis is not required for this final rule.

C. Purpose of Rule

The purpose of this rulemaking is to relocate certain of the Finance Board's regulations by adopting them as FHFA regulations without any substantive revisions. With respect to the general definition section, FHFA is replicating in its regulations (rather than relocating) the general definition provisions of the Finance Board regulations, 12 CFR part 900, with appropriate revisions to reflect the amendments made by HERA, but is leaving in place the Finance Board's general definitions, which are necessary for the remaining Finance Board regulations. For each of these relocated regulations, FHFA is replacing all references to the ''Finance Board,'' ''FHFB,'' and ''board of directors'' of the Finance Board, with references to ''FHFA,'' or the ''Director,'' as appropriate. FHFA also is updating the statutory authority citations for the regulations by replacing the citations to the rulemaking authority for the Finance Board with citations to its own rulemaking authorities. The following paragraphs briefly describe each of the Finance Board regulations that is being adopted as an FHFA regulation and the extent to which the regulation is being revised in the process.

D. Finance Board Part 952/FHFA Part 1292 (Community Investment Cash Advance Programs)

In 1989, Congress amended the Federal Home Loan Bank Act (Bank Act) to authorize the Banks to offer Community Investment Cash Advance (CICA) programs, and to require the Banks to offer advances for housing and economic development activities at targeted income levels through the Community Investment Program (CIP). Part 952 of the Finance Board's regulations implemented the CICA

statutory provision by authorizing the Banks, in their discretion, to offer long-term advances or grants to members or housing associates to provide financing for economic development projects for specified targeted beneficiaries. Part 952 also codified the CIP statutory provisions under the CICA regulatory umbrella.

FHFA is removing part 952 in its entirety from chapter 9 of title 12 of the CFR (Finance Board Chapter) and relocating it to chapter 12 of title 12 of the CFR (FHFA Chapter) as new part 1292. As part of the relocation, FHFA is updating cross references to FHFA regulations and updating a statutory cite in the authority section. Otherwise, the FHFA provision is identical to the Finance Board provision.

E. Finance Board Part 975/FHFA Part 1271—Subpart A (Collection, Settlement, and Processing of Payment Instruments)

Part 975 implements section 11(e)(2) of the Bank Act, (12 U.S.C. 1431(2)), which generally authorizes the Finance Board to permit the Banks to engage in the processing, collection, and settlement of negotiable and nonnegotiable items and instruments drawn on or issued by their members or institutions eligible to make application to be a member. FHFA is removing part 975 in its entirety and relocating it to the FHFA Chapter of the CFR as new subpart A of part 1271. As part of the relocation, FHFA is updating the definition of ''eligible institution'' to include community development financial institutions, which reflects recent amendments to the Bank Act authorizing such institutions to become Bank members. FHFA is also amending regulation text in new part 1271.6(c) (current part 975.6(c)) relating to FHFA's obligation to: (1) Review the cost of capital adjustment factor and prices for services authorized in new subpart A of part 1271 (current part 975); and (2) to publish annually the prices for such services provided by the Banks. The revision clarifies that FHFA's obligation to review and publish will arise only if the Banks resume providing the services described in subpart A of part 1271. Currently, the Banks do not provide any of these services. Lastly, FHFA also is correcting a statutory cross reference in that definition, to reflect other recent amendments to the Bank Act, and is making conforming changes to reflect the fact that this regulation is now established as a subpart of the FHFA regulations instead of a discrete part, as had been the case previously.

F. Finance Board Part 977/FHFA Part 1271—Subpart B (Miscellaneous Bank Authorities)

Part 977 is a very short provision that governs inter-Bank borrowing and, under certain circumstances, allows Banks to act as trustee of any trust affecting the business of any member, any institution or group applying for membership or for insurance of accounts, or any group applying for a charter for a federal savings association. FHFA is repealing all of part 977 and is relocating its substantive provisions without any material change to a new subpart B of part 1271. In the relocated regulation, FHFA is striking a reference in § 977.3 to an institution that is applying for ''insurance of accounts.'' That reference dates to regulations of the Federal Home Loan Bank Board, and would have referred to savings and loan associations that were applying for insurance of accounts from the former Federal Savings and Loan Insurance Corporation. As that term no longer has any relevance to the Banks, FHFA has not included it in the relocated provisions. FHFA is also striking a reference in § 977.3 to ''any group applying for a charter for a federal savings association.'' That provision also dates back to a time when the Federal Home Loan Bank Board chartered federal savings associations in addition to supervising the Banks. Neither FHFA nor the Banks has any regulatory authority over the chartering of federal savings associations. Therefore this outdated reference is being repealed.

G. Finance Board Part 978/FHFA Part 1271—Subpart C (Bank Requests for Information)

Part 978 implements section 22 of the Bank Act, 12 U.S.C. 1442, which generally authorizes the Banks to have access to certain reports, records, or other information of the federal bank regulatory agencies relating to the condition of any Bank member or any institution with respect to which any Bank may have transactions. Part 978 establishes procedures for the Banks to request such information and sets forth requirements for maintaining the security and confidentiality of the information. FHFA is relocating part 978 in its entirety from the Finance Board Chapter to the FHFA Chapter as new subpart C of part 1271. As part of the relocation, FHFA is making conforming changes to reflect the fact that this regulation is now a subpart instead of a discrete part, clarifying that the term ''confidential information'' is intended to refer to ''confidential regulatory information,'' and is removing an obsolete reference to the Office of Thrift Supervision.

H. Finance Board Part 995/FHFA Part 1271—Subpart D (Financing Corporation Operations)

Part 995 implements the authority over the operations of FICO granted to the Finance Board by section 21 of the Bank Act. 12 U.S.C. 1441. The regulation addresses FICO's general authority, procedures for its budget and operations, and record-keeping and reporting requirements. Except for the changes discussed in the following paragraph, FHFA is relocating part 995 in its entirety from the Finance Board Chapter to the FHFA Chapter as new subchapter E of part 1271.

FHFA is removing all references to ''exit fees'' that appear in part 995. Repealed provisions of the Federal Deposit Insurance Act (FDIA) provided a mechanism for institutions to change their status from Bank Insurance Fund (BIF) member to Savings Association Insurance Fund (SAIF) member and vice versa. In connection with that conversion, institutions were charged an ''exit fee,'' which under certain circumstances would be transferred to FICO if FICO had exhausted all other sources of funding for interest payments on its obligations. 12 U.S.C. 1815(d)(2)(E)(i)(II) (repealed). Part 995 provided a mechanism for FICO to request exit fee funds pursuant to the FDIA. With the elimination of SAIF, the conversion process was eliminated along with the exit fee and the associated portions of the FDIA. Therefore, there is no longer any need for the FICO regulations to define or refer to exit fees and FHFA is eliminating all such references, as well as obsolete related references to BIF deposits and SAIF deposits, as part of the relocation. FHFA also is not relocating section 995.8(b)(2)(ii), which by its term expired over ten years ago.[1] FHFA is also updating and correcting in part 995 several erroneous or outdated cross references to statutes and other parts of the CFR.

I. Finance Board Part 996/FHFA Part 1271—Subpart E (Authority for Bank Assistance of the Resolution Funding Corporation)

Part 996 implements section 21B of the Bank Act, which allows certain Bank personnel to perform specified functions on behalf of RefCorp. 12 U.S.C. 1441b(c)(6)(B). Part 996 also

[1] This provision set a cap on the rate of FICO assessments for FDIC insured institution with respect to BIF assessable deposits and expired on December 31, 1999.

permits a Bank to assist in the collection of RefCorp's assessment from SAIF members through the use of a direct debit system.[2] In particular, section 996.3 requires that each Bank allow any SAIF member whose principal place of business is in its district to establish and maintain at least one demand deposit account for the purpose of facilitating the RefCorp assessment. With the elimination of SAIF some years ago, section 996.3 became obsolete and is being repealed, as is section 996.1, which is an empty reserved section. The remaining provision within part 996, section 996.2, is being relocated in its entirety from the Finance Board Chapter to the FHFA Chapter and being designated as new subpart E of part 1271.

J. FHFA Part 1201—Definitions

As part of the relocation of parts 975, 977, 978, 995 and 996 of the Finance Board Chapter, FHFA has created a general definitions section, to be designated as new part 1201 of the FHFA Chapter. Part 1201 contains terms commonly used throughout the FHFA Chapter, many of which are carried over from the general definitions section of the Finance Board regulation, at 12 CFR part 900. Part 1201 also contains a number of other commonly occurring terms from the FHFA regulations. As FHFA has adopted regulations since 2008, it typically has included within each regulation a separate section of defined terms for each part of its regulations, which has included commonly occurring terms as well as terms that are specific to particular parts of the CFR. As a result, commonly used terms such as ''FHFA,'' ''Finance Agency,'' ''Director,'' and ''Enterprise'' are defined multiple times throughout the FHFA regulations, sometimes in different ways. To lessen the number of times the regulations define a particular term, and to ensure consistency in how a particular term is defined, FHFA is establishing part 1201 as a central location for the definition of common terms that are used throughout the regulations and is removing the definitions of those terms that appear in scattered sections throughout the FHFA regulations. Thus, in the definitions section of parts 1225, 1228, 1229, 1231, 1233, 1235–1237, 1261, 1263–1267, 1269, 1270, 1272–1274, 1278, 1281, 1282, 1290, and 1291 of the FHFA Chapter, FHFA is removing the definitions of common terms that will be defined instead in new part 1201. The creation of the new definitions section and removal of existing definitions do not result in any substantive change to any regulation in the FHFA Chapter, but only serve to facilitate the use of these common terms. For FHFA regulations that may be used by the public, such as the FOIA or Privacy Act provisions, FHFA has left the definitions of common terms as part of those regulations, as persons using those regulations may be less familiar with FHFA and its regulations generally and could benefit from having all relevant terms defined within the rules that implement the FOIA or Privacy Act provisions. Similarly, for certain terms that may be commonly used but that also may be important to understanding a particular part of the regulations, FHFA has included the term within the general definitions of part 1201 and has also left the term within the definitions section of the particular part of the regulations. Examples would include definitions of the terms ''advance'' and ''Office of Finance'' both of which are defined in part 1201 as well as in the advances regulation and the OF regulation.

K. Removal of Empty Subchapters

After the relocation of parts 952, 975, 977, 978, 995, and 996 of the Finance Board Chapter, subchapters I and L of the Finance Board Chapter will be empty. In addition, subchapters D, F, H, J, and K of the Finance Board Chapter are currently empty. Therefore, in order to streamline the table of contents of the Finance Board Chapter, FHFA is removing the headings from each of these subchapters and designating each as reserved.

II. Notice and Public Participation

FHFA finds that good cause exists for adopting these rule changes as a final rule without public notice and comment under 5 U.S.C. 553(b)(B). No substantive modifications are being made to the regulations that are being relocated. The addition of the common definitions section also does not alter the substance of any existing regulation. Consequently, the final rule does not alter the rights or responsibilities of any party. Therefore, FHFA believes that public comments are unnecessary and not useful.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Parts 952, 975, 977, 978, 995, 996, 1271, 1290 and 1292

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 1201

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Office of Finance, Regulated entities.

12 CFR Part 1225

Federal home loan banks, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Capital, Filings, Minimum capital, Procedures, Standards.

12 CFR Part 1228

Asset-backed securities, Builders, Condominium associations, Cooperative associations, Developers, Federal home loan banks, Government-sponsored enterprises, Homeowners' associations, Housing, Mortgages, Mortgage-backed securities, Nonprofit organizations, Private transfer fees.

12 CFR Part 1229

Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1231

Golden parachutes, Government-sponsored enterprises, Indemnification.

12 CFR Part 1233

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1235

Federal home loan banks, Government-sponsored enterprises, Records, Reporting and recordkeeping requirements.

[2] In 1989, Congress established RefCorp as a vehicle to provide funding for the Resolution Trust Corporation to finance resolution of the savings and loan crisis. 12 U.S.C. 1441b(a), (b).

12 CFR Part 1236

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1237

Capital, Conservator, Federal home loan banks, Government-sponsored enterprises, Receiver.

12 CFR Part 1261

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 1263

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 1265

Community development, Credit, Federal home loan banks, Housing.

12 CFR Parts 1264, 1266, 1267, 1269, and 1272

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 1270

Accounting, Federal home loan banks, Government securities.

12 CFR Part 1273

Federal home loan banks, Securities.

12 CFR Part 1274

Accounting, Federal home loan banks, Financial disclosure.

12 CFR Part 1278

Banks, banking, Federal home loan banks, mergers.

12 CFR Part 1281

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 1430, 1431, 1432, 1441, 1442, 4511, and 4513, FHFA hereby amends chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

Chapter IX—Federal Housing Finance Board

Subchapter D—[Removed and Reserved]

■ 1. Subchapter D is removed and reserved.

Subchapter F—[Removed and Reserved]

■ 2. Subchapter F is removed and reserved.

Subchapter G—Federal Home Loan Bank Assets and Off-Balance Sheet Items

PART 952—[REMOVED]

■ 3. Remove part 952.

Subchapter H—[Removed and Reserved]

■ 4. Subchapter H is removed and reserved.

Subchapter I—[Removed and Reserved]

■ 5. Subchapter I is removed and reserved.

Subchapter J—[Removed and Reserved]

■ 6. Subchapter J is removed and reserved.

Subchapter K—[Removed and Reserved]

■ 7. Subchapter K is removed and reserved.

Subchapter L—[Removed and Reserved]

■ 8. Subchapter L is removed and reserved.

Chapter XII—Federal Housing Finance Agency

Subchapter A—Organization and Operations

■ 9. Part 1201 is added to read as follows:

PART 1201—GENERAL DEFINITIONS APPLYING TO ALL FEDERAL HOUSING FINANCE AGENCY REGULATIONS

Authority: 12 U.S.C. 4511(b), 4513(a), 4513(b).

§ 1201.1 Definitions.

As used throughout this chapter, the following basic terms relating to the Federal Housing Finance Agency, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, the Office of Finance, and related entities have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section, or paragraph:

1934 Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

Acquired member assets or AMA means those assets that may be acquired by a Bank under part 955 of this title, or any successor thereto.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Bank Act and part 1266 of this chapter.

Affordable Housing Program or AHP means the Affordable Housing Program that each Bank is required to establish pursuant to section 10(j) of the Bank Act (12 U.S.C. 1430(j)) and part 1291 of this chapter.

Appropriate Federal banking agency has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

Appropriate state regulator means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a particular institution.

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank System means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

Capital plan means the capital structure plan required for each Bank by section 6(b) of the Bank Act, as amended (12 U.S.C. 1426(b)).

CIP means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Bank Act (12 U.S.C. 1430(i)).

Community Investment Cash Advance or CICA means any advance made through a program offered by a Bank under section 10 of the Bank Act (12 U.S.C. 1430) and parts 1291 and 1292 of this chapter to provide funding for targeted community lending and affordable housing, including advances made under a Bank's Rural Development Funding (RDF) program, offered under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)); a Bank's Urban Development Funding (UDF) program, offered under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)); a Bank's Affordable Housing Program (AHP), offered under section 10(j) of the Bank Act (12 U.S.C. 1430(j)); a Bank's Community Investment Program (CIP), offered under section 10(i) of the Bank Act (12 U.S.C.

1430(i)); or any other program offered by a Bank that meets the requirements of part 1292 of this chapter.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in § 1263.1 of this chapter), purchasing or funding small business loans, small farm loans, small agri-business loans, or community development loans (as defined in § 1266.1 of this chapter).

Consolidated obligation or CO means any bond, debenture, or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Data Reporting Manual or DRM means a manual issued by FHFA and amended from time to time containing reporting requirements for the Regulated Entities.

Director, written in title case, means the Director of FHFA or his or her designee.

Enterprise means Fannie Mae and Freddie Mac (collectively, Enterprises) and any affiliate thereof.

Excess stock means that amount of a Bank's capital stock owned by a member or other institution in excess of that member's or other institution's minimum investment in capital stock required under the Bank's capital plan, the Bank Act, or FHFA's regulations, as applicable.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

FDIC means the Federal Deposit Insurance Corporation.

FHFA means the Federal Housing Finance Agency established by Section 1311(a) of the Safety and Soundness Act. (12 U.S.C. 4511(a)).

Financing Corporation or FICO means the Financing Corporation established and supervised by the Director under section 21 of the Bank Act (12 U.S.C. 1441) and part 1271 of this chapter.

FRB means the Board of Governors of the Federal Reserve System.

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Generally Accepted Accounting Principles or GAAP means accounting principles generally accepted in the United States.

Ginnie Mae means the Government National Mortgage Association.

GLB Act means the Gramm-Leach-Bliley Act (Pub. L. 106–102 (1999)).

HERA means the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654.

Housing associate means an entity that has been approved as a housing associate pursuant to part 1264 of this chapter.

HUD means the United States Department of Housing and Urban Development.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 1263.20 or 1263.24(b) of this chapter.

NCUA means the National Credit Union Administration.

NRSRO means a credit rating organization registered with the SEC as a nationally recognized statistical rating organization by the Securities and Exchange Commission.

OCC means the Office of the Comptroller of the Currency.

Office of Finance or OF means the Office of Finance, a joint office of the Banks established under part 1273 of this chapter and referenced in the Bank Act and the Safety and Soundness Act.

Regulated Entity means the Federal Home Loan Mortgage Corporation and any affiliate thereof, the Federal National Mortgage Association and any affiliate thereof, and any Federal Home Loan Bank.

Resolution Funding Corporation or REFCORP means the Resolution Funding Corporation established by section 21B of the Bank Act (12 U.S.C. 1441b).

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

SBIC means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 681).

SEC means the United States Securities and Exchange Commission.

State means a state of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

Subchapter B—Entity Regulations

PART 1225—MINIMUM CAPITAL—TEMPORARY INCREASE

■ 10. The authority citation for part 1225 continues to read as follows:

Authority: 12 U.S.C. 4513, 4526 and 4612.

§ 1225.2 [Amended]

■ 11. Amend § 1225.2 by removing the definitions for ''Enterprise'' and ''Regulated entity''.

PART 1228—RESTRICTIONS ON THE ACQUISITION OF, OR TAKING SECURITY INTERESTS IN MORTGAGES ON PROPERTIES ENCUMBERED BY CERTAIN PRIVATE TRANSFER FEE COVENANTS AND RELATED SECURITIES

■ 12. The authority citation for part 1228 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4526, 4616, 4617, 4631.

§ 1228.1 [Amended]

■ 13. Amend § 1228.1 by removing the definitions for ''Enterprises'', ''Federal Home Loan Banks or Banks'', and ''Regulated entities''.

PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION

■ 14. The authority citation for part 1229 continues to read as follows:

Authority: 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

§ 1229.1 [Amended]

■ 15. Amend § 1229.1 by removing the definitions for ''Bank'', ''Bank Act'', ''Director'', ''Consolidated obligations'', ''FHFA'', and ''Safety and Soundness Act''.

PART 1231—GOLDEN PARACHUTE PAYMENTS

■ 16. The authority citation for part 1229 continues to read as follows:

Authority: 12 U.S.C. 4518(e).

§ 1231.1 [Amended]

■ 17. Amend § 1231.1 by removing the word ''Act'' and adding, in its place, the words ''Safety and Soundness Act''.

§ 1231.2 [Amended]

■ 18. Amend § 1231.2 by removing the definitions for ''Act'', ''Director'', ''Enterprise'', ''Federal Home Loan Bank'', ''FHFA'', ''HERA'', ''Office of Finance'', and ''Regulated entity''.

PART 1233—REPORTING OF FRAUDULENT FINANCIAL INSTRUMENTS

■ 19. The authority citation for part 1233 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513, 4514, 4526, 4642.

§ 1233.2 [Amended]

■ 20. Amend § 1233.2 by removing the definitions for ''Bank or Federal Home Loan Bank'', ''Director'', ''Enterprise'',

''Regulated entity'', and ''Safety and Soundness Act''.

PART 1235—RECORD RETENTION FOR REGULATED ENTITIES AND OFFICE OF FINANCE

■ 21. The authority citation for part 1235 continues to read as follows:

Authority: 12 U.S.C. 4511(b), 4513(a), 4513b(a)(10) and (11), 4526.

§ 1235.2 [Amended]

■ 22. Amend § 1235.2 by removing the definitions for ''Director'', ''Federal Home Loan Bank'', ''FHFA'', ''Financing Corporation'', ''Office of Finance'', ''Regulated entity'', and ''Safety and Soundness Act''.

PART 1236—PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

■ 23. The authority citation for part 1236 continues to read as follows:

Authority: 12 U.S.C. 4511, 4513(a) and (f), 4513b, and 4526.

§ 1236.2 [Amended]

■ 24. Amend § 1236.2 by removing the definition for ''FHFA''.

PART 1237—CONSERVATORSHIP AND RECEIVERSHIP

■ 25. The authority citation for part 1237 continues to read as follows:

Authority: 12 U.S.C. 4513b, 4526, 4617.

§ 1237.2 [Amended]

■ 26. Amend § 1237.2 by removing the definitions for ''Director'', ''Enterprise'', and ''Regulated entity''.

Subchapter D—Federal Home Loan Banks

PART 1261—FEDERAL HOME LOAN BANK DIRECTORS

■ 27. The authority citation for part 1261 continues to read as follows:

Authority: 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

§ 1261.1 [Removed and Reserved]

■ 28. Remove and reserve § 1261.1.

PART 1263—MEMBERS OF THE BANKS

■ 29. The authority citation for part 1263 continues to read as follows:

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

§ 1263.1 [Amended]

■ 30. Amend § 1263.1 by removing the definitions for ''Bank Act'' and ''Director''.

PART 1264—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

■ 31. The authority citation for part 1264 continues to read as follows:

Authority: 12 U.S.C. 1430b, 4511, 4513 and 4526.

■ 32. Amend part 1264 by removing the words ''the Act'', wherever they appear, and adding, in their place, the words ''the Bank Act''.

§ 1264.1 [Amended]

■ 33. Amend § 1264.1 by removing the definitions for ''Act'', ''Bank'', and ''FHFA''.

PART 1265—CORE MISSION ACTIVITIES

■ 34. The authority citation for part 1265 continues to read as follows:

Authority: 12 U.S.C. 1430, 1430b, 1431, 4511, 4513 and 4526.

§ 1265.1 [Amended]

■ 35. Amend § 1265.1 by removing the definitions for ''Bank'' and ''Acquired member assets or AMA''.

PART 1266—ADVANCES

■ 36. The authority citation for part 1266 continues to read as follows:

Authority: 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

§ 1266.1 [Amended]

■ 37. Amend § 1266.1 by removing the definitions for ''Bank'', ''Bank Act'', and ''FHFA''.

PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

■ 38. The authority citation for part 1267 continues to read as follows:

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

§ 1267.1 [Amended]

■ 39. Amend § 1267.1 by removing the definitions for ''Bank'' and ''Bank Act''.

PART 1269—STANDBY LETTERS OF CREDIT

■ 40. The authority citation for part 1269 continues to read as follows:

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

§ 1269.1 [Amended]

■ 41. Amend § 1269.1 by removing the definitions for ''Act'' and ''Bank''.

§ 1269.4 [Amended]

■ 42. Amend § 1269.4 in paragraph (c) by removing the words ''the Act'' and adding, in their place, the words ''the Bank Act''.

PART 1270—LIABILITIES

■ 43. The authority citation for part 1269 continues to read as follows:

Authority: 12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526.

§ 1270.1 [Amended]

■ 44. Amend § 1270.1 by removing the definitions for ''Bank'', ''Bank Act'', ''Director'', ''FHFA'', and ''Safety and Soundness Act''.

■ 45. Part 1271 is added to read as follows:

PART 1271—MISCELLANEOUS FEDERAL HOME LOAN BANK OPERATIONS AND AUTHORITIES

Subpart A—Collection, Settlement, and Processing of Payment Instruments

Sec.
1271.1 Definitions.
1271.2 Authority and scope.
1271.3 General provisions.
1271.4 Incidental powers.
1271.5 Operations.
1271.6 Pricing of services.
1271.7 Rights, powers, responsibilities, duties, and liabilities.

Subpart B—Miscellaneous Bank Authorities

1271.10 Transfer of funds between Banks.
1271.11 Trustee powers.

Subpart C—Bank Requests for Information

1271.15 Definitions.
1271.16 Scope.
1271.17 Request for confidential regulatory information.
1271.18 Form of request.
1271.19 Storage of confidential regulatory information.
1271.20 Access to confidential regulatory information.
1271.21 Third party requests for confidential regulatory information.
1271.22 Computer data.

Subpart D—Financing Corporation Operations

1271.30 Definitions.
1271.31 General authority.
1271.32 Authority to establish investment policies and procedures.
1271.33 Book-entry procedure for Financing Corporation obligations.
1271.34 Bank and Office of Finance employees.
1271.35 Budget and expenses.
1271.36 Administrative expenses.
1271.37 Non-administrative expenses; assessments.

1271.38 Reports to FHFA.
1271.39 Review of books and records.

Subpart E—Authority for Bank Assistance of The Resolution Funding Corporation

1271.41 Bank employees.

Authority: 12 U.S.C. 1430, 1431, 1432, 1441(b)(8), (c), (j), 1442, 4511(b), 4513(a), 4526.

Subpart A—Collection, Settlement, and Processing of Payment Instruments

§ 1271.1 Definitions.

Unless otherwise defined in this subpart, the terms used in this subpart shall conform, in the following order, to: Regulations of FHFA, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage. As used in this subpart:

Account processing includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

Assets includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

Data communication means transmitting and receiving of data to or from Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities; arrangement for delivery of information; and telephone inquiry service.

Data processing includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Banks, clearinghouse associations, depository institutions, and other direct lending entities.

Eligible institution means any institution that is eligible to make application to become a member of a Bank under section 4 of the Bank Act (12 U.S.C. 1424), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution, or any insured depository institution (as defined in section 2(9) of the Bank Act (12 U.S.C. 1422(9))), regardless of whether the institution applies for or would be approved for membership.

Issuance of forms means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

Presentment means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

Statement packaging includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

Storage services includes filing, storage, and truncation of items.

Transportation of items includes transporting items from Federal Reserve offices, other Banks' clearinghouse associations, depository institutions, and other direct sending entities to a Bank; forwarding items to financial institutions after sorting; and forwarding cash items or return items to Federal Reserve offices and other sending entities.

§ 1271.2 Authority and scope.

(a) Pursuant to section 11(e)(2) of the Bank Act (12 U.S.C. 1431(e)(2)), FHFA has promulgated this subpart governing the collection, processing, and settlement, and services incidental thereto, of drafts, checks, and other negotiable and nonnegotiable items and instruments by Banks. Settlement, collection, and processing include the following activities as defined in this subpart: Account processing, data processing, data communication, issuance of forms, transportation of items, and storage services.

(b) Any activity authorized by section 11(e)(2) of the Bank Act (12 U.S.C. 1431(e)(2)) shall be governed by the provisions of this subpart.

§ 1271.3 General provisions.

The Banks are authorized to:

(a) Engage in, be agents or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments of payment drawn on eligible institutions or Bank members; and

(b) Be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

§ 1271.4 Incidental powers.

In connection with the collection, processing, and settlement of items and instruments drawn on or issued by eligible institutions or Bank members, a Bank may also perform the following services:

(a) Statement packaging; and

(b) Any other activity that FHFA shall, from time to time, after notice and comment, find necessary for the exercise of the authority of this subpart.

§ 1271.5 Operations.

A Bank may utilize the services of a Federal Reserve Bank and may become a member or use the services of a clearinghouse, public or private financial institution, or agency in the exercise of any powers or functions under this subpart.

§ 1271.6 Pricing of services.

(a) *General.* Banks shall charge for services authorized in this subpart in a manner consistent with the principles of section 11A(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this subpart.

(b) *Payment instrument account services.* (1) In determining the fees for services provided under this subpart, a Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this subpart.

(c) *Review and publication.* For any year during which any Bank actually provides services authorized by this subpart:

(1) FHFA shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this subpart for compliance with the principles set forth in paragraphs (a) and (b) of this section, and

(2) FHFA shall annually publish in the **Federal Register** all prices for Bank services authorized in this subpart except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

§ 1271.7 Rights, powers, responsibilities, duties, and liabilities.

To the extent it is not inconsistent with other provisions of this subpart, the Uniform Commercial Code governs the rights, powers, responsibilities, duties, and liabilities of Banks in the exercise of their authority under this subpart. For purposes of this paragraph, the term ''bank,'' as used in the Uniform Commercial Code and clearinghouse rules, includes Banks and their members and eligible institutions.

Subpart B—Miscellaneous Bank Authorities

§ 1271.10 Transfer of funds between Banks.

Inter-Bank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks.

§ 1271.11 Trustee powers.

A Bank may act, and make reasonable charges for doing so, as trustee of any trust affecting the business of any member or any institution or group applying for membership, if:

(a) Such trust is created or arises for the benefit of the institution or its depositors, investors, or borrowers, or for the promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected.

Subpart C—Bank Requests for Information

§ 1271.15 Definitions.

As used in this subpart:

Confidential regulatory information means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a financial regulatory agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Bank Act.

Financial regulatory agency means any of the following:

(1) The Department of the Treasury, including the Comptroller of the Currency;

(2) The Board of Governors of the Federal Reserve System;

(3) The National Credit Union Administration; or

(4) The Federal Deposit Insurance Corporation.

Third party means any person or entity except a director, officer, employee or agent of either:

(1) A Bank in possession of any particular confidential regulatory information; or

(2) The financial regulatory agency that supplied the particular confidential regulatory information to such Bank.

§ 1271.16 Scope.

This subpart governs the procedure by which a Bank will request and receive confidential regulatory information pursuant to section 22 of the Bank Act (12 U.S.C. 1442).

§ 1271.17 Request for confidential regulatory information.

A Bank shall make all requests for confidential regulatory information to a financial regulatory agency, or to a regional office of such agency if mutually agreeable, in accordance with the procedures contained in this subpart as well as any procedures of general applicability for requesting information promulgated by such financial regulatory agency. This subpart and its procedures may be supplemented by a confidentiality agreement between a Bank and a financial regulatory agency.

§ 1271.18 Form of request.

A request by a Bank to a financial regulatory agency for confidential regulatory information shall be made in writing or by such other means as may be agreed upon between the Bank and the financial regulatory agency. The request shall reference section 22 of the Bank Act (12 U.S.C. 1442), as amended, and this regulation, and shall describe the confidential regulatory information requested and identify its intended use pursuant to the Bank Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

§ 1271.19 Storage of confidential regulatory information.

Each Bank shall:

(a) Store all identified confidential regulatory information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members' privileged or non-public information;

(b) Have in place a written set of procedures and policies designed to ensure the confidentiality of confidential regulatory information in its possession; and

(c) Establish an internal review of its procedures for storing confidential regulatory information and maintaining its confidentiality, as a part of its internal audit process.

§ 1271.20 Access to confidential regulatory information.

Each Bank shall ensure that access to the confidential regulatory information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential regulatory information in accordance with the Bank's own procedures for maintaining the confidentiality of its members' privileged or non-public information.

§ 1271.21 Third party requests for confidential regulatory information.

(a) *General.* In the event a Bank receives a request for confidential regulatory information in its possession from any third party, the Bank shall forward such request to the financial regulatory agency from which the confidential regulatory information was obtained.

(b) *Subpoena.* In the event a Bank receives a subpoena for confidential regulatory information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the financial regulatory agency from which the confidential regulatory information was obtained, unless such notice is prohibited by applicable law. Except as limited in this subpart, the Bank may disclose confidential regulatory information pursuant to the subpoena, after giving timely written notice, when:

(1) The financial regulatory agency gives written approval to the disclosure; or

(2) A binding order to produce the confidential regulatory information has become final with all rights of appeal either exhausted or lapsed.

(c) *Nondisclosure to third parties.* Except as provided in paragraph (b) of this section, a Bank shall not disclose confidential regulatory information to any third party. A Bank shall refer all third party requests for such confidential regulatory information to the financial regulatory agency that released the confidential regulatory information to the Bank.

(d) *Disclosure to FHFA.* (1) Neither this subpart nor any confidentiality agreement executed between a Bank and a financial regulatory agency shall prevent a Bank from disclosing confidential regulatory information in its possession to FHFA whenever disclosure is necessary to accomplish FHFA's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential regulatory information in its possession if such disclosure is made pursuant to an audit conducted pursuant to § 1271.19 or section 20 of the Bank Act (12 U.S.C. 1440).

(2) FHFA shall keep all confidential regulatory information received under this paragraph (d) in strict confidence.

§ 1271.22 Computer data.

Nothing in this subpart shall preclude a Bank from arranging with any financial regulatory agency to transmit or allow access to confidential regulatory information with the consent of such agency by means of an

electronic computer system. Any such arrangement shall ensure the security of the computerized data stored in a Bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the Bank and the financial regulatory agency.

Subpart D—Financing Corporation Operations

§ 1271.30 Definitions.

As used in this subpart:

Administrative expenses. (1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

Custodian fees means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Bank Act (12 U.S.C. 1441(g)(2)), and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

Directorate means the board established under section 21(b) of the Bank Act (12 U.S.C. 1441(b)) to manage the Financing Corporation.

Insured depository institution has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

Issuance costs means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

Non-administrative expenses means custodian fees, issuance costs, and interest on Financing Corporation obligations.

Obligations means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Bank Act (12 U.S.C. 1441(c)(3) and (e)).

Receivership proceeds means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act (12 U.S.C. 1821a) from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under section 21B of the Bank Act (12 U.S.C. 1441b).

§ 1271.31 General authority.

Subject to the limitations and interpretations in this subpart and such orders and directions as FHFA may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Bank Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§ 1271.32 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Bank Act (12 U.S.C. 1441(g)). The Directorate shall promptly notify FHFA in writing of any changes to the investment policies and procedures.

§ 1271.33 Book-entry procedure for Financing Corporation obligations.

(a) *Authority.* Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure.* The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank consolidated obligations, codified at part 1270 of this chapter. Wherever the terms ''Bank(s),'' ''consolidated obligation(s)'' or ''Book-entry consolidated obligation(s)'' appear in part 1270, the terms shall be construed also to mean ''Financing Corporation,'' ''Financing Corporation obligation(s),'' or ''Book-entry Financing Corporation obligation(s),'' respectively, if appropriate to accomplish the purposes of this section.

§ 1271.34 Bank and Office of Finance employees.

Without further approval of FHFA, the Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§ 1271.35 Budget and expenses.

(a) *Directorate approval.* The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *FHFA approval.* The Directorate shall submit annually to FHFA for approval, the budget of the Financing Corporation's proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation.* The Financing Corporation shall not exceed the amount provided for in the annual budget approved by FHFA pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by FHFA.

(d) *Amended budgets.* Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by FHFA or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to FHFA for approval.

§ 1271.36 Administrative expenses.

(a) *Payment by Banks.* The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to § 1271.35.

(b) *Amount.* The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Bank Act (12 U.S.C. 1441(b)(7)(B)). The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments.* The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

§ 1271.37 Non-administrative expenses; assessments.

(a) *Interest expenses.* The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions*—(1) *Authority.* To provide

sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under § 1271.35, the Financing Corporation shall, with the approval of the board of directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817).

(2) *Assessment rate*—(i) *Determination.* The Financing Corporation at least semiannually shall establish an assessment rate formula, which may include rounding methodology, to determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(ii) *Notice.* The Financing Corporation shall notify the FDIC and the collection agent, if any, of the formula established under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments*—(i) *Collection agent.* The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts.* Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Bank Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(c) *Receivership proceeds*—(1) *Authority.* To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under § 1271.35, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Bank Act (12 U.S.C. 1441(f)(3)).

(2) *Procedure.* The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under § 1271.35.

§ 1271.38 Reports to FHFA.

The Financing Corporation shall file such reports as FHFA shall direct.

§ 1271.39 Review of books and records.

FHFA shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Bank Act (12 U.S.C. 1441) and this subpart.

Subpart E—Authority for Bank Assistance of the Resolution Funding Corporation

§ 1271.41 Bank employees.

Upon the request of the Directorate of the Resolution Funding Corporation, established pursuant to section 21B(b) of the Bank Act (12 U.S.C. 1441b(b)), officers, employees, or agents of the Banks are authorized to act for and on behalf of the Resolution Funding Corporation in such manner as may be necessary to carry out the functions of the Resolution Funding Corporation as provided in section 21B(c)(6)(B) of the Bank Act (12 U.S.C. 1441b(c)(6)(B)).

PART 1272—NEW BUSINESS ACTIVITIES

■ 46. The authority citation for part 1272 continues to read as follows:

Authority: 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

§ 1272.1 [Amended]

■ 47. Amend § 1272.1 by removing the definitions for ''Bank'', ''Bank Act'', and ''FHFA''.

PART 1273—OFFICE OF FINANCE

■ 48. The authority citation for part 1273 continues to read as follows:

Authority: 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

§ 1273.1 [Amended]

■ 49. Amend § 1273.1 by removing the definitions for ''Bank'', ''Bank Act'', ''FHFA'', and ''Safety and Soundness Act''.

PART 1274—FINANCIAL STATEMENTS OF THE BANKS

■ 50. The authority citation for part 1274 continues to read as follows:

Authority: 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

§ 1274.1 [Amended]

■ 51. Amend § 1274.1 by removing the definitions for ''Bank'', ''FHFA'', and ''Office of Finance or OF''.

PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

■ 52. The authority citation for part 1278 continues to read as follows:

Authority: 12 U.S.C. 1432(a), 1446, 4511.

§ 1278.1 [Amended]

■ 53. Amend § 1278.1 by removing the definitions for ''Bank'', ''Bank Act'', ''Director'', ''FHFA'', and ''Office of Finance''.

Subchapter E—Housing Goals and Mission

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

■ 54. The authority citation for part 1281 continues to read as follows:

Authority: 12 U.S.C. 1430c.

§ 1281.1 [Amended]

■ 55. Amend § 1281.1 by removing the definitions for ''Bank'', ''Bank Act'', ''Director'', and ''FHFA''.

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 56. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

§ 1282.1 [Amended]

■ 57. Amend § 1282.1 by removing the definitions for ''Director'', ''Enterprise'', ''Fannie Mae'', ''FHFA'', ''Freddie Mac'', ''Ginnie Mae'' and ''Safety and Soundness Act''.

PART 1290—COMMUNITY SUPPORT REQUIREMENTS

■ 58. The authority citation for part 1290 continues to read as follows:

Authority: 12 U.S.C. 1430(g), 4511, 4513.

§ 1290.1 [Amended]

■ 59. Amend § 1290.1 by removing the definitions for ''Bank'' and ''FHFA''.

PART 1291—FEDERAL HOME LOAN BANKS' AFFORDABLE HOUSING PROGRAM

■ 60. The authority citation for part 1291 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§ 1291.1 [Amended]

■ 61. Amend § 1291.1 by removing the definitions for ''Director'' and ''FHFA''.

■ 62. Part 1292 is added to read as follows:

PART 1292—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

Sec.
1292.1 Definitions.
1292.2 Scope.
1292.3 Purpose.
1292.4 Targeted Community Lending Plan.
1292.5 Community Investment Cash Advance Programs.
1292.6 Reporting.
1292.7 Documentation.

Authority: 12 U.S.C. 1430, 4511(b)(2).

§ 1292.1 Definitions.

As used in this part:

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA program or Community Investment Cash Advance program means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) A Bank's RDF program or UDF program using any combination of the targeted beneficiaries and targeted income levels specified in § 1292.1 of this part; and

(4) Any other advance or grant program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in § 1292.1 of this part, established by the Bank with the prior approval of FHFA.

Economic development projects means:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Housing projects means projects or activities that involve the purchase, construction, rehabilitation or refinancing (subject to § 1292.5(c) of this part) of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iv) The median income for the area, as published by the USDA; or

(v) The median income for the area obtained from another public entity or a private source and approved by the Director, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area obtained from another public entity or a private source and approved by the Director, at the request of a Bank, for use under the Bank's CICA programs.

MSA means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Provide financing means:

(1) Originating loans;

(2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or housing associate borrower receives funding;

(5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or housing associate borrower receives funding;

(6) Originating CICA-eligible loans within 3 months prior to receiving the CICA funding; and

(7) Purchasing low-income housing tax credits.

RDF or Rural Development Funding program means an advance or grant program offered by a Bank for targeted community lending in rural areas.

Rural area means:

(1) A unit of general local government with a population of 25,000 or less;

(2) An unincorporated area outside an MSA; or

(3) An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

Small business means a ''small business concern,'' as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

Targeted beneficiaries means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a ''community in the vicinity of the installation'' as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m–2;

(viii) The project is located in a Federally declared disaster area; or

(ix) The project is located in a state declared disaster area, or other area that qualifies for assistance under another Federal or State targeted economic development program, approved by FHFA.

(2) Individual Beneficiaries:

(i) The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or

(ii) At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

(3) Activity Beneficiaries: Projects that qualify as small businesses.

(4) Other Targeted Beneficiaries. A Bank may designate, with the prior approval of FHFA, other targeted beneficiaries for its targeted community lending.

(5) Only targeted beneficiaries identified in paragraphs (1)(i) through (1)(iv), and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

Targeted community lending means providing financing for economic development projects for targeted beneficiaries.

Targeted income level means:

(1) For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(2) For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(3) For advances provided under CIP:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; or

(4) For advances or grants provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of FHFA.

UDF program or Urban Development Funding program means an advance or grant program offered by a Bank for targeted community lending in urban areas.

Urban area means:

(1) A unit of general local government with a population of more than 25,000; or

(2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

USDA means the United States Department of Agriculture.

§ 1292.2 Scope.

Section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)) authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. This part establishes requirements for all CICA programs offered by a Bank, except for a Bank's Affordable Housing Program (AHP), which is governed specifically by part 1291 of this chapter.

§ 1292.3 Purpose.

The purpose of this part is to identify targeted community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Bank Act (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer RDF or UDF programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 1292.1, without prior FHFA approval. A Bank also may offer other CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in § 1292.1, established by the Bank with the prior approval of FHFA. In addition, a Bank shall offer CICA programs under section 10(i) of the Bank Act (12 U.S.C. 1430(i)) (Community Investment Program (CIP)) and section 10(j) of the Bank Act (12 U.S.C. 1430(j)) (AHP). A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 1292.4 Targeted Community Lending Plan.

Each Bank shall develop and adopt an annual Targeted Community Lending Plan pursuant to § 1290.6 of this chapter.

§ 1292.5 Community Investment Cash Advance Programs.

(a) *In general.* (1) Each Bank shall offer an AHP in accordance with part 1291 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible targeted community lending at the appropriate targeted income levels.

(3) Each Bank may offer RDF programs or UDF programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 1292.1 of this part, without prior FHFA approval.

(4) Each Bank may offer CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in § 1292.1 of this part, established by the Bank with the prior approval of FHFA.

(b) *Mixed-use projects.* (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) *Refinancing.* CICA funding other than AHP may be used to refinance economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) *Pricing and Availability of advances*—(1) *Advances to members.*

For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 1266.5 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Bank Act. (12 U.S.C. 1430(a)).

(2) *Pricing of CIP advances.* The price of advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

(3) *Pricing of AHP advances.* A Bank shall price advances made under AHP in accordance with parts 1266 and 1291 of this chapter.

(4) *Advances to housing associate borrowers.* (i) A Bank may offer advances under CICA programs to housing associate borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to housing associate borrowers as provided in § 1266.17 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Bank Act. (12 U.S.C. 1430b).

(5) *Pricing pass-through.* A Bank may require that borrowers receiving advances made under CICA programs pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) *Discount Fund.* (i) A Bank may establish a Discount Fund which the Bank may use to reduce the price of CIP or other advances made under CICA programs below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

§ 1292.6 Reporting.

(a) Each Bank annually shall provide to FHFA, on or before January 31, a Targeted Community Lending Plan.

(b) Each Bank shall provide such other reports concerning its CICA programs as FHHA may request from time to time.

§ 1292.7 Documentation.

(a) A Bank shall require the borrower to certify to the Bank that each project funded under a CICA program (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank's obligations to document compliance with the CICA funding provisions of this part.

Dated: December 18, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–31093 Filed 1–10–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0416; Directorate Identifier 2012–NE–13–AD; Amendment 39–17303; AD 2012–26–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, PW127G, and PW127M turboprop engines. That AD currently requires initial and repetitive inspections of certain serial numbers (S/Ns) of propeller shafts for cracks and removal from service if found cracked. This new AD requires the same actions, but requires removal from service of affected propeller shafts as mandatory terminating action to the repetitive inspections. This AD was prompted by reports of two propeller shafts found cracked at time of inspection during maintenance. We are issuing this AD to detect propeller shaft cracks, which could cause failure of the shaft, propeller release, and loss of control of the airplane.

DATES: This AD is effective February 15, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 15, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 20, 2012 (77 FR 39624, July 5, 2012).

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Web site: *www.pwc.ca.* 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;* 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 Document 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: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *james.lawrence@faa.gov;* phone: 781–238–7176; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–11–14, Amendment 39–17078 (77 FR 39624, July 5, 2012). That AD applies to the specified products. The NPRM published in the **Federal Register** on September 14, 2012 (77 FR 56794). That NPRM proposed initial and repetitive inspections of certain S/Ns of propeller shafts for cracks and removal from service if found cracked. That NPRM also proposed to require the removal from service of affected propeller shafts

as mandatory terminating action to the repetitive inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 56794, September 14, 2012).

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed (77 FR 56794, September 14, 2012).

Costs of Compliance

We estimate that this AD will affect 570 P&WC engines installed on airplanes of U.S. registry. We estimate that it will take 6 hours per engine to remove the propeller shaft for inspection, 1 hour to perform the inspection, 65 hours to remove and reinstall the engine if needed, and 35 hours to replace the propeller shaft. We estimate that consumable materials will cost $2,200 per engine, and required engine testing will cost $5,000. The average labor rate is $85 per hour. We expect that about 30 engines will be found with propeller shafts requiring a replacement propeller shaft. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,028,850.

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

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

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

(2) Is not a ''significant rule'' under 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–11–14, Amendment 39–17078 (77 FR 39624, July 5, 2012), and adding the following new AD:

2012–26–08 Pratt & Whitney Canada Corp: Amendment 39–17303 ; Docket No. FAA–2012–0416; Directorate Identifier 2012–NE–13–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 15, 2013.

(b) Affected ADs

This AD supersedes AD 2012–11–14 (77 FR 39624, July 5, 2012).

(c) Applicability

This AD applies to all Pratt & Whitney Canada Corp. (P&WC) PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, PW127G, and PW127M turboprop engines, with the serial number (S/N) propeller shafts listed in P&WC Alert Service Bulletin (ASB) No. PW100–72–A21813, Revision 3, dated March 21, 2012, ASB No. PW100–72–A21802, Revision 4, dated March 16, 2012, and ASB No. PW100–72–A21798, Revision 5, dated March 20, 2012.

(d) Unsafe Condition

This AD was prompted by reports of two propeller shafts found cracked at time of inspection during maintenance. We are issuing this AD to detect propeller shaft cracks, which could cause failure of the shaft, propeller release, and loss of control of the airplane.

(e) Compliance

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

(f) Inspecting Propeller Shafts

(1) For propeller shafts with an S/N listed in Table 1 and Table 2 of P&WC ASB No. PW100–72–A21813, Revision 3, dated March 21, 2012:

(i) For engines not yet initially inspected per AD 2012–11–14 (77 FR 39624, July 5, 2012), before further flight, perform either an initial visual inspection or an initial ultrasonic inspection (UI) for cracks, in accordance with paragraphs 3.C.(1) through 3.C.(1)(a), and 3.C.(2) of P&WC ASB No. PW100–72–A21813, Revision 3, dated March 21, 2012, and Section 9 of P&WC Special Instruction (SI) P&WC No. 22–2012, R2, dated April 4, 2012.

(ii) If the visual inspection was performed, repeat the visual inspection within 50 engine flight hours (EFH) after the initial inspection, and thereafter within every 10 EFH, until the propeller shaft is removed from service.

(iii) If the UI was performed, repeat the UI at intervals not to exceed 1,000 EFH, until the propeller shaft is removed from service.

(2) If a crack is found during any of the inspections required by this AD, remove the propeller shaft from service before the next flight.

(g) Mandatory Terminating Action

As mandatory terminating action to the repetitive inspections required by this AD:

(1) For propeller shafts with an S/N listed in Table 1 of P&WC ASB No. PW100–72–A21802, Revision 4, dated March 16, 2012, remove the propeller shafts from service before further flight.

(2) For affected S/N propeller shafts listed in Table 1 of P&WC ASB No. PW100–72–A21798, Revision 5, dated March 20, 2012, remove the propeller shafts from service within 6 months after the effective date of this AD.

(3) For affected S/N propeller shafts listed in Table 2 of P&WC ASB No. PW100–72–A21798, Revision 5, dated March 20, 2012, remove the propeller shafts from service within 12 months after the effective date of this AD.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install any propeller shaft S/Ns listed in Table 1 of P&WC ASB No. PW100–72–A21802, Revision 4, dated March 16, 2012, into any engine.

(2) After the effective date of this AD, do not install any propeller shaft S/Ns listed in Table 1 and Table 2 of P&WC ASB No. PW100–72–A21798, Revision 5, dated March 20, 2012, into any engine.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

(1) Initial inspections performed before the effective date of this AD using P&WC ASB No. PW100–72–A21813, Revision 3, dated March 21, 2012 or earlier revisions satisfy the initial inspection requirements of paragraph (f) of this AD. However, you must perform the repetitive inspection intervals specified in paragraph (f).

(2) Ultrasonic inspections performed before the effective date of this AD per Special Instruction P&WC 22–2012R2, dated April 4, 2012, or earlier revisions satisfy the requirements of paragraph (f) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(k) Related Information

(1) For more information about this AD, contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *james.lawrence@faa.gov;* phone: 781–238–7176; fax: 781–238–7199.

(2) Refer to Transport Canada AD CF–2012–12, dated March 26, 2012, for related information.

(l) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Canada Alert Service Bulletin ASB No. PW100–72–A21798, Revision 5, dated March 20, 2012.

(ii) Reserved.

(3) The following service information was approved for IBR on July 20, 2012, (77 FR 39624, July 5, 2012).

(i) Pratt & Whitney Canada Alert Service Bulletin No. PW100–72–A21813, Revision 3, dated March 21, 2012.

(ii) Pratt & Whitney Canada Alert Service Bulletin No. PW100–72–A21802, Revision 4, dated March 16, 2012.

(iii) Pratt & Whitney Canada Special Instruction P&WC 22–2012R2, dated April 4, 2012.

(4) For Pratt & Whitney Canada service information identified in this AD, contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; phone: 800–268–8000; fax: 450–647–2888; Web site: *www.pwc.ca.*

(5) 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.

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

Issued in Burlington, Massachusetts, on December 21, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–31361 Filed 1–10–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA–R01–OAR–2012–0430; FRL–9697–2]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Asbestos Management and Control; State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Direct final rule.

SUMMARY: Under the Clean Air Act (''CAA'') and Federal regulations promulgated there under, the New Hampshire Department of Environmental Services (''NH DES'') submitted a request for approval to implement and enforce the readopted and re-codified ''Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981,'' and the amended ''Env-A 1801–1807.01: Asbestos Management and Control,'' (amended Asbestos Management Rules) in place of the National Emission Standard for Asbestos (''Asbestos NESHAP''). EPA has reviewed this request and has determined that the amended Asbestos Management Rules satisfy the requirements necessary for approval. Thus, EPA is hereby granting NH DES the authority to implement and enforce the amended Asbestos Management Rules in place of the Asbestos NESHAP. This approval makes NH DES's amended Asbestos Management Rules federally enforceable.

DATES: This direct final rule will be effective March 12, 2013, unless EPA receives adverse comments by February 11, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 12, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0430 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''EPA–R01–OAR–2012–0430'', Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier:* Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, 5th floor, (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2012–0430. 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 through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. 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. EPA will forward copies of all

submitted comments to the New Hampshire Department of Environmental Services.

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 at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever '' we,'' '' us,'' or '' our'' is used, we mean EPA. Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Background and Purpose

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emission Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

The Environmental Protection Agency (EPA) first promulgated standards to regulate asbestos emissions on April 6, 1973 (see 38 FR 8826). These standards have since been amended several times and re-codified in 40 CFR part 61, subpart M, ''National Emission Standard for Asbestos'' (Asbestos NESHAP). On June 28, 2002, NH DES submitted a partial rule substitution request to implement and enforce its regulation Env-Wm 3900 titled ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981'' (Asbestos Disposal Site Rule) in lieu of some sections of the Asbestos NESHAP as they apply to certain inactive waste disposal sites. On May 28, 2003, EPA approved the Asbestos Disposal Site Rule as a partial rule substitution for the provisions of the Asbestos NESHAP, under section 61.151, which apply to inactive waste disposal sites not operated after July 9, 1981. (*See* 68 FR 31611). On November 15, 2005 and January 10, 2006, respectively, EPA received a request and a supplement from NH DES for a rule adjustment to implement and enforce its regulation Env-A 1800 titled ''Asbestos Management and Control'' (Asbestos Management and Control Rule) in lieu of the Asbestos NESHAP, except for inactive waste disposal sites not operated after July 9, 1981. On November 28, 2006, EPA approved the Asbestos Management and Control Rule as a rule adjustment for the Asbestos NESHAP, except for inactive waste disposal sites not operated after July 9, 1981.

Under Section 63.91(e)(2), within 90 days of any state amendment, repeal, or revision of any state rule approved as an alternative to a Federal requirement, the state must provide EPA with a copy of the revised authorities and request approval of the revised rule. In a letter dated January 28, 2010, NH DES requested approval of its readopted rules pertaining to inactive waste disposal sites in New Hampshire. Specifically, NH DES requested that EPA approve its readopted and re-codified rules in Env-Sw 2100 titled ''Management and Control of Asbestos Sites Not Operated After July 9, 1981'' (amended Asbestos Disposal Site Rule). On April 1, 2010, EPA determined that NH's submittal was complete. In a letter dated February 25, 2011, supplemented on September 16, 2011 and October 20, 2011, NH DES requested approval of its amended rules pertaining to asbestos management in New Hampshire. Specifically, NH DES requested approval of its amended rules in Env-A 1800 titled ''Asbestos Management and Control'', effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, and 1807.02 (amended Asbestos Management and Control Rule). On November 16, 2011, EPA determined that NH's submittal was complete.

As explained below, EPA has reviewed the State's submissions and determined that the amended Asbestos Disposal Site Rule and the amended Asbestos Management and Control Rule are no less stringent than the provisions of the Asbestos NESHAP. EPA is therefore approving NH DES's requests to implement and enforce its readopted and re-codified rules in Env-Sw 2100, ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981,'' as a partial rule substitution for the same provisions of 40 CFR 61.01 through 40 CFR 61.18 and 40 CFR 61.151 that were substituted by the predecessor rule Env-Wm 3900 on May 28, 2003. EPA is also approving NH DES's request to implement and enforce its amended rules in Env-A 1800, ''Asbestos Management and Control'', effective October 21, 2008, Sections 1801–1807, excluding the following

provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, and 1807.02, as a rule adjustment for the Asbestos NESHAP, except inactive waste disposal sites not operated after July 9, 1981.

In addition, in the **Federal Register** on May 13, 2009, EPA corrected a sequential numbering error in 40 CFR 63.99. *See* 74 FR 22437. In this rulemaking, paragraph (a)(29) of section 63.99, the subparagraph for the state of New Hampshire, was redesignated as paragraph (a)(30). However, the references to paragraph (a)(29) in the incorporation by reference section 63.14(d)(5)(i) and (ii) were not corrected to refer to paragraph (a)(30) at that time. Therefore, today's notice also corrects the references in 40 CFR 63.14(d)(5) to appropriately refer to paragraph (a)(30).

II. What requirements must a state rule meet to substitute or adjust a section 112 rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing ''up-front approval'' assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d) (3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for ''up-front approval.'' On September 24, 2001, EPA promulgated full approval of NH DES's operating permits program. *See* 66 FR 48806. Accordingly, NH DES has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the ''rule substitution'' and ''rule adjustment'' options require EPA to make a detailed and thorough evaluation of the state's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93 and 40 CFR 63.92, respectively. A rule will be approved as a substitute if the state or local government demonstrates: (1) The state and local rules contain applicability criteria that are no less stringent than the corresponding Federal rule; (2) the state and local rule requires levels of control and compliance and enforcement measures that would achieve emission reductions from each affected source that are no less stringent than would result from the otherwise applicable Federal standard; (3) the schedule for implementation and compliance is consistent with the deadlines established in the otherwise applicable Federal rule; and (4) the state requirements include additional compliance and enforcement measures as specified in 40 CFR 63.93(b)(4). *See* 40 CFR 63.93(b). A rule will be approved as an adjustment if the state or local government demonstrates: (1) The public within the state has had adequate notice and opportunity to submit written comments on the state requirements; and (2) that each state adjustment to the Federal rule individually results in requirements that are unequivocally no less stringent than the applicable Federal rule regarding applicability and level of control and compliance and enforcement measures for each affected source and emission point and assure compliance by every affected source no later than would be required by the Federal rule. *See* 40 CFR 63.92(b).

After reviewing NH DES's amended Asbestos Management Rules and equivalency demonstrations for the Asbestos NESHAP, as the rules apply to sources in New Hampshire, EPA has determined these requests meet all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91, 63.92 and 63.93.

III. How will EPA determine equivalency for state alternative NESHAP requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the state rule must be at least as stringent as the level of control in the Federal rule. For a rule adjustment, each adjustment taken individually must be no less stringent than the corresponding requirement in our standard. In addition, in order for equivalency to be granted for a rule substitution, the level of control and compliance and enforcement measures (monitoring, reporting and recordkeeping (''MRR'')) of the state rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency under the rule substitution option for state alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

IV. What changes did NH make to its asbestos disposal site rule?

The NH DES recently completed the process of readopting expiring administrative rules pertaining to management of certain inactive asbestos sites in New Hampshire. These rules, known as the Asbestos Disposal Site Rule, had been previously approved by the EPA in 2003, under the provisions of 40 CFR 63.93, as a substitute for certain requirements in the Asbestos NESHAP (*see* 68 FR 31611, May 28, 2003). The Asbestos Disposal Site Rule, originally codified as Env-Wm 3900, became re-designated editorially in 2008, with a new subtitle, as Env-Sw 2100, pursuant to a state approved reorganization plan for NH DES rules. The Env-Sw 2100 rules were set to expire on February 16, 2010. On January 26, 2010, with an effective date of February 16, 2010, NH readopted the Env-Sw 2100 rules with minor amendments (amended Asbestos Disposal Site Rule). No substantive changes were made to the rules. The changes to the regulations include the following: (1) In 2005, NH DES enacted legislation to transfer the portions of the asbestos control program that had been at the NH Department of Health and Human Services (DHHS) to NH DES. In the amended Asbestos Disposal Site Rule, references to DHHS were updated accordingly; and (2) In 2008, NH DES consolidated the former DHHS rules into Env-A 1800 from He-P 5000. In the amended Asbestos Disposal Site Rule, references to He-P 5000 were updated accordingly.

V. What changes did NH make to its asbestos management and control rule?

On October 28, 2008, NH DES readopted the Asbestos Management and Control Rule Env-A 1800 (amended Asbestos Management and Control Rule) and incorporated the state's asbestos licensing rules, which were previously codified in He-P 5000. NH DES is not requesting approval of the amended sections of Env-A 1800 which incorporate the asbestos licensing rules and are unrelated to the Asbestos NESHAP. In readopting Env-A 1800, NH DES also made some changes to Env-A 1800 editorial in nature, intended to clarify rather than substantially amend the Asbestos Management and Control Rule. As in the original approved rule, the amended Asbestos Management and Control Rule continues to incorporate most, but not all, of the Asbestos NESHAP into Section 1807.01. The only changes to the Asbestos NESHAP incorporation by reference section 1807.01 are the following: (1) NH

revised the reference to the NH Statute; (2) NH updated the incorporation by reference date to the version of the Asbestos NESHAP rule in the July 2007 Code of Federal Regulations; and (3) NH changed the term ''owner/operator'' to the acronym ''O/O''. The November 28, 2006 **Federal Register** Notice contains a more detailed discussion of the differences between the Asbestos Management and Control Rule and the Asbestos NESHAP.

VI. What is EPA's action regarding NH DES's amended asbestos management rules?

After reviewing the request for approval of NH DES's amended Asbestos Disposal Site Rule, and NH DES's amended Asbestos Management and Control rule, EPA has determined that these requests meet all of the requirements necessary to qualify for partial rule substitution approval and rule adjustment approval under CAA section 112(l) and 40 CFR 63.91, 63.92, and 63.93. EPA has determined that NH DES's amended Asbestos Disposal Site Rule is equivalent to or not less stringent than the Asbestos NESHAP, as it applies to inactive waste disposal sites not operated after July 9, 1981. EPA has also determined that NH DES's amended Asbestos Management and Control Rule is equivalent to or not less stringent than the Asbestos NESHAP, as it applies to sources except for inactive waste disposal sites not operated after July 9, 1981. Therefore, EPA hereby approves NH DES's amended Asbestos Management Rules to be used in place of the Asbestos NESHAP. As of the effective date of this action, NH DES's amended Asbestos Disposal Site Rule and NH DES's amended Asbestos Management and Control Rule are enforceable by the EPA and citizens under the CAA. Although NH DES has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

VII. Final Action

The EPA is approving NH's readopted and re-codified rules in Env-Sw 2100, ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981,'' effective as of February 16, 2010, as a partial rule substitution for the Asbestos NESHAP, as it applies to those inactive waste disposal sites not operating after July 9, 1981, that are subject to 40 CFR 61.151 in New Hampshire. The EPA is also approving NH DES's amended rules in Env-A 1800, ''Asbestos Management and Control'', effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, and 1807.02, as a rule adjustment for the Asbestos NESHAP except for inactive waste disposal sites not operating after July 9, 1981. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective March 12, 2013 without further notice unless the Agency receives relevant adverse comments by February 11, 2013.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 12, 2013 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by March 12, 2013. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Regional Administrator, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, (ORA 01–4), Boston, MA 02109–3912, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, (ORA 18–1), Boston, MA 02109–3912. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action approves equivalent state requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under EO 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. Thus, this action does not require any person to submit information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards found at 13 CFR 121.201, (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000, and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.92 and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. Thus, this action does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows New Hampshire to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Government

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. This action will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a state program such that it allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action allows the state of New Hampshire to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to certain asbestos-emitting activities. The state requirements contain standards that are at least equivalent to the federal standards; thus, we anticipate only a positive impact from this action.

K. Congressional Review Act

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 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**. 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). This rule will be effective March 12, 2013.

List of Subjects in 40 CFR Parts 61 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: December 19, 2012.

Ira Leighton,

Acting Regional Administrator, EPA-New England.

Therefore, 40 CFR parts 61 and 63 are amended as follows:

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 1. The authority citation for parts 61 and part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by revising paragraph (c)(1) to read as follows:

§ 61.04 Address.

(c) * * *

(1)(i) Inactive waste disposal sites not operated after July 9, 1981 within the state of New Hampshire must comply with the New Hampshire Regulations at Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (incorporated by reference, see § 61.18).

(ii) The remainder of the sources subject to the Part 61 Subpart M Asbestos provisions, except for those listed under paragraph (c)(1)(i) of this section, must comply with the New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, and 1807.02 (incorporated by reference, see § 61.18).

* * * * *

■ 3. Section 61.18 is amended by revising paragraph (e)(1) to read as follows:

§ 61.18 Incorporation by reference.

* * * * *

(e) *State and Local Requirements.* The following materials listed below are available at the Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number (202) 566–1745.

(1)(i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated February 12, 2010, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule). Incorporation By Reference approved for § 61.04(c).

(ii) New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, 1807.02 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated November 14, 2008, certifying that the enclosed rule, Env-A 1800, is the official version of this rule). Incorporation By Reference approved for § 61.04(c).

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subpart A—General Provisions

■ 4. Section 63.14 is amended by revising paragraph (d)(5) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d) * * *

(5)(i) New Hampshire Regulations at Env-Sw 2100, Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated February 12, 2010, certifying that the enclosed rule, Env-Sw 2100, is the official version of this rule). Incorporation By Reference approved for § 63.99(a).

(ii) New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, 1807.02 (including a letter from Thomas S. Burack, Commissioner, Department of Environmental Services, State of New Hampshire, to Carol J. Holahan, Director, Office of Legislative Services, dated November 14, 2008, certifying that the enclosed rule, Env-A 1800, is the official version of this rule). Incorporation By Reference approved for § 63.99(a).

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 5. Section 63.99 is amended by revising paragraphs (a)(30)(iii) and (iv) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(30) * * *

(iii) Affected inactive waste disposal sites not operated after July 9, 1981 within New Hampshire must comply with New Hampshire Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14(d)) as described in paragraph (a)(30)(iii)(A) of this section:

(A) The material incorporated into the New Hampshire Regulations at Env-Sw 2100: Management and Control of Asbestos Disposal Sites Not Operated after July 9, 1981, effective February 16, 2010, pertaining to inactive waste disposal sites not operated after July 9, 1981 in the State of New Hampshire's jurisdiction, and has been approved under the procedures in 40 CFR Part 63.93 to be implemented and enforced in place of the Federal NESHAPs for Inactive Waste Disposal Sites (40 CFR 61.151).

(B) [RESERVED]

(iv) Affected asbestos facilities (*i.e.,* facilities found under 40 CFR Part 61, subpart M, except those listed under paragraph (a)(30)(iii)) of this section) must comply with New Hampshire Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14(d)) as described in paragraph (a)(30)(iv)(A) of this section:

(A) The material incorporated into the New Hampshire Regulations at Env-A 1800, Asbestos Management and Control, effective October 21, 2008, Sections 1801–1807, excluding the following provisions: 1801.02(e), 1802.02, 1802.04, 1802.07–1802.09, 1802.13, 1802.15–1802.17, 1802.28–1802.29, 1802.36, 1802.42, 1802.45, 1802.50, 1802.54, 1804.05–1804.09, and 1807.02, pertaining to those affected sources in the State of New Hampshire's jurisdiction, and has been approved under the procedures in 40 CFR 63.92 to be implemented and enforced in place of the federal NESHAPs found at 40 CFR part 61, subpart M (except those listed under paragraph (a)(30)(iii) of this section).

(B) [RESERVED]

* * * * *

[FR Doc. 2013–00184 Filed 1–10–13; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 78, No. 8
Friday, January 11, 2013

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–TP–0042]

RIN 1904–AC53

Energy Conservation Program: Test Procedures for Residential Water Heaters and Commercial Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for Information.

SUMMARY: Through this Request for Information (RFI), the U.S. Department of Energy (DOE) is initiating the rulemaking and data collection process to develop a uniform efficiency descriptor and accompanying test method for residential water heaters and commercial water heaters. This test procedure rulemaking is intended to fulfill DOE's statutory obligation to develop a uniform efficiency descriptor for residential and commercial water heaters pursuant to the amendments to the Energy Policy and Conservation Act (EPCA) brought about by the American Energy Manufacturing Technical Corrections Act (AEMTCA; H.R. 6582), which was signed into law on December 18, 2012 (Pub. L. 112–210). To inform interested parties and to facilitate this process, DOE has identified several issues in this RFI on which DOE is particularly interested in receiving comment from interested parties. In overview, the issues outlined in this document are mainly associated with: Currently available efficiency metrics and test procedures for rating the efficiency of residential and commercial water heaters; the requirements for a uniform metric set forth in the AEMTCA; and available options for DOE to address those statutory requirements. DOE welcomes written comments from the public on any subject within the scope of this rulemaking (including relevant topics not specifically raised in this RFI).

DATES: Written comments and information are requested on or before February 11, 2013.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–TP–0042 and/or regulatory identification number (RIN) 1904–AC53, by any of the following methods:

- *Email: HeatingProducts-2011-TP-0042@ee.doe.gov*. Include EERE–2011–BT–TP–0042 and/or RIN 1904–AC53 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585– 0121. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. Email: *Mohammed.Khan@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

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I. Introduction

The American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210, amended the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163, to require that the U.S. Department of Energy (DOE or the Department) publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered residential water heaters and commercial water heating equipment within one year of the enactment of the

AEMTCA.[1] (42 U.S.C. 6295(e)(5)) Historically, DOE has administered its energy conservation standards (and specified the requisite test procedures) for residential water heaters and commercial water heaters separately. Thus, the historical background and statutory authority for these products are divided along those lines in the discussion that follows (*i.e.,* sections I.A.1 and I.A.2). In addition, background information on the AEMTCA is presented in section I.B.

A. Authority and Background

1. Residential Water Heaters

Residential water heaters are products that use oil, gas, or electricity to heat potable water for use outside the heater upon demand. These include storage type units, instantaneous type units, and heat pump type units.[2] (42 U.S.C. 6291(27))

Title III, Part B [3] of EPCA (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and establishes the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the residential water heaters that are, in part, the subject of today's notice. (42 U.S.C. 6291(1)–(2) and 6292(a)(4))

This program authorizes DOE to establish technologically feasible, economically justified energy efficiency regulations for certain products and equipment that would be likely to result in substantial national energy savings. (42 U.S.C. 6295(o)(2)–(3)) Under EPCA, this program generally consists of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as both the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA, and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293 and 6314, EPCA sets forth criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products and equipment. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3) and 6314(a)(2))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2) and 6314(b)) Also, in any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the product's measured energy efficiency. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Further, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA to require that at least once every 7 years, DOE must review test procedures for all covered products and equipment and either amend the test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3) or 6314(a)(2)) or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A) and 6314(a)(1))

The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA and established energy conservation standards for residential water heaters, as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(e)) Specifically, NAECA set minimum standards for residential water heaters in terms of the energy factor (EF) and required that DOE publish a final rule to determine whether the standard should be amended no later than January 1, 1992. (42 U.S.C. 6295(e)(1) and (4)(A)) It also required that DOE publish another final rule by January 1, 2000 to determine whether standards in effect for such products should again be amended. (42 U.S.C. 6295(e)(4)(B))

Pursuant to 42 U.S.C. 6295(e)(4)(A), DOE published a final rule in the **Federal Register** on January 17, 2001 (hereafter referred to as the ''January 2001 final rule''), amending statutorily-prescribed energy conservation standards for residential water heaters. 66 FR 4474. Compliance with the standards in the January 2001 final rule was required by January 20, 2004. Pursuant to 42 U.S.C. 6295(e)(4)(B), DOE published a final rule in the **Federal Register** on April 16, 2010, amending the energy conservation standards for residential water heaters for a second time. 75 FR 20112. Compliance with the standards in the April 2010 final rule will be required beginning on April 16, 2015. The current and future energy conservation standards for residential water heaters are presented in Table I.1 immediately below.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS (10 CFR 430.32(d))

Product class	Energy factor (EF) as of January 20, 2004	Energy factor (EF) as of April 16, 2015
Gas-fired Storage	EF = 0.67 − (0.0019 × Rated Storage Volume in gallons).	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.675 − (0.0015 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 0.8012 − (0.00078 × Rated Storage Volume in gallons).

[1] The AEMTCA was signed into law on December 18, 2012, so accordingly, DOE must complete the required rulemaking by December 18, 2013.

[2] In a final rule published in the **Federal Register** on April 16, 2010, DOE determined that heat pump type water heaters with an integrated storage tank are a type of electric storage water heater, but that heat pump type water heaters without an integrated storage tank do not meet the definition of a ''water heater'' and are, therefore, not covered equipment under EPCA. 75 FR 20112, 20126 and 20135.

[3] This part was originally titled Part B. It was redesignated as Part A in the United States Code for editorial reasons.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS (10 CFR 430.32(d))—Continued

Product class	Energy factor (EF) as of January 20, 2004	Energy factor (EF) as of April 16, 2015
Electric Storage	EF = 0.97 − (0.00132 × Rated Storage Volume in gallons).	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.960 − (0.0003 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 2.057 − (0.00113 × Rated Storage Volume in gallons).
Oil-fired Storage	EF = 0.59 − (0.0019 × Rated Storage Volume in gallons).	EF = 0.68 − (0.0019 × Rated Storage Volume in gallons).
Gas-fired Instantaneous	EF = 0.62 − (0.0019 × Rated Storage Volume in gallons).	EF = 0.82 − (0.0019 × Rated Storage Volume in gallons).
Electric Instantaneous	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).	
Tabletop	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).	

Note: The Rated Storage Volume equals the water storage capacity of a water heater, in gallons, as specified by the manufacturer.

DOE's test procedures for residential water heaters are found at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E, *Uniform Test Method for Measuring the Energy Consumption of Water Heaters.* The test procedures include provisions for determining the energy efficiency (EF), as well as the annual energy consumption of these products.

The following provides a brief history of DOE's more recent test procedure rulemakings related to residential water heaters. The current DOE test procedures for residential water heaters were established by a final rule published in the **Federal Register** on May 11, 1998 (63 FR 25996), and subsequently updated through final rules published in July 1998 and January 2001. (63 FR 38737 (July 20, 1998); 66 FR 4474 (Jan. 17, 2001)) The July 1998 final rule was a technical correction that added figures to the test procedure, and the January 2001 amendments added a definition to the test procedure, although the bulk of that final rule was dedicated to amended energy conservation standards for residential water heaters. On December 17, 2012, DOE published a final rule in the **Federal Register**, as required under 42 U.S.C. 6295(gg)(2), that concluded that no modifications were needed to the residential water heater test procedure to account for standby mode and off mode energy consumption, as the existing test procedure already accounted for those modes of energy consumption. 77 FR 74559. DOE initiated a rulemaking to consider updates to the water heater test procedure by publishing an RFI in the **Federal Register** on October 12, 2011 (hereafter referred to as the October 2011 RFI). 76 FR 63211.

2. Commercial Water Heaters

DOE's regulations include the following types of commercial water heating equipment: (1) Gas-fired, electric, and oil-fired commercial storage water heaters; (2) gas-fired and oil-fired instantaneous water heaters; (3) hot water supply boilers; and (4) unfired hot water storage tanks. 10 CFR 431.2. Commercial storage type water heaters heat and store water within the appliance at a thermostatically-controlled temperature for delivery on demand; commercial storage type water heaters do not include units with an input rating of 4,000 Btu per hour or more per gallon of stored water. 10 CFR 431.102. Commercial instantaneous type waters heater include water heaters that have an input rating of at least 4,000 Btu per hour per gallon of stored water, including products meeting this description that are designed to heat water to temperatures of 180 °F or higher. *Id.* An unfired hot water storage tank is a tank used to store water that is heated externally. *Id.* DOE's regulations further clarify that all such units are industrial equipment. *Id.*

DOE's regulations for commercial water heating equipment at 10 CFR 431.102 also include hot water supply boilers, which are a type of packaged boiler that is industrial equipment and that:

(1) Has an input rating from 300,000 Btu/h to 12,500,000 Btu/h and of at least 4,000 Btu/h per gallon of stored water,

(2) Is suitable for heating potable water, and

(3) Meets either or both of the following conditions:

(i) It has the temperature and pressure controls necessary for heating potable water for purposes other than space heating, or

(ii) The manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

Title III, Part C[4] of EPCA (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, a program which addresses the energy efficiency of certain types of commercial and industrial equipment, including the commercial water-heating equipment that is, in part, the subject of this rulemaking. Relevant provisions of the Act specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labelling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Energy Policy and Conservation Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA and established energy conservation standards for commercial storage water heaters, instantaneous water heaters, and unfired water storage tanks. (42 U.S.C. 6313(a)(5)) Specifically, EPACT 1992 set standards for various types of commercial water heating equipment in terms of minimum thermal efficiency (E_t) and maximum standby loss (SL), based on the type of fuel used, the type of unit (*e.g.,* storage type or instantaneous type), and the input capacity. The standard levels generally corresponded to the levels in the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings,* as in effect on October 24, 1992 (*i.e.,* ASHRAE Standard 90.1–1989). In acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation

[4] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

standard for commercial water heating equipment, each time ASHRAE Standard 90.1 is amended with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) EPCA also requires that if a test procedure referenced in ASHRAE Standard 90.1 is updated, DOE must update its test procedure to be consistent with the amended test procedure, unless DOE determines that the amended test procedure is not reasonably designed to produce test results which reflect the energy efficiency, energy use, or estimated operating costs of the ASHRAE equipment during a representative average use cycle. In addition, DOE must determine that the amended test procedure is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2) and (4))

Pursuant to the requirements of EPCA, DOE last amended the energy conservation standards for commercial water heating equipment in a final rule published in the **Federal Register** on January 12, 2001. 66 FR 3336. The amended energy conservation standards largely corresponded to the levels contained in ASHRAE Standard 90.1–1999. In a direct final rule published in the **Federal Register** on October 21, 2004, DOE prescribed test procedures to rate the energy efficiency of commercial water heaters and hot water supply boilers, specifying definitions for these products as well as unfired hot water storage tanks. 69 FR 61974. The rule also recodified existing energy conservation standards to locate them in closer proximity in the CFR to the test procedures that DOE promulgated. The current standards for commercial water heating equipment are set forth at 10 CFR 431.110 and shown in Table I.2 below.

TABLE I.2—ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT (10 CFR 431.110)

Product	Size	Energy conservation standard* (products manufactured on and after October 29, 2003) **	
		Minimum thermal efficiency	Maximum standby loss ***
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$(%/hr)
Gas-fired storage water heaters	≤155,000 Btu/hr	80%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
	>155,000 Btu/hr	80%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
Oil-fired storage water heaters	≤155,000 Btu/hr	78%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
	>155,000 Btu/hr	78%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	80%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
Oil-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80%	N/A
	≥10 gal	78%	$Q/800 + 110(V_r)^{1/2}$(Btu/hr)
Product		Size	Minimum thermal insulation
Unfired hot water storage tank		All	R–12.5

*V^m is the measured storage volume and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/h.

** For hot water supply boilers with a capacity of less than 10 gallons: (1) The standards are mandatory for products manufactured on and after October 21, 2005, and (2) products manufactured prior to that date, and on or after October 23, 2003, must meet either the standards listed in this table or the applicable standards in subpart E of this part for a "commercial packaged boiler."

*** Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if: (1) The tank surface area is thermally insulated to R–12.5 or more, (2) a standing pilot light is not used and (3) for gas or oil-fired storage water heaters, they have a fire damper or fan-assisted combustion.

DOE's test procedures for commercial water heaters (other than commercial heat pump water heaters) are found at 10 CFR 431.106 and as noted previously, were established in an October 21, 2004 direct final rule. 69 FR 61974. The test procedures for commercial water heating equipment are currently largely based on American National Standards Institute (ANSI) Z21.10.3–1998, *Gas Water Heaters—Volume III, Storage Water Heaters with Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous.* The test procedures include provisions for determining thermal efficiency and standby loss. DOE published a final rule in the **Federal Register** on May 16, 2012 that amended the test procedures for commercial water heating equipment to reference the most current industry standard (*i.e.,* ANSI Z21.10.3–2011). 77 FR 28928. Compliance with the amended test procedures is required beginning on May 13, 2013.

B. The American Energy Manufacturing Technical Corrections Act (AEMTCA)

The AEMTCA amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered water heaters (both residential and commercial) not later than one year after the enactment of the AEMTCA. (42 U.S.C. 6295(e)(5)(B)) The final rule must replace the current EF, E_t, and SL metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) Further, the AEMTCA requires that beginning one year after the date of publication of DOE's final rule establishing the uniform descriptor, the efficiency standards for covered water heaters must be denominated according to the uniform efficiency descriptor established in the final rule (42 U.S.C. 6295(e)(5)(D)), and that DOE must develop a mathematical conversion factor for converting the measurement of efficiency for covered water heaters from the test procedures and metrics currently in effect (*i.e.,* EF for residential water heaters and E_t and SL for commercial water heaters) to the new uniform energy descriptor. (42 U.S.C. 6295(e)(5)(E)(ii)) Such conversion factor would apply to affected water heaters that are tested prior to the establishment of the final rule. The AEMTCA requires that the conversion factor not affect the minimum efficiency requirements for covered water heaters. (42 U.S.C. 6295(e)(5)(E)(iii)) Covered water heaters shall be considered to comply with the final rule on and after the effective date of the final rule and with any revised labeling requirements established by the Federal Trade Commission to carry out the final rule if the covered water heater was

manufactured prior to the effective date of the final rule and complied with the efficiency standards and labeling requirements in effect prior to the final rule. (42 U.S.C. 6295(e)(5)(K))

The AEMTCA requires that the uniform efficiency descriptor and accompanying test method apply, to the maximum extent practicable, to all water heating technologies currently in use and to future water heating technologies. (42 U.S.C. 6295(e)(5)(H)) However, the AEMTCA allows DOE to provide an exclusion from the uniform efficiency descriptor for any specific category of otherwise covered water heaters that do not have a residential use, that can be clearly described, and that are effectively rated using the current thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F))

The AEMTCA also outlines DOE's options in terms of establishing a new uniform efficiency descriptor for water heaters. Specifically, the options provided to DOE for a uniform descriptor include: (1) A revised version of the energy factor descriptor currently in use; (2) the thermal efficiency and standby loss descriptors currently in use; (3) a revised version of the thermal efficiency and standby loss descriptors; (4) a hybrid of descriptors; or (5) a new approach. (42 U.S.C. 6295(e)(5)(G)) Each of these options is discussed in further detail in section II.B.

Lastly, the AEMTCA also requires that DOE invite interested stakeholders to participate in the rulemaking process used to establish the final rule (42 U.S.C. 6295(e)(5)(I)), and that DOE contract with the National Institute of Standards and Technology (NIST), as necessary, to conduct testing and simulation of alternative descriptors identified for consideration (42 U.S.C. 6295(e)(5)(J))

In response to the statutory provisions of the AEMTCA, DOE envisions developing an energy efficiency metric (or metrics) that covers all residential and commercial water heaters. Such metric (or metrics) would be determined through a test method that is as uniform as possible while still producing a rating that is representative of performance under conditions that approximate actual usage. Additionally, DOE will strive to develop a uniform test method that would minimize incremental test burdens on manufacturers to the extent possible.

II. Discussion

A. Implications of the AEMTCA

DOE tentatively interprets the relevant provisions of the AEMTCA to mean that a single efficiency metric and test method should apply to all water heaters currently covered under residential and commercial test methods unless circumstances justify use of the exclusion provided under 42 U.S.C. 6295(e)(5)(F). This interpretation means that water heaters from the smallest capacity and size rating used in residential applications all the way up to the largest capacity covered under DOE's commercial water heater program should be subject to the same rating metric and testing procedures. These test methods and the resulting uniform rating metric should cover all fuel types and technologies, including storage water heaters, instantaneous water heaters, integral heat pump water heaters, non-integral heat pump water heaters, unfired hot water storage tanks, and hot water supply boilers. In addition, DOE believes it may be appropriate for the uniform descriptor and test methods to also address hot water supply boilers, which are included with other types of commercial water heating equipment in DOE's regulations at 10 CFR 431.110, although they are not explicitly called out among the covered products in 42 U.S.C. 6295(e)(5)(A). DOE is interested in receiving comment on whether the uniform efficiency descriptor should apply to all types of residential and commercial water heaters covered by EPCA, hot water supply boilers, and unfired hot water storage tanks. Lastly, DOE acknowledges that the AEMTCA provides for the possibility of an exclusion for certain water heaters from the uniform efficiency metric and accompanying test method (42 U.S.C. 6295(e)(5)(F) and further discusses this exclusion below in section II.D.

B. Potential Approaches To Address the Requirements of the AEMTCA

As noted previously, the AEMTCA provides five options by which DOE can meet the relevant requirements related to water heaters. (42 U.S.C. 6295(e)(5)(G)) Each of these options is discussed for comment in the sections that immediately follow.

1. Revised Energy Factor Metric

Energy factor is currently the regulating metric for residential water heaters. Energy factor is a measure of the overall efficiency of the water heater and accounts for efficiency during active, standby, and cyclical operation. DOE's test method for determining energy factor currently includes a 24-hour simulated use test consisting of six hot water draws followed by a standby period. 10 CFR part 430, subpart B, appendix E.

DOE has tentatively decided that the revised energy factor approach would follow the general technique for determining energy factor that is currently in place for residential water heaters. The current approach provides the efficiency of the water heater over a defined period of time (currently 24 hours) subject to a specified usage profile and ambient conditions. Based on comments received in response to the October 2011 RFI (76 FR 63211), DOE believes that a 24-hour simulated-use test is the most viable method for obtaining the energy factor for residential water heaters.

Advantages of such an approach are that it results in a single descriptor that is clear and concise for evaluating the efficiency of a water heater and that it is applicable across all fuel types, sizes, and technologies. All water heaters would be subject to a simulated-use test that is similar to the test currently required for residential water heaters. The simulated-use test provides a means by which the water heater's efficiency is determined under a pattern of representative usage. A properly designed simulated-use test can also be technologically agnostic, meaning that the test applies to water heaters utilizing any water heating technology and that it would properly represent the efficiency of one technology versus another for a particular application.

A disadvantage of the current simulated-use test is that it requires assumptions of in-field usage, and a single use pattern as currently applied in the residential test procedure would not be appropriate for the wide range of water heaters covered under this legislation. The October 2011 RFI requested comments on the appropriateness of the draw pattern. 76 FR 63211, 63214 (Oct. 12, 2011). Among the comments, some mentioned the need to implement multiple draw patterns appropriate for different size classes. This technique may provide more appropriate demands for a range of water heaters, and allow for an accurate representation of efficiency of a wide range of different water heaters, including those that are currently rated as commercial units. However, one potential disadvantage of using multiple, differing draw patterns would be the increased complexity of a simulated-use test and the added test time.

In addition to comments on the appropriateness of a simulated-use test approach, DOE also seeks comment on draw patterns that could be used in extending such an approach to water heaters intended for the commercial market.

2. Existing Thermal Efficiency and Standby Loss Metrics

Thermal efficiency and standby loss are currently the regulating metrics for commercial water heating equipment, with the exception of unfired storage tanks which are regulated by minimum thermal insulation. Thermal efficiency accounts for the efficiency of a water heater during active operation, while standby loss accounts for efficiency during standby periods. DOE's test methods for determining thermal efficiency and standby loss reference the industry standard, ANSI Z21.10.3, and are specified at 10 CFR 431.106.

DOE has tentatively decided that this option would use the thermal efficiency and standby loss metrics and test methods that are currently in place for the commercial water heating equipment for all covered water heaters, including residential units that are currently rated using energy factor.

The key advantage of this approach is that the tests would be simpler to implement. No changes would be needed to the commercial water heaters test method, because that same test procedure, as it exists today, could be applied to both residential and commercial models. While this may be true from a technical perspective, there may be disadvantages in terms of characterizing representative use, as explained below.

A disadvantage of this approach is that it does not account for energy efficiency performance during cyclical portions of water heater operation. Comments to the October 2011 RFI (76 FR 63211) indicated that field data show lower efficiency in the actual use compared to the rating obtained using the current DOE simulated use test because of cycling of the units between warm and cold states under usage typically seen in residences. The thermal efficiency is a measure of efficiency during the water delivery stage, and the standby loss factor is a measure of efficiency during the standby mode stage. Neither of these metrics would capture the losses associated with cyclical warm-up and cool-down of water heaters. It is also questionable whether thermal efficiency is an appropriate metric for smaller storage water heaters, because they are not designed to provide a large supply of hot water continuously. It should also be noted that the test procedure for residential water heaters utilized the thermal efficiency and standby loss tests up until 1990, when a simulated use test was adopted to make the test uniform across technologies, particularly for heat pump water heaters and gas instantaneous water heaters.

3. Revised Thermal Efficiency and Standby Loss Metrics

DOE has tentatively decided that this approach would be a modified version of the current commercial water heater test procedure that results in the same descriptors, albeit with potentially modified meanings, as those currently used to rate commercial water heaters. One option would be to use a metric similar to the recovery efficiency and standby heat loss coefficient as computed in the current residential water heater test procedure.

The advantage of such an approach is that simpler laboratory tests that are more repeatable could theoretically be used to rate efficiency. Revisions to the original metrics and test methods, such as changes to account for cycling effects, changes to the water delivery temperature, and ambient conditions, could make them more suitable for residential water heaters compared to the existing metrics.

Disadvantages with this approach are the same as those discussed above in section II.B.2 for the existing thermal efficiency and standby loss metrics. Most notably, it is not clear that these metrics would capture efficiency effects of cycling water heaters on and off. Additionally, DOE is not aware of any proposed approaches other than those discussed related to the residential water heater test method incorporating revised thermal efficiency and standby loss descriptors, nor is it aware of what specifically can be done to revise or improve thermal efficiency and standby loss to accomplish the intent of the AEMTCA.

4. Hybrid Efficiency Metric

DOE has tentatively decided that this approach would involve a combination of the current energy factor, thermal efficiency, and standby loss metrics into a new single uniform descriptor. DOE anticipates that such a metric would utilize some combination of the existing test procedures and aspects of the existing metrics to obtain information for the new hybrid metric.

The advantage of such an approach is that parts or all of existing test methods could be utilized, thereby decreasing the effort for manufacturers and testing agencies in developing test programs even if certain portions of those test methods had not been previously applied to all models of water heaters.

The disadvantage of such an approach could be that it would require more tests on each water heater if each water heater should need to undergo a test to determine multiple individual metrics that ultimately result in a single, hybrid metric, resulting in a higher burden on manufacturers. The testing method to obtain a uniform ''hybrid'' metric may lead to biases between different water heating technologies if the performance model fails to capture critical aspects of a particular technology's operation. This model may also require adjustment as new technologies emerge. Furthermore, DOE is not aware of any proposed approaches towards developing a hybrid metric, nor what specifically could be done by a hybrid metric to accomplish the intent of the AEMTCA.

5. New Approach

DOE seeks comment on any other approach or descriptor that it should consider that has not previously been discussed.

C. Conversion Factor

The AEMTCA requires that DOE develop a temporary mathematical conversion factor for converting the measurement of efficiency for covered water heaters from the existing test procedures to the new energy descriptor established under the final rule. (42 U.S.C. 6295(e)(5)(E)) The allowance to use the conversion factor will expire 1 year after publication of such conversion factor or December 31, 2015, whichever is later. (42 U.S.C. 6295(e)(5)(E)(v)) The form and magnitude of this mathematical conversion factor would depend on which option is chosen, and on the extent of accompanying test procedure modifications. Thus, particularly for comments related to new or adjusted metrics, DOE seeks comment on ways to convert from the existing metrics for the different types of residential and commercial water heaters to the uniform metric, as discussed above.

D. Exclusions

The AEMTCA indicates that the final rule may exclude a specific category of covered water heaters from the uniform efficiency descriptor, if such category of water heaters: (1) Does not have a residential use and can be clearly described in the final rule; and (2) can be effectively rated using the existing thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F)) Tentatively, DOE does not view the exclusion as applying to all models that are solely offered for non-residential applications, and the Department notes that the statute states that DOE's final rule may exclude certain types of water heaters. Moreover, under 42 U.S.C. 6295(e)(5)(H), the AEMTCA states that ''[t]he efficiency descriptor and

accompanying test method established under the final rule shall apply, to the maximum extent practicable, to all water heater technologies in use * * * and to future water heater technologies.'' If DOE were to review the exclusion in a broad manner, it would apply to a large subset of models that currently are characterized as commercial water heaters under DOE's regulatory scheme. In addition, it is unclear how the Department could create an equitable distinction for application of the exclusion based on a manufacturer's claim of intended use of its product. DOE also notes that no other statutory section specifically indicates that the uniform descriptor should only apply to water heaters intended for residential use, and thus, DOE believes the uniform descriptor should apply to all covered water heaters, unless a clear need exists and the statutory criteria for using the exclusion are met. It is DOE's position that an expansive view of the above-referenced exclusion authority would largely undermine the purposes of AEMTCA in terms of achieving a uniform efficiency metric and test method for all water heaters.

With the above understanding in mind, DOE has tentatively concluded that a uniform efficiency descriptor and test method would be possible for all water heaters covered by the statute, but DOE seeks comment on the types of water heaters, if any, that should be excluded, along with a rationale to support such exclusion. (42 U.S.C. 6295(e)(5)(F)) As an example, DOE notes that unfired storage tanks and commercial ''add-on'' heat pump water heaters (which are typically shipped without tanks and the paired with a storage tank or storage water heater) are not completely contained water heating systems, and are required to be paired with other water heating equipment in the field to operate as intended. As such, these types of equipment have specific characteristics that may not be conducive to a uniform efficiency metric, and certain efficiency metrics may not be applicable to these types of equipment depending on the testing requirements for that metric. DOE requests comment on whether these types of equipment should be excluded from the uniform efficiency descriptor requirement.

If stakeholders were to suggest that DOE exclude certain heaters that do not have a residential use, comments are sought as to how to distinguish those water heaters based on characteristics of the products. DOE would be interested in comments regarding whether the storage volume, energy input capacity, output capacity as determined through testing, or another means would be appropriate for indicating which water heaters clearly do not have a residential use and are effectively rated under current procedures.

At this point, the Department tentatively expects the exclusions, if any, to be limited in number. DOE seeks comments on the characteristics of any types of water heaters that should be excluded from this uniform efficiency descriptor, as well as the rationale for doing so.

E. Other Concerns

DOE seeks comments on any other issues that may relate to the development of a uniform efficiency descriptor and test methods, and the requirements of the AEMTCA. In particular, DOE has identified several additional issues below for discussion.

1. Representative Test Procedures

As noted above, under 42 U.S.C. 6293 and 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products and equipment. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3) and 6314(a)(2)) Usage patterns between water heaters intended for residential applications and those intended for commercial applications, however, are vastly different, as dictated by factors such as water delivery temperature, flow rate, total volume of water delivered per day, and draw pattern. In addition, environmental factors that could affect performance (*e.g.,* such as ambient air temperature, ambient relative humidity, and inlet water temperature) may also vary. DOE seeks comments on the best approaches to managing these wide ranges of conditions for testing purposes, while still meeting the requirements of EPCA to produce energy efficiency results during a representative period of use and not be unduly burdensome to conduct.

2. Measures of Delivery Capacity

The current DOE residential water heater test procedure requires a test to measure the delivery capacity of the water heater, resulting in either a first-hour rating for storage water heaters or a maximum gallons-per-minute rating for instantaneous water heaters. No equivalent test for delivery capacity is present for commercial water heaters. DOE seeks comments on the need for this metric for water heaters intended for non-residential applications. Additionally, DOE seeks comments regarding the applicability of the metrics and test methods currently present in the residential water heater test procedure (first-hour rating, maximum gallons-per-minute) for commercial water heaters.

3. Implications for Current Energy Conservation Standards

In developing the uniform efficiency descriptor, the AEMTCA requires that DOE develop a mathematical conversion factor (discussed in section II.C) for converting the measurement of efficiency for covered water heaters under the current test procedures to the uniform descriptor. The AEMTCA stipulates that the conversion factor shall not affect the minimum efficiency requirements for covered water heaters.

To address this requirement, DOE plans to develop a conversion factor as discussed in section II.C and apply it to the current energy conservation standards to equate the standards under the existing metric and test procedures to the standards using the new uniform efficiency metric and test procedures. DOE requests comment on this approach to maintaining equivalent efficiency standards, and on the appropriate approach to develop the mathematical conversion.

III. Public Participation

DOE invites all interested parties to submit in writing by February 11, 2013, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of a uniform efficiency descriptor and accompanying test methods for residential and commercial water heaters.

After the close of the comment period, DOE will begin collecting data, conducting the relevant analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure NOPR for residential and commercial water heaters that establishes a uniform efficiency descriptor and accompanying test method.

DOE considers public participation to be a very important part of the process for developing the uniform energy descriptor and developing updates to the test procedure, if necessary, to accommodate the new metric. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the

rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on January 7, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–00483 Filed 1–10–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2012–0118]

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Notification and Request for Comment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notification; request for comment.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated in our regulations, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. Consistent with Executive Order 13563, and in particular its emphasis on burden-reduction and on retrospective analysis of existing rules, this document requests comments on potential formats for restructuring the MUTCD into two documents, one that would be subject to rulemaking and one that would contain supplemental information that is not subject to rulemaking. This document asks for responses to a series of questions regarding formats, types of material to be included in each document, implications on agency acceptance of the MUTCD, ease of use, and effects on future MUTCD updates.

DATES: Comments must be received on or before March 12, 2013.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For questions about the program discussed herein, contact Mr. Chung Eng, MUTCD Team Leader, FHWA Office of Transportation Operations, (202) 366–8043 or via email at *chung.eng@dot.gov.* For legal questions, please contact Mr. William Winne, Office of the Chief Counsel, (202) 366–1397, or via email at *william.winne@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Purpose of This Notification

The FHWA is interested in examining how to provide a simpler, streamlined MUTCD through restructuring the content into two separate documents—one with material deemed critical to traffic control device design, application or traffic safety that would be subject to rulemaking, and one containing supplemental application information that would not be subject to rulemaking. This action promotes a more responsive and efficient government. It is consistent with the requirements of Executive Order 13563, and in particular its requirement for retrospective analysis of existing rules, with an emphasis on streamlining its regulations. This action is also consistent with Presidential Memorandum, Administrative Flexibility, which calls for reducing burdens and promoting flexibility for State and local governments.

The purpose of this document is to present a discussion of potential formats for a restructured MUTCD as well as to provide descriptions and examples of the types of material that could potentially be moved from the MUTCD to the Applications Supplement, including examples showing two restructuring options with text from Chapter 2B of the 2009 MUTCD. The examples can be viewed at *www.regulations.gov* under the docket number listed in the heading of this document. The FHWA is seeking comments from all interested parties to help the FHWA in further examining these issues and in evaluating potential future alternative courses of action. Specifically, the FHWA seeks input on the type of material to be included in the MUTCD and the Applications Supplement, as well as the formats for both documents. This document also includes a set of specific questions for which the FHWA requests input. While there are specific questions presented on aspects associated with restructuring the MUTCD, comments and input may be offered on any part of this notification.

Background

The MUTCD is incorporated by reference within Federal regulations at 23 CFR part 655, approved by the FHWA, and recognized as the national standard for traffic control devices used on all public roads. The FHWA has received comments from a variety of parties expressing concerns about the size and complexity in application of the MUTCD as it has evolved over the decades. To address those issues, the FHWA is exploring the possibility of separating the MUTCD into two documents.

Since its inception in 1935, the MUTCD has grown from slightly over 150 pages to more than 850 pages. The most significant expansion in the number of pages in the MUTCD has occurred in the last three editions, the

2000, 2003, and the 2009 Editions. The size and complexity of the MUTCD has significantly increased, in large part because of an expansion of the number of devices included in the MUTCD and the desire to provide more specifics in conveying the intent of the language in order to avoid uncertainty. Along with the expanded content, the layout of the MUTCD has changed over the years to its current format with four headings (Standard, Guidance, Option, and Support) and three font styles (regular, bold, and italic). The four headings of Standard, Guidance, Option, and Support are defined as:

1. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device.
2. Guidance—a statement of recommended, but not mandatory, practice in typical situations.
3. Option—a statement of practice that is a permissive condition and carries no requirement or recommendation.
4. Support—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition.

The increase in the size and complexity of the MUTCD results in a lengthy rulemaking process for incorporating changes (new devices, clarifications, corrections, etc.). A larger and more complex MUTCD also makes it more difficult to find material within the manual because of the amount of information provided. In addition, some users of the MUTCD have expressed concerns that due to the amount of detail included, the MUTCD is becoming too prescriptive rather than allowing engineering judgment to optimize the traffic control device decision for a particular situation or location.

In response to the interest for a simpler, streamlined MUTCD, the FHWA is requesting public comment on the option of splitting the material in the MUTCD into two separate documents:

- MUTCD—The MUTCD itself would be the document incorporated by reference into the Code of Federal Regulations (CFR) as the national standard for all traffic control devices. The publication of this document, and any subsequent updates, would be subject to the rulemaking process. It could contain Standard statements, and potentially Guidance statements that are considered to be critical to traffic control device design, application, or traffic safety, as well as Option statements that provide exceptions to these Standard and Guidance statements.
- Applications Supplement—The second document would be an ''applications supplement'' that would include recommendations and best practices and would be a companion document to the MUTCD. Material from the 2009 MUTCD that is not included in the next edition of the restructured MUTCD would form the core of the companion document. It is possible that the companion document would also contain useful information brought in from other sources such as ''The Grade Crossing Handbook'' and ''The Roundabout Guide.'' The companion document could be updated whenever needed without requiring rulemaking to do so. The Applications Supplement would not be incorporated by reference into the CFR, and compliance with it would be encouraged, but not legally required.

The MUTCD and the initial edition of the Applications Supplement would both be available on the MUTCD Web site in electronic format and each document would include hotlinks to assist readers who use the electronic versions of the MUTCD and the Applications Supplement in navigating through the many cross-references that are contained within both documents. Hotlinks to cross-referenced chapters, sections, figures, and tables; pop-up definitions; links to external documents and Web sites; and links to official interpretations would be made available, similar to the current hotlinks version of the 2009 MUTCD available on the Web site today.

Discussion of Restructuring

Because of the large audience with interest in the MUTCD, there are numerous thoughts and opinions related to the type and amount of information that should be retained in the MUTCD. The FHWA has given initial consideration to the type of material to include in each document, balancing the desire to retain material deemed critical to traffic control device design, application or traffic safety in the MUTCD, while moving supplemental application information to the Applications Supplement.

In addition to the efforts underway within the FHWA, the National Cooperative Highway Research Program has initiated a parallel effort (NCHRP Project 20–07/Task 323) to develop a long-range vision and strategic plan for the MUTCD.[1] The NCHRP effort is addressing many different issues related to the future of the MUTCD. The NCHRP project has developed a series of white papers on critical MUTCD issues and is soliciting public comment on those white papers.[2] Examples of white paper topics include: The purpose of the MUTCD, the MUTCD target audience, the appropriate level of detail for content, and options for dividing the MUTCD into multiple documents. Readers are encouraged to review the background and supplementary material related to the past, present, and future of the MUTCD discussed in this research effort. Although both the FHWA staff and the NCHRP research team are coordinating their efforts, readers that have an interest in each activity should submit comments to both this request for comments and the NCHRP project Web site.

The spectrum of ideas related to the amount of material to be contained in the MUTCD and the Applications Supplement has led the FHWA to develop two possible restructuring alternatives.

1. *Option A* would retain Standard statements and important Guidance statements, along with associated Option statements in the MUTCD. Support statements and stand-alone Option statements (those that are not exceptions to the Standard and Guidance statements that were retained in the MUTCD) would be moved from the MUTCD to the Applications Supplement.
2. *Option B* would move a greater amount of information from the MUTCD to the Applications Supplement, retaining in the MUTCD only Standard statements and any related Option statements that contain exceptions to the Standard statements.

For both Options A and B, material from the 2009 MUTCD that is not included in the next edition of the restructured MUTCD would form the core of the Applications Supplement. To serve as a document that is easily relatable to the MUTCD provisions on the same subject, the Applications Supplement document would need to be written and organized in a manner that makes it a cohesive stand-alone document that is fully consistent with the MUTCD. Among the larger items that would likely be moved to the Applications Supplement would be most of the figures illustrating how to apply the provisions of the MUTCD, including all of the Typical Applications in Chapter 6H, as well as most of the material in chapters such as

[1] General information about the NCHRP Project 20–07/Task 323 can be viewed at the following Internet Web site: *http://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=3203.*

[2] The white papers and public comments are available on the project Web site: *http://mutcd.tamu.edu/.*

4C, 6G, and 6I. The Applications Supplement could potentially be expanded to include useful information brought in from other sources and could be updated whenever needed without requiring rulemaking to do so.

The FHWA perceives several benefits to the development of a stand-alone Applications Supplement. For example, the Applications Supplement could include a chapter providing users with references on where to find subject area information regarding traffic control treatment of a particular roadway feature, such as roundabouts. Such a chapter would list sections in the MUTCD, as well as sections in the Applications Supplement, that users could reference for signing and markings at roundabouts, including treatment of pedestrians at roundabouts and how roundabouts relate to nearby at-grade railroad crossings. Another example is that supplemental material regarding emerging and innovative traffic control devices could be more easily disseminated and used by engineers interested in their applications, without the delays associated with updating the MUTCD.

Discussion of Material in Separate Documents

For the purpose of illustrating the separation of current 2009 MUTCD material into two documents, FHWA developed examples showing two possible options for Sections 2B.01 through 2B.18 and Sections 2B.37 through 2B.42 of Chapter 2B Regulatory Signs, Barricades, and Gates. These examples are available for review on *www.regulations.gov* under the docket number listed in the heading of this document. In order to make a comparison with the existing material in the 2009 MUTCD easier, no improvements were made in these examples to the text, figures, or tables of the existing 2009 MUTCD other than those directly related to the development of the alternative format. Readers are encouraged to view Options A and B, along with the comparison documents for each Option, which describe the revisions that were made in the development of each of the examples. The files illustrating Options A and B formatted for the MUTCD and the Applications Supplement are also embedded with hotlinks from the MUTCD to the Applications Supplement and vice versa in order to illustrate how users would interact with both documents. Where an ''AS'' in a blue box is placed to the left of the section heading in the MUTCD, a direct link to the same section in the Applications Supplement is available. Where an ''M'' in a blue box is placed to the left of the section heading in the Applications Supplement, a direct link to the same section in the MUTCD is available. In addition, all of the chapter, section, figure, and table titles, and all of the page numbers in the Applications Supplement have a parenthetical suffix of ''(AS)'' immediately following the ''2B'' to distinguish the Applications Supplement from the MUTCD. Readers can access all of these files from the Docket. The following paragraphs explain some of the differences between the content and formatting used for Options A and B.

There are only Standard statements in Section 2B.14 of the 2009 MUTCD. Please note in the Option A Applications Supplement that the title for this section is included in the Option A Applications Supplement along with parenthetical text that informs the reader that ''there is no supplemental information for this section.'' Accordingly, there is no ''AS'' in a blue box to the left of the Section 2B.14 heading in the MUTCD.

Because the Option B MUTCD is comprised almost exclusively of Standard statements with only an occasional related Option paragraph, showing Standard statements in bold font resulted in an awkward looking document that was almost entirely bold-faced type. As a result, the section titles were lost in the mix. Thus, regular font is used for the Standard statements and italicized font is used to distinguish the few Option paragraphs. Because italics are used for the Option statements in the MUTCD, the Option statements in the Option B Applications Supplement are also italicized for consistency. This resulted in a need for doing something different than italics for the Guidance statements in the Option B Applications Supplement. Because there are no Standard statements in the Option B Applications Supplement, bold-faced type was available for the Guidance statements to distinguish them from the Support statements.

There are no Standard statements in Sections 2B.06 and 2B.07 of the 2009 MUTCD. In the Option B Applications Supplement these sections were incorporated into Section 2B(AS).05 and the section titles were included as subheadings because of the length of the consolidated section. There are also no Standard statements in Section 2B.38 of the 2009 MUTCD. In the Option B Applications Supplement this section was incorporated into Section 2B(AG).37 and the section title for Section 2B.37 was revised in both the Option B MUTCD and the Option B Applications Supplement to reflect this consolidation of material. Even though the only Standard statement in Section 2B.37 of the Option B MUTCD relates to DO NOT ENTER signs, the reader is alerted to the fact that WRONG WAY signs are included in the corresponding section of the Option B Applications Supplement. Similarly, there are only Standard statements in Section 2B.14 of the 2009 MUTCD. In the Option B Applications Supplement the title for this section (which has been renumbered as Section 2B(AS).12) is included in the Option B Applications Supplement along with parenthetical text that informs the reader that ''there is no supplemental information for this section.'' Accordingly, there is no ''AS'' in a blue box to the left of the Section 2B.12 heading in the MUTCD.

For the purpose of this Request for Comments, it was not practical for FHWA to develop examples for the entire MUTCD; however, the FHWA has given some initial thought as to the separation of content in several other parts of the manual. In addition to most of the support paragraphs and stand-alone option paragraphs, following are examples of other items from some of the chapters that could be moved from the MUTCD to the Applications Supplement:

MUTCD Part	Sections that could be moved to the Applications Supplement
Part 4	Chapters 4A and 4B, Chapter 4C (with Standard statements either reduced to Guidance or moved to other places in Part 4), Section 4D.02, Section 4D.33, and Figures 4D–1, 4D–2, 4D–6 through 4D–20, 4E–1, 4E–2, 4E–3, and 4E–4.
Part 6	Sections 6G, 6H, and 6I.
Part 8	Section 8A.06, and Figures 8B–5, 8B–6, 8B–8, 8B–9, 8C–2, 8C–4 through 8C–10, and 8D–1.
Part 9	Figures 9B–5, 9B–6, 9B–7, 9B–8, 9C–1, 9C–2, 9C–4, 9C–5, 9C–6, and 9C–8.

Questions

The FHWA requests input on each of the following questions. In addition, comments and input may be offered on any part of this notice.

1. Regardless of the ultimate restructuring format chosen, would you support separating the current material in the MUTCD into two documents? Please explain your reasoning for supporting or opposing the concept of having two documents.

2. Referring to the examples shown for Chapter 2B, should the format of the MUTCD and the Applications Supplement remain consistent between the two documents? For example, should the same headings, such as ''Support'' and ''Option'' be used in the Applications Supplement? Should the type of section, figure, and table numbering remain consistent between the MUTCD and the Applications Supplement? Should the sections in the Applications Supplement have a one-to-one correspondence to the sections of the MUTCD, even if that means that some sections of the Applications Supplement would either be skipped or simply have a sentence that says something such as ''No additional guidance is available for this section''?

3. Regarding the philosophy of the type of material to retain in the MUTCD versus the Applications Supplement, does Option A move enough material to the Applications Supplement, thus achieving the goal of a streamlined MUTCD, or does Option B better achieve the intended result while maintaining the appropriate balance to retain material deemed critical to traffic control device design and road user safety in the MUTCD? Please explain the reasoning for your response to this question.

4. How would restructuring the MUTCD affect the approval process of the MUTCD in your State? If your State develops a supplement to the MUTCD or creates its own State MUTCD that is in substantial conformance with the National MUTCD, how would restructuring the National MUTCD impact your organization?

5. Describe the use of the printed version of the MUTCD within your agency compared to the electronic version. Which users prefer the printed version and which users prefer the electronic version? Why?

6. In addition to providing hotlinks between the new MUTCD and the Applications Supplement, would providing hotlinks in the Applications Supplement to supplementary documents or additional resources be helpful or more cumbersome for MUTCD users? Should the important elements of the additional resources be incorporated into the Applications Supplement?

7. After the initial edition of the Applications Supplement is developed by the FHWA as a part of the process of developing the next edition of the MUTCD, should the FHWA continue to maintain and update the Applications Supplement, or should some other organization or group take on this responsibility? Please explain the reasoning for your response to this question. If you feel that another organization should be responsible for the Applications Supplement, please provide thoughts on the appropriate organization and why.

8. Is there an advantage to the FHWA (or some other organization or group) making revisions to the Applications Supplement without seeking public comments and why? Should there be a structured process for making revisions to the Applications Supplement? If yes, what should this involve and who should be included in the process? How often should this occur?

9. Should the FHWA consider other options for splitting MUTCD content into separate documents? Please explain.

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.85.

Issued on: December 20, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2013–00373 Filed 1–10–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2012–0104; FXFR13350700640–134–FF07J00000]

RIN 1018–AY85

Subsistence Management Regulations for Public Lands in Alaska—2014–15 and 2015–16 Subsistence Taking of Wildlife Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods and means related to taking of wildlife for subsistence uses during the 2014–15 and 2015–16 regulatory years. The Federal Subsistence Board is on a schedule of completing the process of revising subsistence taking of wildlife regulations in even-numbered years and subsistence taking of fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations. This rule would also amend the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between February 12 and March 26, 2013, and then hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between August 19 and October 30, 2013. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2014. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by March 29, 2013.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and search for FWS–R7–SM–2012–0104, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199, or hand delivery to the Designated Federal Official attending any of the

Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations were published in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Advisory Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Federal Subsistence Regional Advisory Councils, will hold public meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Ketchikan	March 12, 2013.
Region 2—Southcentral Regional Council	Anchorage	February 20, 2013.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 26, 2013.
Region 4—Bristol Bay Regional Council	Naknek	February 12, 2013.
Region 5—Yukon–Kuskokwim Delta Regional Council	Hooper Bay	February 27, 2013.
Region 6—Western Interior Regional Council	Galena	March 5, 2013.
Region 7—Seward Peninsula Regional Council	Nome	March 12, 2013.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 5, 2013.
Region 9—Eastern Interior Regional Council	Tok	February 20, 2013.
Region 10—North Slope Regional Council	Barrow	February 26, 2013.

During April 2013, the written proposals to change the subpart D, take of wildlife regulations and subpart C, customary and traditional use determinations, will be compiled and distributed for public review. During the 30-day public comment period, which is presently scheduled to end on June 7, 2013, written public comments will be accepted on the distributed proposals.

The Board, through the Regional Advisory Councils, will hold a second series of public meetings in August through October 2013, to receive comments on specific proposals and to develop recommendations to the Board at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Petersburg	September 24, 2013.
Region 2—Southcentral Regional Council	Copper Center	October 2, 2013.
Region 3—Kodiak/Aleutians Regional Council	Cold Bay	September 24, 2013.
Region 4—Bristol Bay Regional Council	Dillingham	October 29, 2013.
Region 5—Yukon–Kuskokwim Delta Regional Council	St. Marys	September 25, 2013.
Region 6—Western Interior Regional Council	Fairbanks	October 8, 2013.
Region 7—Seward Peninsula Regional Council	Nome	October 8, 2013.
Region 8—Northwest Arctic Regional Council	Kiana	August 21, 2013.
Region 9—Eastern Interior Regional Council	Fairbanks	October 16, 2013.
Region 10—North Slope Regional Council	Barrow	August 19, 2013.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Advisory Council's agenda determines the length of each Regional Advisory Council meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in January 2014. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, wildlife harvest regulations, and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requestor;

b. Each section and/or paragraph designation in this proposed rule for which changes are suggested, if applicable;

c. A description of the regulatory change(s) desired;

d. A statement explaining why each change is necessary;

e. Proposed wording changes; and

f. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board immediately rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § ____.24, subpart C (the regulations governing customary and traditional use determinations), and §§ ____.25 and ___.26, subpart D (the general and specific regulations governing the subsistence take of wildlife). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once distributed for public review no additional changes may be made as part of the original submission. During the January 2014 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Regional Advisory Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Advisory Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been considered, and a recommendation has not been made, by a Regional Advisory Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule.

The Board will engage in outreach efforts for this rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Developing the 2014–15 and 2015–16 Wildlife Seasons and Harvest Limit Regulations

Subpart C and D regulations are subject to periodic review and revision. The Federal Subsistence Board currently completes the process of revising subsistence take of wildlife regulations in even-numbered years and fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle.

The text of the final rule published June 13, 2012 (77 FR 35482) for the 2012–14 subparts C and D regulations is the text of this proposed rule. These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human

environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with § 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Secretaries, through the Board, will provide a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Jack Lorrigan, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2014–15 and 2015–16 regulatory years. The text of the proposed amendments to 36 CFR 242.24, 242.25, and 242.26 and 50 CFR 100.24, 100.25, and 100.26 is the final rule for the 2012–14 regulatory period (77 FR 35482; June 13, 2012).

Dated: December 11, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 2013–00325 Filed 1–10–13; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0639; FRL–9769–9]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve two revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality (ADEQ) to EPA on February 17, 2010 and November 6, 2012. The February 17, 2010 proposed SIP revision to the Arkansas New Source Review (NSR) Prevention of Significant Deterioration (PSD) program updates the Arkansas SIP to incorporate by reference (IBR) requirements for the Federal PSD permitting program under EPA's November 29, 2005 Phase 2 8-hour Ozone Implementation rule. The November 6, 2012 proposed SIP revision to the Arkansas NSR PSD program provides the state of Arkansas with the authority to issue PSD permits governing greenhouse gas (GHG) emissions and establishes appropriate emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to Arkansas's PSD permitting requirements for their GHG emissions. The November 6, 2012 proposed SIP revision also defers until July 21, 2014 application of the PSD permitting requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources. EPA is proposing to approve the February 17, 2010, and November 6, 2012 SIP revisions to the Arkansas NSR PSD permitting program as consistent with Federal requirements for PSD permitting. EPA is also proposing to rescind the GHG PSD Federal Implementation Plan (FIP) for Arkansas that was put in place to ensure the availability of a permitting authority for GHG permitting in Arkansas, upon final approval of the November 6, 2012 PSD SIP revisions. EPA is proposing this action under the Clean Air Act (the Act).

DATES: Comments must be received on or before February 11, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2012–0639, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* Mr. Mike Miller at *miller.michael@epa.gov.*
- *Fax:* Mr. Mike Miller, Air Permits Section (6PD–R), at fax number 214–665–6762.
- *Mail:* Mr. Mike Miller, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Mike Miller, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2012–0639. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 *http://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 along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://*

www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the Local Air Agency listed below during official business hours by appointment:

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118–5317.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Miller (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–7550. Mr. Miller can also be reached via electronic mail at *miller.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background for Our Proposed Action

The Act at section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160—51.166.

Arkansas submitted on February 17, 2010 and November 6, 2012, a collection of regulations for approval by EPA into the Arkansas SIP, including some regulations specific to the Arkansas PSD permitting program. The February 17, 2010 SIP submittal includes the PSD permitting provisions that were adopted on December 5, 2008 at Regulation 19, Chapter 9 to ensure consistency with the federal PSD permitting requirements promulgated in EPA's Phase 2 8-hour Ozone Implementation Rule (70 FR 71612, November 29, 2005). The November 6, 2012 SIP submittal includes the PSD permitting provisions to (1) establish that the state of Arkansas has the authority to issue PSD permits governing GHG emissions, and (2) establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Arkansas's PSD permitting requirements for their greenhouse gas (GHG) emissions consistent with the ''PSD and Title V Greenhouse Gas Tailoring Final Rule'' (75 FR 31514, June 3, 2010) hereafter referred to as the ''Tailoring Rule'', and 3) defers the application of the PSD requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources consistent with the EPA's final rule ''Deferral for CO_2 Emissions from Bioenergy and other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs'' (76 FR 43490, July 20, 2011).

Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of these regulations as meeting the minimum federal requirements for the adoption and implementation of the PSD SIP permitting programs. Note that Arkansas is currently subject to the GHG PSD Federal Implementation Plan (FIP) at 40 CFR 52.37(b)(2). See 75 FR 82246, December 30, 2010. We are also proposing to rescind the GHG PSD FIP for Arkansas when we finalize today's proposed action.

A. History of EPA's GHG-Related Actions

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for the identified GHG-related rulemakings for more information.

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's final action on the Arkansas SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[1] the ''Johnson Memo Reconsideration,''[2] the ''Light-Duty Vehicle Rule,''[3] and the ''Tailoring Rule.''[4] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary

[1] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[2] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[3] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[4] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call on December 13, 2010, that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority.[5] The State of Arkansas, along with several other states, did not submit a corrective SIP revision to apply their CAA PSD programs to sources of GHG emissions by the established deadline. EPA published a finding of failure to submit the required SIP revision by the specified deadline and then promulgated the GHG PSD FIP to ensure the availability of a permitting authority for GHG emitting sources subject to PSD requirements in Arkansas and the other states.[6] [7]

For other states, EPA recognized that many states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule; therefore, EPA issued the GHG PSD SIP Narrowing Rule.[8] Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. EPA's Biomass Deferral Rule

On July 20, 2011, EPA promulgated the final ''Deferral for CO_2 Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs'' (Biomass Deferral Rule). Following is a brief discussion of the deferral. For a full discussion of EPA's rationale for the rule, see the notice of final rulemaking at 76 FR 43490.

The biomass deferral delays until July 21, 2014 the consideration of CO_2 emissions from bioenergy and other biogenic sources (hereinafter referred to as ''biogenic CO_2 emissions'') when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT. As with the Tailoring Rule, the Biomass Deferral addresses both PSD and Title V requirements. However, EPA is only taking action on Arkansas's PSD program as part of this action. Stationary sources that combust biomass (or otherwise emit biogenic CO_2 emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The deferral applies only to biogenic CO_2 emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH_4) and nitrous oxide (N_2O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO_2 emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of ''biogenic CO_2 emissions'' include, but are not limited to:

- CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO_2 from fermentation during ethanol production or other industrial fermentation processes;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities. We believe part of fostering this development is to ensure that those feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. At the same time, it is important that EPA have time to conduct its detailed examination of the science and technical issues related to accounting for biogenic CO_2 emissions and therefore have finalized this deferral. The deferral is intended to be a temporary measure, in effect for no more than three years, to allow the Agency time to complete its work and determine what, if any, treatment of biogenic CO_2 emissions should be in the PSD and Title V programs. The biomass deferral rule is not EPA's final determination on the treatment of biogenic CO_2 emissions in those programs. The Agency plans to complete its science and technical review and any follow-on rulemakings within the three-year deferral period and further believes that three years is ample time to complete these tasks. It is possible that the subsequent rulemaking, depending on the nature of EPA's determinations, would supersede the biomass deferral rulemaking and become effective in fewer than three years. In that event, Arkansas may revise its SIP accordingly.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO_2 emissions from that combustion are included in the biomass deferral. However, the fossil CO_2 emissions are not. Emissions of CO_2 from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various

[5] ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (Dec. 13, 2010). Specifically, by notice dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority.

[6] ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010).

[7] ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because Arkansas did not submit by their established deadline, a corrective SIP revision to apply their Clean Air Act PSD program to sources of GHGs, Arkansas is subject to the GHG PSD FIP.

[8] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans,'' 75 FR 82536 (December 30, 2010). The GHG PSD SIP Narrowing Rule does not apply to Arkansas because the GHG PSD FIP is in place.

methods are available to calculate both the biogenic and fossil portions of CO_2 emissions, including those methods contained in the GHG Reporting Program (40 CFR part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil CO_2 emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO_2 emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO_2 emissions from a particular source during the three-year effective period and the study and future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO_2 emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO_2 emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with that subsequent rulemaking and the Final Tailoring Rule (e.g., a major source determination for Title V purposes or a major modification determination for PSD purposes).

EPA also wishes to clarify that we did not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires. Section 52.21(w) of 40 CFR requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no longer eligible to exclude its biogenic CO_2 emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO_2 emissions after the deferral expires, the source will need to consider its biogenic CO_2 emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Arkansas SIP, and will be addressed through subsequent rulemaking. The results of EPA's ongoing review of the science related to net atmospheric impacts of biogenic CO_2 are incomplete. The framework to properly account for such emissions in Title V and PSD permitting programs based on the study is also incomplete. Thus, we are unable to determine which biogenic CO_2 sources currently subject to the deferral would be subject to any permanent exemptions, or would be potentially required to account for their emissions in the future rulemaking EPA has committed to undertake. Only in that future rulemaking can EPA address the question of extending the deferral or putting in place requirements that would have the equivalent effect on sources covered by the biomass deferral. Once that rulemaking has occurred, Arkansas may address related revisions to its SIP.

II. Summary of State Submittals

EPA most recently approved revisions to the Arkansas PSD SIP on April 12, 2007, where we updated our approval of the Arkansas PSD SIP to include the revisions adopted by the State on February 3, 2005 (72 FR 18394). Since that time, Arkansas has submitted two revisions to the AR PSD SIP on February 17, 2010, and November 6, 2012.

A. February 17, 2010

In a letter dated February 17, 2010, Governor Beebe submitted revisions to the Arkansas PSD SIP that were adopted by the Arkansas Pollution Control and Ecology Commission on December 5, 2008, and became effective on January 15, 2009. This February 17, 2010, SIP submittal consisted of the following revisions to Regulation 19, Chapter 9, Prevention of Significant Deterioration, of the Arkansas Plan of Implementation for Air Pollution Control:

- Non-substantive revisions to Regulation 19.902 to correct general formatting and typographical errors,
- Substantive revisions to Regulation 19.903 to update the incorporation by reference date of the federal PSD program through November 29, 2005, and
- Substantive revisions to Regulation 19.904 to update the incorporation by reference date of the federal PSD program through November 29, 2005, and non-substantive revisions to update internal numbering within the Arkansas rules.

Taken together, the revisions to Regulations 19.902—19.904 ensure consistency with the federal PSD permitting requirements promulgated in EPA's Phase 2 8-hour Ozone Implementation Rule (70 FR 71612, November 29, 2005). [9]

B. November 6, 2012

In a letter dated November 6, 2012, Governor Beebe submitted revisions to the Arkansas SIP that were adopted by the Arkansas Pollution Control and Ecology Commission on June 22, 2012 and October 26, 2012. This SIP submittal consisted of the following revisions:

- The request to withdraw the existing SIP-approved fee regulations at Regulation 9 and replace with the submitted provisions at Regulation 9, Chapters 1, 2, 3, 5 and 9. This submittal includes substantive revisions to Regulation 9, Sections 9.502(B) and (C) for fee assessments of GHG permits;
- Substantive revisions to Regulation 19, Chapter 1 to add a rescission clause pertaining to GHG PSD permitting;
- Substantive revisions to Regulation 19, Chapter 2 definitions to add definitions for CO_2e, federally regulated air emissions and GHGs,
- Substantive revisions to Regulation 19.407(C)(3) for permit amendments;
- Substantive revisions to Regulation 19, Chapter 9, Section 19.904(G) establishing GHG PSD permitting requirements and the provisions of the GHG biomass deferral,
- Substantive revisions to Regulation 19, Appendix A Insignificant Activities List to clarify GHG permitting applicability,
- Substantive revisions to Regulation 26, Section 26.401 to clarify an applicant's duty to apply for permitting in Arkansas.

The revisions submitted on November 6, 2012 to the AR PSD SIP at Regulation 19, Chapter 9 will (1) establish that the state of Arkansas has the authority to issue PSD permits for GHG emissions under the PSD program, (2) establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Arkansas's PSD permitting requirements for their greenhouse gas (GHG) emissions

[9] "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline."

consistent with the Tailoring Rule, and (3) defer the application of the PSD requirements to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources consistent with EPA's Biomass Deferral Rule.

EPA's proposed action today will only evaluate the revisions necessary to adopt and implement the permitting of GHG emissions subject to PSD permitting at Regulation 19, Chapter 9. EPA is severing and taking no action at this time on the remaining components of the November 6, 2012 SIP submittal. Specifically, we are severing and taking no action on the revisions to Regulation 9; Regulation 19, Chapters 1, 2, 4, and Appendix A; and Regulation 26. By severing, we mean that the submitted portions of the SIP revision that address Arkansas's ability to issue PSD permit for GHG emissions subject to EPA's Tailoring Rule can be implemented independently of the portions of the submittal relating to air permit fees, general air definitions and permitting below PSD thresholds. EPA anticipates taking action on the remaining portions of the November 6, 2012 SIP submittal at a later date.

III. EPA's Analysis of State Submittals

A. February 17, 2010

The Phase 2 8-Hour Ozone Implementation Rule required states to submit applicable SIP revisions to EPA no later than June 15, 2007, to address this Rule's SIP requirements for both the PSD and NNSR programs. The SIP revision submittals were required by this Rule to revise the major source thresholds, significant emission rates, and offset ratios for ozone such that nitrogen oxides (NO_X) are recognized as an ozone precursor. Arkansas's February 17, 2010 SIP submittal updated the incorporation by reference date of the federal PSD program to November 29, 2005, which is the date of the Phase 2 rule. Therefore the Arkansas PSD SIP updates are consistent with the federal Phase 2 PSD permitting requirements.

EPA partially approved and partially disapproved the Arkansas Infrastructure SIP on August 20, 2012 (77 FR 50033). In this action we approved the revisions in Regulation 19.903 and 19.904 specific to NO_X as a precursor to ozone for the implementation of the Phase 2 8-hour ozone rule. However, we did not update the amendatory language table at 40 CFR 52.170 to reflect that the revisions to Regulation 19.902—19.904 as adopted on December 5, 2008, and submitted on February 17, 2010, were approved. Therefore, today's proposed action includes a proposal to fully approve the AR PSD program revisions adopted on December 5, 2008, and submitted on February 17, 2010.

A. November 6, 2012

As explained more fully in the accompanying TSD in this rulemaking, Arkansas has adopted and submitted regulations that are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. The detailed analysis in our TSD demonstrates that the regulatory revisions adopted on June 22, 2012 and submitted on November 6, 2012; establish that Arkansas has the authority to issue PSD permits for GHG-emitting sources subject to PSD consistent with the federal PSD requirements of EPA's final GHG Tailoring Rule. The revisions also establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under its PSD program. Our analysis also demonstrates that the regulatory revisions adopted on October 26, 2012 and submitted on November 6, 2012, appropriately defer the applicability of these thresholds for biogenic CO_2 emissions from bioenergy and other biogenic stationary sources consistent with EPA's Biomass Deferral Final Rule.

IV. What action is EPA proposing?

EPA proposes to approve the February 17, 2010 and November 6, 2012, submitted revisions to Regulation 19, Chapter 9 into the Arkansas PSD SIP. Arkansas's February 17, 2010, proposed SIP revision updates the incorporation by reference date of the PSD program to address the permitting requirements in EPA's Phase 2 8-hour ozone final rule. Arkansas's November 6, 2012, proposed SIP revision (1) provides the state of Arkansas with the authority to issue PSD permits governing GHGs, and (2) establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that the February 17, 2010 and November 6, 2012 revisions to Regulation 19, Chapter 9 are approvable because they are adopted and submitted in accordance with the CAA and EPA regulations regarding PSD permitting for 8-hour ozone and GHGs. Therefore, under section 110 and parts C and D of the Act, and for the reasons stated above, EPA proposes to approve the following revisions to the Arkansas SIP:

- Substantive revisions to Regulation 19, Chapter 9, Sections 19.903 and 19.904 to update the incorporation by reference date of the PSD program,
- Substantive revisions to Regulation 19, Chapter 9, Section 19.904(G) establishing GHG PSD permitting requirements and the biomass deferral provisions.

As explained in today's proposed notice, Arkansas is subject to the Federal Implementation Plan for PSD permitting of GHG emissions. This GHG PSD FIP remains in place and EPA remains the PSD permitting authority for GHG-emitting sources in Arkansas until EPA finalizes our proposed approval of the November 6, 2012 submitted revisions to the Arkansas SIP. Therefore, we propose that upon finalization of today's action, EPA will rescind the GHG PSD FIP for Arkansas at 40 CFR 52.37(b)(2).

Consistent with the analysis presented in today's proposed notice and the accompanying TSD, EPA is severing and taking no action on the fee related regulations at Regulation 9; as well as the revisions to Regulation 19, Chapters 1, 2, 4 and Appendix A, and Regulation 26, submitted on November 6, 2012.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 proposes to approve 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 Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–00429 Filed 1–10–13; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0640; FRL–9769–7]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Idaho's State Implementation Plan (SIP) submitted by the Director of the Idaho Department of Environmental Quality (IDEQ) on July 13, 2011, for approval into the Idaho SIP. The submitted revisions relate to Idaho's open burning and crop residue disposal requirements and establish a streamlined permitting process for spot burns, baled agricultural residue burns, and propane flaming. The submitted revisions also make minor changes to the existing crop residue disposal rules to update cross references and clarify certain administrative information. This action is being taken under the Clean Air Act (the Act or CAA).

DATES: Written comments must be received on or before February 11, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0640, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Mail:* Donna Deneen, EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Donna Deneen, Office of Air Waste, and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

D. *Email: R10-Public_Comments@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0640. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706, or by email at *deneen.donna@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

I. Background
II. Summary of Rule Changes
III. Evaluation of Rule Changes
IV. Proposed Action
V. Scope of Proposed Action
VI. Statutory and Executive Order Reviews

I. Background

Idaho's federally-approved rules at Idaho Administrative Procedures Act (IDAPA) 58.01.01.617 through 623 contain the open burning requirements for crop residue disposal in Idaho. These rules were approved by the EPA on August 1, 2008, (73 FR 44915) and were submitted to the EPA as a result of the Ninth Circuit Court of Appeals decision in *Safe Air for Everyone* v. *USEPA,* 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007). More information regarding the Ninth Circuit Court of Appeals decision and the federally-approved requirements for crop residue disposal can be found in the EPA's proposed and final actions on the state's 2008 SIP submittal. 73 FR 23155 (April 29, 2008) and 73 FR 44915 (August 1, 2008).

Idaho's federally-approved crop residue disposal rules at IDAPA 58.01.01.617 currently provide that the open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with the provisions at IDAPA 58.01.01.618 through 623. The provisions at IDAPA 58.01.01.618 through 623 are described

in the EPA's proposed action at 73 FR 23159 (April 29, 2008). In brief, these rules require that a person desiring to burn crop residue must register at least thirty days in advance of the date of the proposed burn, pay a fee at least seven days prior to the burn, contact the IDEQ for initial approval at least 12 hours prior to the burn, obtain final approval from the IDEQ the morning of the burn, and submit a post-burn report to the IDEQ. In addition, all persons intending to dispose of crop residue through burning must abide by all of the general provisions in IDAPA 58.01.01.622 (covering such items as training requirements, reporting requirements, and certain limitations on burning).

The criteria for the IDEQ to approve a request to burn are described in IDAPA 58.01.01.621. Importantly, before approving a permittee's request to burn, the IDEQ must determine that ambient air quality levels do not exceed seventy-five percent of the level of any National Ambient Air Quality Standards (NAAQS) on any day and are not projected to exceed such level over the next 24 hours. In addition, the IDEQ must determine that ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent of the one-hour action criteria for particulate matter under IDAPA 58.01.01.556.[1] Thus, the IDEQ will not approve a burn if these levels are expected to be exceeded as a result of the burn. In determining whether to approve the burn, the IDEQ must also consider the expected emissions from the proposed burn, the proximity of the proposed burn to other burns, the moisture content of the fuels, the acreage, crop type and other fuel characteristics, existing and expected meteorological conditions, the proximity of the proposed burn to institutions with sensitive populations, public roadways, and airports, and other relevant factors. IDAPA 58.01.01.621.01. The IDEQ must also notify the public as provided in IDAPA 58.01.01.623.

The IDEQ's SIP revision submitted on July 13, 2011, contains changes to the federally-approved crop residue disposal rules at IDAPA 58.01.01.617 through 623. More specifically, the July 13, 2011, SIP submittal revises IDAPA 58.01.01.617, 618, 620, 622, and 623, and adds a new section at IDAPA 58.01.01.624. These revisions were submitted by the IDEQ after determining that the administrative requirements under the existing rules for certain types of small burns (spot burns, broken bale burns and propane flaming) were unnecessarily burdensome. According to the July 13, 2011, SIP submittal, these revisions were made to streamline the administrative requirements for these types of small fuel loading and small acreage burns.

In the July 13, 2011, submittal, the IDEQ described the process for making the rule changes and noted that the changes were drafted in conjunction with a negotiating committee made up of persons having an interest in the development of this rule.[2] Participants included growers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, the Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions. The IDEQ also explained that a change to the statute was necessary relating to the fee requirement for propane flaming. The resulting temporary rule was adopted by the IDEQ Board of Environmental Quality on April 25, 2011 and became effective on July 1, 2011.

II. Summary of Rule Changes

The rule changes in the July 13, 2011, submittal include new IDAPA 58.01.01.624, which relates to spot burns, baled agricultural residue burns and propane flaming, and revisions to IDAPA 58.01.01.617 through 623, which clarify existing disposal of crop residue provisions and update references to new IDAPA 58.01.01.624. The EPA prepared a Technical Support Document (TSD) with detailed description of the specific provisions in the SIP submittal. The TSD is available for review as part of the docket for this action.

Spot Burns and Baled Agricultural Residue Burns

The new provisions for spot burns and baled agricultural residue burns in IDAPA 58.01.01.624 streamline the procedure and provide for the issuance of an annual permit to cover spot burns and baled agricultural residue burns proposed by an applicant for a given calendar year. Under the prior rule, a separate approval was required for each and every individual spot or bale burn. The new rule still regulates these types of burns but simplifies the administrative process. Specifically, under the new rule, to apply for an annual permit to conduct spot burning and baled agricultural residue burning, the applicant must provide registration information identifying the proposed burn areas and submit a fee. The permit issued by the IDEQ is valid for the calendar year in which it is issued, covers the proposed burn areas provided in the applicant's registration information, and is good for a cumulative total of no more than one acre per day and no more than ten acres per year. The person intending to burn must meet all applicable permit provisions, including provisions relating to preventing travel hazards, protecting sensitive populations, and recordkeeping. Under IDAPA 58.01.01.624.04.c, spot burns and baled agricultural residue burns may not be conducted except on IDEQ-designated burn days, which for these types of burns may include weekends and holidays.

Propane Flaming

The new provisions for propane flaming in IDAPA 58.01.01.624 provide that a person intending to conduct propane flaming is deemed to have a permit if the definition of propane flaming is met and the person complies with all applicable provisions. Under the prior rule, a separate approval was required for each and every burn using propane flaming. The new rule still regulates propane flaming but simplifies the administrative process by deeming persons conducting propane flaming to have a permit by rule if they comply with applicable provisions in IDAPA 624.04 and 624.05. The applicable provisions include general crop residue disposal provisions and provisions relating to preventing travel hazards, protecting sensitive populations, and recordkeeping. Under IDAPA 58.01.01.624.04.c, propane flaming may not be conducted except on IDEQ-designated burn days, which for propane flaming may include weekends and holidays.

Revisions to IDAPA 58.01.01.117 Through 623

The revisions to IDAPA 58.01.01.117 through 623 consist of minor changes that update cross references to new IDAPA 58.01.01.624 and clarify certain administrative provisions.

III. Evaluation of Rule Changes

The crop residue disposal provisions in the federally-approved SIP for Idaho may be revised provided the State meets

[1] The current one-hour action criteria under IDAPA 58.01.01.556 is an average of 80 μg/m^3 for $PM_{2.5}$ and an average of 385 μg/m^3 for PM_{10}.

[2] Idaho's negotiated rulemaking process is an informal process open to the public and intended to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rule-making; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. See Section 67–5220, Idaho Code and IDAPA 04.11.01.810 through 819.

the requirements of CAA section 110. To address section 110, the EPA reviewed each changed provision in the crop residue disposal rules in its July 13, 2011, submittal to determine whether or not the changes would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this Act. As further discussed in the TSD, the changes to existing IDAPA 58.01.01.117 to 623 consisted of minor changes, such as updated cross references and clarifying administrative information (e.g, specifying the Web site address and toll free number). Because of the nature of these revisions, these changes do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act.

The new provisions at IDAPA 58.01.01.624 that simplify the administrative process for spot burns, baled agricultural residue burns, and propane flaming also do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act. Spot burning, baled agricultural residue burning, and propane flaming are already allowed under the existing federally-approved crop residue disposal rule and burning continues to be allowed only on IDEQ-designated burn days. Moreover, the permittee is still subject to the applicable general provisions for the burning of crop residue. See the TSD for more information about our review and analysis of the July 13, 2011, SIP submittal.

Based on the EPA's review and evaluation of the July 13, 2011, SIP submittal, the burn determination provisions in IDAPA 58.01.01.621, and the IDEQ's analysis of its rule changes in the July 13, 2011, SIP submittal, the EPA concludes that Idaho's SIP revision submitted on July 13, 2011, meets the requirements of Clean Air Act section 110.

IV. Proposed Action

Consistent with the discussion above and based on our review and analysis of revised IDAPA 58.01.01.617, 618, 620, 622, and 623 and new section IDAPA 58.01.01.624, the EPA proposes approval of the revisions in Idaho's July 13, 2011, SIP submittal.

V. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[3] Therefore, the EPA proposes that this SIP approval not extend to ''Indian Country'' in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with the EPA's previous approval of Idaho's PSD program, in which the EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with the EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

VI. 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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed 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 Clean Air Act; and
- Does not provide the 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 the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 3, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–00428 Filed 1–10–13; 8:45 am]

BILLING CODE 6560–50–P

[3] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA–R01–OAR–2012–0430; FRL–9768–8]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Asbestos Management and Control; State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the New Hampshire Department of Environmental Services (''NH DES'') request to implement and enforce the readopted and re-codified ''Env-Sw 2100: Management and Control of Asbestos Disposal Sites not Operated after July 9, 1981,'' and the amended ''Env-A 1801–1807.01: Asbestos Management and Control'' (amended Asbestos Management Rules), in place of National Emission Standard for Asbestos (''Asbestos NESHAP''). This approval would make the NH DES's amended Asbestos Management Rules federally enforceable.

DATES: Written comments must be received on or before February 11, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2012–0430 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: mcdonnell.ida@epa.gov.*

3. *Fax:* (617) 918–0653.

4. *Mail:* ''EPA–R01–OAR–2012–0430'', Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Ida E. McDonnell, Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, 5th Floor, Suite 100 (OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments. EPA will forward copies of all submitted comments to the New Hampshire Department of Environmental Services.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1656, fax number (617) 918–0656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register,** EPA is approving the State of New Hampshire's Section 112(l) submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this final rule, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions 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.**

Dated: December 19, 2012.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2013–00183 Filed 1–10–13; 8:45 am]

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Notices

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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

Office of the Secretary

[Docket No. APHIS–2012–0041]

Notification of Deletion of a System of Records; Automated Trust Funds Database

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of deletion of a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the U.S. Department of Agriculture is giving notice that it is deleting a system of records that is no longer in use.

DATES: *Effective Date:* January 11, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Tripp, Supervisory Accountant, International Operations and Accounting Team, Financial Operations Branch, APHIS, 100 North Sixth Street, Ste. 510 C, Minneapolis, MN 55403; (612) 336–3240.

SUPPLEMENTARY INFORMATION: On April 30, 2008, pursuant to the provisions of the Privacy Act of 1974, the U.S. Department of Agriculture (USDA) published in the **Federal Register** (73 FR 23414–23416, Docket No. APHIS–2008–0026) a system of records notice establishing the Automated Trust Funds (ATF) database system of records. The Federal Information Security Management Act of 2002 (44 U.S.C. 3541 *et seq.*), the Chief Financial Officers Act of 1990 (31 U.S.C. 101 *et seq.*), the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)), and the Federal Managers' Financial Integrity Act of 1982, Public Law 97–255, provided authority for the system.

The ATF database has been replaced by USDA's Financial Management Modernization Initiative (FMMI) and is no longer in use. Information in the ATF database about cooperators who have trust fund agreements with APHIS, including company name, company address, account number and balance, as well as company contact information, including name, telephone number, and mailing address, were transferred to FMMI. All other information was destroyed. Accordingly, this notice formally terminates this system of records.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2013–00440 Filed 1–10–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Coronado National Forest, USDA Forest Service, Tucson, Arizona.

ACTION: Notice of New Fee Site.

SUMMARY: The Coronado National Forest is proposing to charge a fee for the overnight rental of the Palisades Ranger Residence, located on the Santa Catalina Ranger District approximately 20 miles north of Tucson, Arizona. The building was constructed in 1933 by the Civilian Conservation Corps and has been determined eligible for listing on the National Register of Historic Places. The proposed fee will be $125.00 per night, to accommodate up to four people. Other cabin rentals on National Forests in Arizona have shown that the public appreciates the enhanced recreational opportunity afforded by these rehabilitated historic structures. Revenues from the rentals will be used for the continued operation and maintenance of this facility and other properties in the Arizona ''Rooms with a View'' Cabin Rental Program.

DATES: Send any comments regarding this fee proposal by April 26, 2013. Comments will be compiled, analyzed, and shared with the BLM-Arizona Recreation Resource Advisory Council (RRAC). Palisades Cabin is scheduled to become available for rent in fall of 2013. Please send comments to: Forest Supervisor, Coronado National Forest, 300 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Kathy Makansi, Archaeologist, Coronado National Forest at (520) 760–2502 or by email at *kmakansi@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Coronado National Forest currently has four other rental facilities. These facilities are booked regularly throughout the year. A business analysis for the rental of the Palisades Ranger Residence shows public interest in this sort of recreational experience on the Coronado National Forest. A market analysis indicates that the $125.00 daily fee is both reasonable and acceptable for this sort of unique recreational experience.

People wanting to rent the Palisades Ranger Residence will need to do so through the National Recreation Reservation Service at *www.recreation.gov,* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 reservation fee for Internet reservations and a $10 reservation fee for phone reservations.

Dated: January 2, 2013.

Jim Upchurch,

Forest Supervisor, Coronado National Forest.

[FR Doc. 2013–00332 Filed 1–10–13; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain cased pencils (''pencils'') from the People's Republic of China (''PRC''). The period of review (''POR'') is December 1, 2010, through November 30, 2011. The review covers one exporter of subject merchandise, Beijing Fila Dixon Stationery Company, Ltd. a/

k/a Beijing Dixon Ticonderoga Stationery Company, Ltd., a/k/a Beijing Dixon Stationery Company, Ltd., and Dixon Ticonderoga Company (collectively, ''Dixon''). We preliminarily find that Dixon made sales of subject merchandise at less than normal value.

DATES: *Effective Date:* January 11, 2013.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin or Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order includes certain cased pencils from the PRC. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9609.10.00. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description available in *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994) is dispositive.

Partial Rescission of Review

For those companies named in the *Initiation Notice* [1] for whom all review requests have been withdrawn and who previously received separate rate status in prior segments of this case, we are rescinding this administrative review, in accordance with 19 CFR 351.213(d)(I). These companies are listed in Appendix II.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. Specifically, Dixon's factors of production have been valued in Thailand and Indonesia, both of which are economically comparable to the PRC and significant producers of comparable merchandise.

For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Results of 2010–2011 Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated January 2, 2013 (''Preliminary Decision Memorandum'') and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Intent Not To Revoke Order In Part

We preliminary find that Dixon has not satisfied the requirements of 19 CFR 351.222(b).[2] Thus, under section 751 of the Act, we preliminarily determine not to revoke in part the order with respect to Dixon. *See* Preliminary Decision Memorandum.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Exporter	Weighted average dumping margin (percent)
Beijing Fila Dixon Stationery Company, Ltd. a/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd. a/k/a Beijing Dixon Stationery Company, Ltd., and Dixon Ticonderoga Company	92.46

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[3] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[4]

Any interested party may request a hearing within 30 days of publication of this notice.[5] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[6]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 4759 (January 31, 2012).

[2] The Department recently published a final rule amending this section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that final rule does not apply to this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to the Department's regulations in effect prior to June 20, 2012.

[3] *See* 19 CFR 351.309(c).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.310(c).

[6] *See* 19 CFR 351.310(d).

extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[7] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[8]

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[9] For assessment purposes, we calculated exporter/importer- (or customer-) specific assessment rates for merchandise subject to this review. Dixon reported that its U.S. affiliate was the importer of record for all U.S. sales. Thus, we calculated an *ad valorem* rate by dividing the total dumping margins for reviewed sales by the total entered values associated with those transactions. If Dixon's antidumping duty rate exceeds 0.5 percent *ad valorem* for the final results of this review, we will instruct CBP to assess duties on all of Dixon's entries. *See* 19 CFR 351.106(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

For companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping 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 regarding entries of the rescinded companies directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Dixon, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: January 2, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope of the Order
2. Non-Market Economy Country
3. Separate Rates
4. Surrogate Country and Surrogate Value Data
5. Economic Comparability
6. Significant Producers of Identical or Comparable Merchandise
7. Data Availability
8. Date of Sale
9. Fair Value Comparisons
10. U.S. Price
11. Normal Value
12. Factor Valuations
13. Currency Conversion

Appendix II

Separate rate companies for which we are rescinding this administrative review:

China First Pencil Co., Ltd. Orient International Holding Shanghai Foreign Trade Co., Ltd. Shandong Rongxin Import and Export Co., Ltd.

[FR Doc. 2013–00452 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[8] *See* 19 CFR 351.301(c)(3).

[9] *See* 19 CFR 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip From India: Partial Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 11, 2013.

FOR FURTHER INFORMATION CONTACT: Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398.

Background

On July 2, 2012, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet and strip from India covering the period July 1, 2011, through June 30, 2012.[1] The Department received a timely request from Petitioners[2] for an AD administrative review of five companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation Ltd. (Polyplex), SRF Limited (SRF), and Jindal Poly Films Limited of India (Jindal).[3] In addition, the Department

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 39216, 39217 (July 2, 2012).

[2] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

[3] *See* Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request for Antidumping Duty Administrative Review: Petitioners' Request for an Administrative Review (July 31, 2012).

received timely requests for an AD review from SRF and Jindal.[4] On August 30, 2012, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, and SRF.[5] On September 26, 2012, one of the petitioners (DuPont Teijin Films) withdrew its request for an AD administrative review of all the companies for which reviews were initiated.[6] Finally, on November 30, 2012, the remaining petitioners (Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.) submitted a withdrawal request for Ester and Garware only.[7]

Rescission, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners' September 26, 2012, and November 30, 2012, withdrawal requests were submitted within the 90-day period and thus are timely.[8] Because Petitioners' withdrawals of their requests for review are timely and because no other party requested a review of Ester and Garware, we are rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). The requests from Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. for an administrative review of Jindal, Polyplex, and SRF have not been withdrawn. As such, we are not rescinding the review with respect to these three companies. For the review, the Department will proceed with individual examination of the two previously selected mandatory respondents, Jindal and SRF.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess ADs on all appropriate entries. Subject merchandise of Ester and Garware will be assessed ADs at rates equal to the cash deposit of estimated ADs 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 assessment instructions to CBP 15 days after the date of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of ADs 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 the ADs occurred and the subsequent assessment of double ADs.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 7, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–00469 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* Polyethylene Terephthalate (PET) Film from India/Request for Antidumping Admin Review/Jindal Poly Films Limited (July 30, 2012) and Polyethylene Terephthalate (PET) Film from India/Request for Antidumping Admin Review/SRF Limited (July 30, 2012).

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 52688 (August 30, 2012).

[6] *See* Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Withdrawal of DuPont Teijin Films' Request for Antidumping Duty Administrative Review (September 26, 2012).

[7] *See* Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Partial Withdrawal of Request for Antidumping Duty Administrative Review (November 30, 2012).

[8] The 90th day fell on November 28, 2012; however, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for filing a withdrawal request was November 30, 2012. *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy'' (October 31, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 6, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the fourth administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. Further, we determine that Huvis Sichuan Co., Ltd. (''Huvis Sichuan'') had no reviewable entries of subject merchandise during the period of review (''POR'').

DATES: Effective January 11, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Hampton or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116 and (202) 482–4031 respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, the Department published the *Preliminary Results.* Between August 8, 2012, and August 20, 2012, interested parties submitted surrogate value information and rebuttal surrogate value comments. Interested parties were further provided an opportunity to comment on the *Preliminary Results.* On September 21, 2012, the Department received a case brief from Zhaoqing Tifo New Fiber Co., Ltd. On September 28, 2012, the Department received a rebuttal brief from DAK Americas LLC.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum

[1] *See Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 39990 (July 6, 2012) (''*Preliminary Results*'').

entitled, ''Certain Polyester Staple Fiber from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2010–2011 Administrative Review'' (''I&D Memo''), which is dated concurrently with and adopted by this notice. A list of the issues which parties raised and to which we respond in the I&D Memo is attached to this notice as Appendix I. The I&D Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Changes Since the Preliminary Results

The Department has made changes to the preliminary margin calculation. Specifically, we:

- Used the 2010 financial statement of P.T. Tifico Fiber Indonesia Tbk. to calculate all surrogate financial ratios.[2] As a result of that decision, we did not separately value electricity and water in the final margin program because these factors of production are already captured in the surrogate financial ratios.
- Corrected various errors as described in the Analysis Memo and Surrogate Value Memo.[3]

Scope of the Order

The merchandise subject to the order is certain polyester staple fiber.[4] The product is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.[5]

Final Determination of No Shipments

On September 22, 2011, the Department received a no-shipment certification from Huvis Sichuan. To confirm the facts behind this assertion, the Department issued a no-shipment inquiry to U.S. Customs Border and Protection (''CBP'') requesting that it provide any information that contradicted the no-shipment claim. The Department received no information from CBP indicating that there were reviewable transactions from Huvis Sichuan during the POR.

On August 6, 2012, the Department received comments on the *Preliminary Results* from Huvis Sichuan.[6] Huvis Sichuan noted that the *Preliminary Results* should have included notice that the Department intends to rescind this review with respect to Huvis Sichuan. The Department inadvertently omitted this information from the *Preliminary Results.* Therefore, we determine that Huvis Sichuan had no reviewable entries of subject merchandise during the POR. Consistent with our ''automatic assessment'' clarification, the Department will issue appropriate instructions to CBP based on our final results.[7]

Final Results of Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted-average dumping margin (percent)
Zhaoqing Tifo New Fiber Co., Ltd	9.98
PRC-wide Entity (which includes Far Eastern Industries (Shanghai) Ltd., and Far Eastern Polychem Industries)	44.30

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice, in accordance with section 351.224(b) of the Department's regulations.

Assessment

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping calculated for the importer's examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where an importer-specific assessment rate is zero or *de minimis,* the Department will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2).

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales database submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.* at that exporter's rate) will be liquidated at the NME-wide rate.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that exporter); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the

[2] *See* I&D Memo at Comment II.

[3] *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Steven Hampton, International Trade Analyst, Office 9, regarding Analysis of the Final Results of the Fourth Administrative Review for Certain Polyester Staple Fiber from the People's Republic of China: Zhaoqing Tifo New Fibre Co., Ltd., dated January 4, 2013, (''Analysis Memo'') and Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Steven Hampton, International Trade Analyst, Office 9, regarding 2010–2011 Antidumping Duty Administrative Review of Certain Polyester Staple fiber from the People's Republic of China: Surrogate Values for the Final Results dated January 4, 2013 (''Surrogate Value Memo'').

[4] *See* I&D Memo for a complete description of the Scope of the Order.

[5] *See Notice of Antidumping Duty Order: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 30545 (June 1, 2007).

[6] *See* Letter from Huvis Sichuan regarding Certain Polyester Staple Fiber from China; 4th Administrative Review, dated August 6, 2012.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement''*); *see also* the ''Assessment'' section of this notice, below.

[8] *See Assessment Practice Refinement,* 76 FR at 65694.

most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be 44.30 percent, the rate for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 4, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Comment 1. Surrogate Value for Steam Coal
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[FR Doc. 2013–00463 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818; A–489–805]

Certain Pasta From Italy and Turkey; Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 11, 2013.

SUMMARY: On September 4, 2012, the Department of Commerce (''the Department'') initiated five-year (''sunset'') reviews of the antidumping duty orders on certain pasta (''pasta'') from Italy and Turkey. As a result of these reviews, the Department finds that revocation of these antidumping orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Reviews'' section of this notice.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

The Department published antidumping duty orders on pasta from Italy and Turkey in July 1996.[1] On September 4, 2012, the Department initiated sunset reviews of those orders pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[2] On September 20, 2012, the Department received notices of intent to participate in these sunset reviews on behalf of New World Pasta Company, Dakota Growers Pasta Company, A. Zerga's Sons, Inc., Philadelphia Macaroni Company, and American Italian Pasta Company (collectively, ''the domestic interested parties''), within the applicable deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as producers of certain pasta in the United States.

On October 4, 2012, the Department received an adequate substantive response regarding Turkey from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received an inadequate substantive response from respondent interested parties.[3] On October 9, 2012, domestic interested parties filed a rebuttal to the GOT's submission.

On September 25, 2012, the Government of Italy (''GOI'') requested an extension of time to submit a substantive response. On September 27, 2012, the Department granted an extension until October 11, 2012; however, the GOI did not submit a response. On October 11, 2012, the Department received adequate substantive responses regarding Italy from the domestic interested parties, within the extended deadline specified in the Department's September 27, 2012, letter.

Pursuant to 19 CFR 351.218(e)(1)(ii)(C), because the Department received no substantive responses from foreign producers in either review, the Department is conducting expedited, 120-day, sunset reviews of these antidumping duty orders.

Scope of the Orders

Italy (A–475–818)

The merchandise subject to the order is pasta. The product is currently classified under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Italian Order,* remains dispositive.[4]

Turkey (A–489–805)

The merchandise subject to the order is pasta. The product is currently classified under items 1902.19.20 of the HTSUS. Although the HTSUS numbers are provided for convenience and

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[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996) (''*Italian Order*''), and *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 38545 (July 24, 1996) (''*Turkish Order*'').

[2] *See Notice of Initiation of Five-Year (Sunset) Reviews,* 71 FR 53867 (September 4, 2012).

[3] Only the Government of Turkey (''GOT'') submitted a response. We did not receive a response from any Turkish producers or exporters of pasta, as provided in 19 CFR 351.218(e)(1)(ii)(A).

[4] On August 14, 2009, the Department issued its final results of a changed circumstance review and revoked the order, in part, with regard to gluten-free pasta effective July 1, 2008. *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009).

customs purposes, the written product description, available in *Turkish Order,* remains dispositive.

Analysis of Comments Received

All issues raised by parties to these sunset reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit in room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum may be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''January 2013.'' The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on pasta from Italy and Turkey would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

ITALY

Manufacturer/producer/exporter	Weighted-average margin (percent)
Arrighi S.p.A. Industrie Alimentari and affiliate Italpasta S.p.A.	20.84
La Molisana Industrie Alimentari S.p.A.	14.78
Liguori Pastificio Dal S.p.A.	12.14
Pastificio Fratelli Pagani S.p.A.	18.23
All Others	[5] 16.51

[5] The cash deposit rate for All Others was modified to account for export subsidies.

TURKEY

Manufacturer/producer/exporter	Weighted-average margin (percent)
Filiz Gida Sanyi ve Ticaret A.S.	63.29
Maktas Makarnicilik ve Ticaret T.A.S. (''Maktas'')	[6] 60.87
All Others	[7] 60.87

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. Timely 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.

These sunset reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 4, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–00454 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–DS–P

[6] Marsan Gida Sanayi ve Ticret A.S. was found to be the successor-in-interest to Gidasa Sabanci Gida Sanayi ve Ticaret A.S. (''Gidasa'') in 2009; Gidasa was found to be the successor-in-interest to Maktas in 2003. *See* Decision Memorandum at 5.

[7] The cash deposit rate for Maktas and All Others were modified to account for export subsidies.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Partial Rescission of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 11, 2013.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–1398, respectively.

Background

On July 2, 2012, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet and strip from India covering the period January 1, 2011, through December 31, 2011.[1] The Department received a timely request for a CVD administrative review from Petitioners [2] for five companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation Ltd. (Polyplex), SRF Limited (SRF), and Jindal Poly Films Limited of India (Jindal). The Department also received timely requests from Jindal and SRF for a CVD review of themselves. On August 30, 2012, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, and SRF.[3] On November 30, 2012, Petitioners withdrew their requests for a CVD administrative review of Ester, Garware, Jindal, and Polyplex. Jindal also withdrew its self-request for an administrative review.

Rescission, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners' and Jindal's November 30, 2012, withdrawal requests were submitted within the 90-day period and thus are timely.[4] As the withdrawal requests filed by Petitioners and Jindal are timely and no other party requested a review of Ester, Garware, Jindal, and Polyplex, we are rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). Because the review requests for SRF were not withdrawn,

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 39216, 39217 (July 2, 2012).

[2] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 52688 (August 30, 2012).

[4] The 90th day fell on November 28, 2012; however, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for filing a withdrawal request was November 30, 2012. *See* Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy'' (October 31, 2012).

the Department will continue to conduct the CVD administrative review of SRF.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries. Ester, Garware, Jindal, and Polyplex shall be assessed CVDs at rates equal to the cash deposit of estimated CVDs 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 publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 7, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–00466 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC435

New England Fishery Management Council (NEFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a four-day meeting on January 28–31, 2013 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, January 28, through Thursday, January 31, 2013. The meeting will begin at 1 p.m. on Monday, at 9 a.m. on Tuesday, and at 8:30 a.m. on both Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Sheraton Portsmouth Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; fax: (603) 431–7805; or online at *http://www.sheratonportsmouth.com/.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, January 28, 2013

The New England Council will hold a closed session on Monday, January 28 from 1 p.m. to 5 p.m. to address employment matters.

Tuesday, January 29, 2013

Following introductions and any announcements on Tuesday, the Council will receive brief reports from the NEFMC Chairman and Executive Director, the Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the Atlantic States Marine Fisheries Commission, and staff from the regional Vessel Monitoring Systems Operations and NOAA Law Enforcement offices. The Council also will receive an update about Northeast Regional Ocean Council activities. Following these reports, NOAA's Northeast Regional Office staff will provide a presentation on a proposed offshore mussel aquaculture project off Cape Ann, MA and solicit comments or recommendations. The Monkfish Committee will update the Council about the development of Amendment 6. This report will include details about alternatives that would modify the current days-at-sea/trip limit system, incorporate monkfish into groundfish sectors and/or outline an Individual Transferable Quota (ITQ) program for the fishery. The Council may approve a request asking the NOAA Regional Administrator to provide feedback about the Northeast Regional Office's ability to provide timely data during the development a sector management or ITQ program for monkfish. Prior to a lunch break, the Northeast Regional Office will present a Draft Environmental Assessment on Standard Bycatch Reporting Methodology and also ask the Council and public for comments. The day will conclude with a lengthy set of decisions about Atlantic Herring. The Council is expected to select and approve final recommendations for multi-year herring fishery specifications (2013–15) and Framework Adjustment 2 to the Herring FMP (to allow consideration of seasonal quota splitting and carryover of unutilized quota). The specifications will address overfishing levels and acceptable biological catch based on Scientific and Statistical Committee advice, management uncertainty, optimum yield and a stock-wide annual catch limit (ACL) for Atlantic herring, Domestic Annual Harvest, Domestic Annual Processing, U.S. At-Sea Processing, Border Transfer, sub-ACLs (quotas) for each of four management areas, seasonal sub-ACL allocations (based on Framework 2 provisions), research set-asides, set-asides for fixed gear fisheries in the Gulf of Maine, and a range of accountability measures (AMs) for the herring fishery.

Wednesday, January 30, 2013

The Council will receive a report from the Northeast Fisheries Science Center staff summarizing the findings of the 55th Stock Assessment Workshop/Stock Assessment Review Committee meetings. The species addressed were Gulf of Maine cod and Georges Bank cod. The Council's Scientific and Statistical Committee will report on its acceptable biological catch recommendations for those two species, and possibly set ABCs for several other groundfish stocks, all for fishing years 2013–15. During the Groundfish Committee's report, the Council intends to specify ABCs and ACLs for fishing year 2013, to include consideration of a revised Southern New England/Mid-Atlantic winter flounder rebuilding plan and changes to the prohibition on landings Southern New England/Mid-Atlantic winter flounder. These measures may be adopted either through a specification package or an additional framework adjustment. Additionally, the Council will discuss and could approve a request for interim action to reduce overfishing on Gulf of Maine cod and Gulf of Maine haddock in fishing year 2013.

Thursday, January 31, 2013

The final day of the New England Council's meeting will be used to focus on further development of Draft EFH Omnibus Habitat Amendment 2. The Habitat Committee will present recommendations on Dedicated Habitat

Research Areas, while the Groundfish Committee will recommend specific spatial management options to achieve groundfish objectives in the Habitat Amendment. In the absence of Groundfish Committee recommendations, the Council will receive an update from the Closed Area Technical Team and a summary of committee progress. The full Council will direct it attention to providing guidance to both committees about reconciling the two sets of options and identify next steps. The selection of alternatives to be analyzed in a Draft Environmental Impact Statement will take place at the Council's April 2013 meeting.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 8, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–00396 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC436

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice, public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS). A listening station will be available at the Pacific Council offices for interested members of the public, and there may be opportunities to attend the meeting remotely.

DATES: The conference call will be held Tuesday, January 29, 2013, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held via conference call, with a public listening station available at the Pacific Council offices.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The items of discussion are as follows:

1. The Council's Fishery Ecosystem Plan, which is scheduled to be adopted at the Council's March 2013 meeting in Tacoma, WA.

2. The February 5–8, 2013 Pacific sardine harvest parameters workshop.

3. A plan for holding future CPSMT and CPSAS elections.

4. Other items relevant to Coastal Pelagic Species management may be discussed as time allows, at the discretion of the Chairs.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: January 8, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–00397 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA933

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California.

DATES: This authorization is effective from January 8, 2013, until January 7, 2014.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 427–8418, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or

stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 19, 2011, CALTRANS submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction associated with a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB), California. The proposed construction activities would last for approximately three years, starting 2013. After receiving NMFS comments on the IHA application regarding proposed monitoring measures, CALTRANS submitted a revised IHA application on April 23, 2012. The action discussed in this document is based on CALTRANS April 23, 2012, IHA application and NMFS **Federal Register** notice for the proposed IHA (77 FR 50473; August 21, 2012).

An IHA was previously issued to CALTRANS for this activity on February 7, 2011 and it expired on February 6, 2012 (76 FR 7156, February 9, 2011). No in-water construction activity was conducted during the period covered by that IHA. CALTRANS' renewal application indicates that the next stage of the construction activities will involve dismantling of the existing bridge, which is expected to start in fall 2013. However, some preparatory construction activities related to the dismantling may take place before the planned schedule. A detailed description of the proposed SF–OBB East Span project is provided in the CALTRANS' IHA application and in the **Federal Register** for the proposed IHA (77 FR 50473, August 21, 2012), and there is no change to the description of the activities. Therefore, the detailed description of the proposed construction activities is not repeated here, except for certain information that was missing in the earlier documents.

Supplemental Information Regarding CALTRANS Construction Activities

As stated in the IHA application and the **Federal Register** notice for the proposed IHA (77 FR 50473; August 21, 2012), work at the Yerba Buena Island (YBI) access would involve the construction of a small (approximately 650 m^2, or 7,000 ft^2) H-pile supported trestle. The size of the H-pile was not identified in the proposed IHA. Discussion with CALTRANS indicated that it is unclear the size of the H-piles would be used. However, it is known that the contractor would most likely use HP H-piles, which with dimensions between 9.70 x 10.075 in. and 14.21 x 14.885 in., with length between 25 and 100 feet.

CALTRANS also stated that it's very unlikely that multiple pile driving would occur simultaneously. If in the case that more than one contractor would be employed to conduct the construction activity, maximum of two pile work could occur and most likely it would be one pile driving and one pile removal.

In addition, NMFS also worked with CALTRANS to revise the size of the exclusion zones and Level B harassment zones due to the lack of on-site data to establish specific zones for driving of 24- and 36-in piles, H-piles, and sheet piles. CALTRANS agreed that it will use the data of 48-in piles to establish the temporary exclusion zones and Level B harassment zones based on in-situ measurements conducted in 2009 (CALTRANS 2009) before revised zones are established based on on-site measurements during the test pile driving. Likewise, for vibratory pile driving, if hydroacoustic monitoring indicates that sound levels have the potential to exceed the 180 or 190 dB SPL, corresponding exclusion zones will be established. The temporary exclusion zones and Level B zones for various pile driving and dismantling activities are listed in Table 1.

TABLE 1—TEMPORARY EXCLUSION AND LEVEL B HARASSMENT ZONES FOR VARIOUS PILE DRIVING AND DISMANTLING ACTIVITIES

Pile driving/dismantling activities	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
Vibratory Driving	24	2,000	NA	NA	NA
	36	2,000	NA	NA	NA
	Sheet pile	2,000	NA	NA	NA
Attenuated Impact Driving	24	NA	1,000	235	95
	36	NA	1,000	235	95
Unattenuated Proofing	24	NA	1,000	235	95

TABLE 1—TEMPORARY EXCLUSION AND LEVEL B HARASSMENT ZONES FOR VARIOUS PILE DRIVING AND DISMANTLING ACTIVITIES—Continued

Pile driving/dismantling activities	Pile size (m)	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)	Distance to 180 dB re 1 μPa (rms) (m)	Distance to 190 dB re 1 μPa (rms) (m)
	36	NA	1,000	235	95
Unattenuated Impact Driving.	H-pile	NA	1,000	235	95
Dismantling		2,000	NA	100	100

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on August 21, 2012 (77 FR 50473). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment 1: The Commission recommends that NMFS promulgate regulations and condition them to require further public review if CALTRANS or the contractor proposes any substantial changes to the project plan.

Response: In the **Federal Register** notice for the proposed IHA (77 FR 50473; August 21, 2012), NMFS noted that CALTRANS' dismantling of the existing east span SF–OBB may take up to five years to complete, therefore, a five-year letter of authorization (LOA) under a rulemaking may seem to be preferable. However, subsequent discussion with CALTRANS indicated that activities involving the existing bridge dismantling are likely to differ from year to year, and the agency may not be able to predict annual construction activities in advance. Further, the proposed dismantling activities could be completed in two to three years. Therefore, at this stage, NMFS concludes that the current best course of action for CALTRANS is to pursue annual IHAs.

Comment 2: The Commission requests NMFS require CALTRANS to implement full-time monitoring of Level A and B harassment zones during all in-water sound-producing activities (i.e., pile-driving and removal and bridge dismantlement activities).

Response: NMFS discussed with CALTRANS on marine mammal monitoring during its proposed in-water construction activities. As described in the **Federal Register** notice for the proposed IHA (77 FR 50473; August 21, 2012) and in CALTRANS IHA application, CALTRANS' planned construction includes an average annual installation of up to 635 temporary falsework piles, 1,925 steel sheet piles, and various mechanical dismantling activities. The extent of the work made it infeasible and costly to implement marine mammal monitoring for Level A and B harassment zones at all times, particularly since some of the Level B harassment zone for vibratory pile driving extends to a radius of 2 km. CALTRANS agrees to monitor the 180 and 190 dB exclusion zones and 160 dB behavioral harassment zone for all unattenuated impact pile driving of H-piles, and the 180 and 190 dB exclusion zones for attenuated impact pile driving and mechanical dismantling. CALTRANS will also monitor the 160 dB behavioral harassment zone for 20% of the attenuated impact pile driving, and 120 dB behavioral harassment zone for 20% of vibratory pile driving and mechanic dismantling. However, CALTRANS will not monitor the unattenuated impact pile proofing, which only lasts for less than one minute. Proposed proofing of piles will be limited to a maximum of two piles per day, and for less than 1 minute per pile, administering a maximum of twenty blows per pile. CALTRANS states, and NMFS agrees, that the logistics of scheduling and mobilizing a monitoring team for activities that will last less than one minute is not practical.

Description of Marine Mammals in the Area of the Specified Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2010.pdf.* Refer to that document for information on these species.

The marine mammals most likely to be found in the SF–OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF–OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving and pile removal, as well as dredging and dismantling of concrete foundation of existing bridge by saw cutting, flame cutting, mechanical splitting, drilling, pulverizing and/or hydro-cutting, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving and removal could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS could have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa @ 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale

(*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

Noises from dismantling of marine foundations by mechanical means include, but are not limited to, saw cutting, mechanical splitting, drilling and pulverizing. Saw cutting and drilling constitute non-pulse noise, whereas mechanical splitting and pulverizing constitute impulse noise. Although the characteristics of these noises are not well studied, noises from saw cutting and drilling are expected to be similar to vibratory pile driving, and noises from mechanical splitting and pulverizing are expected to be similar to impact pile driving, but at lower intensity, due to the similar mechanisms in sound generating but at a lower power outputs. CALTRANS states that drilling and saw cutting are anticipated to produce underwater sound pressure levels (SPLs) in excess of 120 dB RMS, but are not anticipated to exceed the 180 dB re 1 μPa (RMS). The mechanical splitting and pulverizing of concrete with equipment such as a hammer hoe has the potential to generate high sound pressure levels in excess of 190 dB re 1 μPa (RMS) at 1 m.

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, these sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, dredging, and dismantling existing bridge by mechanic means, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise. Due to shallow water depth near the Oakland shore, dredging activities are mainly used to create a barge access channel to dismantle the existing bridge. Therefore, underwater sound propagation from dredging is expected to be poor due to the extreme shallowness of the area to be dredged.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa (RMS) at received level for impulse noises (such as impact pile driving, mechanic splitting and pulverizing) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa (RMS) for non-impulse noises (vibratory pile driving, saw cutting, drilling, and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA,

noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS' 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Mitigation Measures

For the issuance of the IHA for the planned 2012–2013 SF–OBB construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable, NMFS requires the following mitigation measures to be implemented.

Use of Noise Attenuation Devices

To reduce impact on marine mammals, CALTRANS shall use marine pile driving energy attenuator (i.e., air bubble curtain system), or other equally effective sound attenuation method (e.g., dewatered cofferdam) for all impact pile driving, with the exception of pile proofing.

Establishment of Exclusion and Level B Harassment Zones

Before the commencement of in-water construction activities, which include impact pile driving, vibratory pile driving, and mechanical dismantling of existing bridge, CALTRANS shall establish exclusion zones where received underwater sound pressure levels (SPLs) are higher than 180 dB (rms) and 190 dB (rms) re 1 μPa for cetaceans and pinnipeds, respectively, and Level B behavioral harassment zones where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 μPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. Before the sizes of actual zones are determined based on hydroacoustic measurements, CALTRANS shall establish these zones based on prior measurements conducted during SF–OBB constructions, as described in Table 1 of this document.

Once the underwater acoustic measurements are conducted during initial test pile driving, CALTRANS shall adjust the size of the exclusion zones and Level B behavioral harassment zones, and monitor these zones accordingly.

NMFS-approved protected species observers (PSOs) shall conduct initial survey of the safety zone to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the safety zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whales. If no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (i.e., injury) through marine mammal observers monitoring a 190-dB exclusion zone for pinnipeds and 180-dB exclusion zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS and its contractor will also ''soft start'' the hammer prior to operating at full capacity. This should expose fewer animals to loud sounds both underwater and above water. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during the initial exclusion zone monitoring will not be injured.

Power Down and Shut-Down

As mentioned previously, although power down and shut-down measures will not be required for pile driving activities, these measures are required for mechanical dismantling of the existing bridge. The contractor perform mechanical dismantling work will stop in-water noise generating machinery when marine mammals are sighted within the designated exclusion zones.

Monitoring Measures

The following monitoring measures are required for the proposed SF–OBB construction activities.

Visual Monitoring

Besides using mitigation measures as a mean of implementing power down and shut-down measures for mechanical bridge dismantling, marine mammal monitoring will also be conducted to assess potential impacts from CALTRANS construction activities. CALTRANS will implement onsite marine mammal monitoring for 100% of all unattenuated impact pile driving of H-piles for 180- and 190-dB re 1 μPa exclusion zones and 160-dB re 1 μPa

Level B harassment zone, attenuated impact pile driving (except pile proofing) and mechanical dismantling for 180- and 190-dB re 1 μPa exclusion zones. CALTRANS will also monitor 20% of the attenuated impact pile driving for the 160-dB re 1 μPa Level B harassment zone, and 20% of vibratory pile driving and mechanic dismantling for the 120-dB re 1 μPa Level B harassment zone.

Monitoring of the pinniped and cetacean exclusion zones shall be conducted by a minimum of three qualified NMFS-approved protected species observers (PSOs). Observations will be made using high-quality binoculars (e.g., Zeiss, 10 x 42 power). PSOs will be equipped with radios or cell phones for maintaining contact with other observers and CALTRANS engineers, and range finders to determine distance to marine mammals, boats, buoys, and construction equipment.

Data on all observations will be recorded and will include the following information:

(1) Location of sighting;
(2) Species;
(3) Number of individuals;
(4) Number of calves present;
(5) Duration of sighting;
(6) Behavior of marine animals sighted;
(7) Direction of travel;
(8) When in relation to construction activities did the sighting occur (e.g., before, ''soft-start'', during, or after the pile driving or removal).

The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction will be recorded, as well as the time when seals re-haul after a flush.

Hydroacoustic Monitoring

The purpose of the underwater sound monitoring during dismantling of concrete foundations via mechanical means is to establish the exclusion zones of 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds. Monitoring will occur during the initial use of concrete dismantling equipment with the potential to generate sound pressure levels in excess of 180 dB re 1 μPa (rms). Monitoring will likely be conducted from construction barges and/or boats. Measurements will be taken at various distances as needed to determine the distance to the 180 and 190 dB re 1 μPa (rms) contours.

The purpose of underwater sound monitoring during impact pile driving will be to verify sound level estimates and confirm that sound levels do not equal or exceed 180 dB re 1 μPa (rms).

Reporting

CALTRANS will notify NMFS prior to the initiation of the pile driving and dismantling activities for the removal of the existing east span. NMFS will be informed of the initial sound pressure level measurements for both pile driving and foundation dismantling activities, including the final exclusion zone and Level B harassment zone radii established for impact and vibratory pile driving and marine foundation dismantling activities.

Monitoring reports will be posted on the SFOBB Project's biological mitigation Web site (*www.biomitigation.org*) on a weekly basis if in-water construction activities are conducted. Marine mammal monitoring reports will include species and numbers of marine mammals observed, time and location of observation and behavior of the animal. In addition, the reports will include an estimate of the number and species of marine mammals that may have been harassed as a result of activities.

In addition, CALTRANS will provide NMFS with a draft final report within 90 days after the expiration of the IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Marine Mammal Monitoring Report From Previous IHA

As mentioned above, marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within ZOIs that could result in behavioral harassment. However, the reports state that none of the animals were observed as been startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work.

Estimated Take by Incidental Harassment

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF–OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 μPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of zone of influence (ZOI) at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much larger ZOI of 120 dB (rms) re 1 μPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 μPa ZOI (CALTRANS). However, despite the ZOI being monitored extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used an impact hammer and which ones used a vibratory hammer. Therefore, at least some of these animals were not exposed to received level above 160 dB (rms) re μPa, and thus should not be considered as ''taken'' under the MMPA. No harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work (CALTRANS 2007; 2010).

Based on these results, and accounting for a certain level of uncertainty regarding the next phase of construction (which will include dismantling of the existing bridge by mechanical means), NMFS concludes that at maximum 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to noise levels that could cause Level B harassment as a result of the CALTRAN' SF–OBB construction activities.

Negligible Impact and Small Numbers Analyses and Determinations

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by

harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction and dismantling project, such as impact pile driving, are high intensity. However, the in-water pile driving for the piles would use small hammers and/or vibratory pile driving methods, coupled with noise attenuation mechanism such as air bubble curtains for impact pile driving, therefore the resulting exclusion zones for potential TS are expected to be extremely small (< 35 m) from the hammer. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF–OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS estimates that up to 50 harbor seals, 10 California sea lions, 10 harbor porpoises, and 5 gray whales could be exposed to received levels above 120 dB (rms) during vibratory pile driving or 160 dB (rms) during impact pile driving for the next season of construction activities due to the large numbers of piles to be driven and the extended zones of influence from vibratory pile driving. These are small numbers, representing 0.15% of the California stock of harbor seal population (estimated at 34,233; Carretta *et al.* 2010), 0.00% of the U.S. stock of California sea lion population (estimated at 238,000; Carretta *et al.* 2010), 0.10% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,181; Carretta *et al.* 2010), and 0.05% of the Eastern North Pacific stock of gray whale population (Allen and Angliss 2010).

Animals exposed to construction noise associated with the SF–OBB construction work would be limited to Level B behavioral harassment only, i.e., the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 μPa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 μPa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (i.e., 160 dB re 1 μPa (rms) from impulse sources and 120 dB re 1 μPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed SF–OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival. The maximum estimated 160 dB isopleths from impact pile driving is 500 m from the pile, and the estimated 120 dB maximum isopleths from vibratory pile driving is approximately 2,000 m from the pile. There is no pinniped haul-out area in the vicinity of the pile driving sites.

For the reasons discussed in this document, NMFS has determined that the impact of in-water pile driving associated with construction of the SF–OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF–OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

NMFS has determined that issuance of the IHA will have no effect on listed marine mammals, as none are known to occur in the action area.

Authorization

NMFS has issued an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 7, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–00381 Filed 1–10–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a product previously furnished by such agency.

Comments Must Be Received on or Before: 2/11/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

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 USC 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.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Reprographic Service, Department of State, Office of Logistics Management (OLM), (Offsite: 750 S 23rd Street, Arlington, VA), 1701 N Fort Myer Drive, Arlington, VA.

NPA: Linden Resources, Inc., Arlington, VA.

Contracting Activity: Department of State, Office of Acquisition Mgmt—MA, Arlington, VA.

Deletion

The following product is proposed for deletion from the Procurement List:

Product

Pencil, Woodcase, Rubberized

NSN: 7510–01–425–6766.

NPA: Industries for the Blind, Inc., West Allis, WI.

Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–00422 Filed 1–10–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 2/11/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 11/9/2012 (77 FR 67343–67344), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is 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 any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing a small entity to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN: 5180–01–435–3502—Tool Kit, Multipurpose Plier.

NPA: The Lighthouse for the Blind, St. Louis, MO.

Contracting Activity: General Services Administration, Kansas City, MO.

Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–00423 Filed 1–10–13; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Reopening of Public Comment Period for the Draft Environmental Impact Statement/Legislative Environmental Impact Statement for Renewal of Naval Air Weapons Station China Lake Public Land Withdrawal, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations (CFR) parts 1500–1508), and in accordance with the requirements of the California Military Lands Withdrawal and Overflights Act of 1994 (Pub. L. 103–433, part of the California Desert Protection Act), the Department of the Navy (DoN) prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (EIS)/Legislative Environmental Impact Statement (LEIS) for renewal of the Naval Air Weapons Station China Lake public land withdrawal. A Notice of Availability for the Draft EIS/LEIS was published in the **Federal Register** on August 10, 2012 (77 FR 47839). The public review period for the Draft EIS/LEIS ended on November 8, 2012. This notice announces the availability of additional reference materials and the

reopening of the public comment period until February 11, 2013.

SUPPLEMENTARY INFORMATION: With the publication of a Notice of Public Meetings in the **Federal Register** on August 17, 2012 (77 FR 49784), the DoN and its cooperating agency, the Bureau of Land Management, initiated a 90-day public comment period and held three public open house meetings to receive oral and written comments on the Draft EIS/LEIS and the proposed renewal of the public land withdrawal. The 90-day public comment period ended on November 8, 2012. Public comments received by the DoN during the public comment period indicated that certain key reference materials supporting the environmental impact analysis within the Draft EIS/LEIS were not made available to the public. This notice announces the reopening of the public comment period until February 11, 2013. During this re-opened public comment period, the Draft EIS/LEIS and the additional key reference materials are available for public review at the following libraries:

1. Ridgecrest Public Library, 131 East Las Flores Avenue, Ridgecrest, California 93555.
2. Trona Branch Library, 82805 Mount View, Trona, California 93562.
3. Lone Pine Branch Library, 127 Bush Street, Lone Pine, California 93545.
4. Barstow Branch Library, 304 East Buena Vista Street, Barstow, California 92311.
5. Mojave Public Library, 16916–1/2 State Highway 14, Space D2, Mojave, California 93501.
6. Lancaster Public Library, 601 West Lancaster Boulevard, Lancaster, California 93534.

A paper copy of the Executive Summary or a single compact disc of the Draft EIS/LEIS and additional key reference materials will be made available upon written request.

Federal, state and local agencies and officials, and interested groups and individuals are encouraged to review the key reference documents and provide written comments to the mailing address or through the project web site, both identified immediately below. All comments, whether written or submitted through the project web site during the re-opened public comment period, will become part of the public record on the Draft EIS/LEIS and be considered in preparing the Final EIS/LEIS.

ADDRESSES: Comments may be submitted in writing anytime during the re-opened public comment period to: Naval Facilities Engineering Command, Southwest, ATTN: NAWSCL Land Withdrawal Renewal EIS/LEIS Project Manager (Mr. Gene Beale), 1220 Pacific Highway, San Diego, California 92132–5190; *gene.beale@navy.mil.* In addition, comments may be submitted through the project Web site: *http://www.chinalakeleis.com.*

Dated: January 8, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–00427 Filed 1–10–13; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0067]

Agency Information Collection Activities; Comment Request; Impact Evaluation of Math Professional Development

AGENCY: IES/NCES, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 12, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0067 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Acting Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Math Professional Development.

OMB Control Number: 1850–NEW.

Type of Review: New information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 1,260.

Total Estimated Number of Annual Burden Hours: 2,211.

Abstract: This package requests clearance to recruit and collect data from districts, schools, and teachers for a study of math professional development. The study will provide important information about the implementation and impact of intensive, content-focused professional development on fourth grade teachers' content knowledge, classroom practice, and their students' achievement. The evaluation has an experimental design with teacher-level random assignment of a volunteer sample of approximately 200 fourth grade teachers in six districts to receive either the study's Professional Development (PD) or the district's ''business-as-usual'' PD. Findings will be presented in a final report scheduled for release in February 2016.

Dated: January 7, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–00425 Filed 1–10–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–30–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on December 19, 2012, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, own, operate and maintain its Virginia Southside Expansion Project (Project), an incremental expansion of Transco's existing pipeline system in its southern market area. Specifically, the Project involves the construction and operation of 91 miles of new pipeline facilities along Transco's existing South Virginia Lateral A and approximately 7 miles of Greenfield pipeline facilities; a new compressor station with two 10,915 horsepower (ISO) gas turbine-driven compressor; and the construction or modification of associated above ground and underground facilities. Further, the Project will provide 270,000 dekatherms per day (Dth/d) of incremental firm transportation service to Virginia Power Services Energy Corp., Inc. and Piedmont Natural Gas Company, Inc. Transco estimates that the proposed project will cost approximately $275 million, net of the Grant Transco expects to receive from the Virginia Tobacco Indemnification and Community Revitalization Commission. Finally, Transco proposes to place the Project facilities into service on September 1, 2015, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Bela Patel, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, telephone no. (713) 215–2659, and email: *PipelineExpansion@williams.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 7 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: January 25, 2013.

Dated: January 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00367 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–462–001.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.17(b): Joint OATT Attachment C–3 amendment correction to be effective 1/1/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5119.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–702–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position #X2–060 & Y1–068—Original SA No. 3469 to be effective 12/5/2012.
Filed Date: 1/4/13.
Accession Number: 20130104–5041.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–703–000.
Applicants: PJM Interconnection, L.L.C.
Description: Amendments to Schedule 12-Appendices re RTEP approved by PJM Board on 12/5/2012 to be effective 4/4/2013.
Filed Date: 1/4/13.

Accession Number: 20130104–5053.
Comments Due: 5 p.m. ET 2/4/13.

Docket Numbers: ER13–704–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: BPA NITSA (Clark PUD) to be effective 1/1/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5076.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–705–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA and Distribution Service Agmt Lancaster WAD B LLC to be effective 3/6/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5077.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–706–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: Noble Americas Energy Solutions NITSA Rev 5 to be effective 1/1/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5102.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–707–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii: 2013–01–04 Tariff Amendment—Payment Rescission Rules for Ancillary Services to be effective 10/1/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5103.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER13–708–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2012–01–04 Appendix K TOA to be effective 12/18/2013.
Filed Date: 1/4/13.
Accession Number: 20130104–5122.
Comments Due: 5 p.m. ET 1/25/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–13–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Section 204 Application of Midwest Independent Transmission System Operator, Inc.
Filed Date: 1/4/13.
Accession Number: 20130104–5108.
Comments Due: 5 p.m. ET 1/25/13.

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: January 04, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00399 Filed 1–10–13; 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: EC13–53–000.
Applicants: LWP Lessee, LLC.
Description: Application of LWP Lessee, LLC for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, and Expedited Consideration.
Filed Date: 12/26/12.
Accession Number: 20121226–5113.
Comments Due: 5 p.m. ET 1/16/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2302–004.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits its Triennial Market Power Update pursuant to Order No. 697.
Filed Date: 12/21/12.
Accession Number: 20121226–0200.
Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER10–2474–003; ER10–2475–003.
Applicants: Sierra Pacific Power Company.
Description: Updated Market Power Analysis for Southwest Region of Sierra Pacific Power Company, *et al.*
Filed Date: 12/26/2012.
Accession Number: 20121226–5111.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER10–3081–001.
Applicants: Equilon Enterprises LLC.
Description: Equilon Enterprises LLC submits Notice of Change in Status to be effective 12/27/2012.
Filed Date: 12/26/12.
Accession Number: 20121226–5100.
Comments Due: 5 p.m. ET 1/16/13.

Docket Numbers: ER10–3081–002.
Applicants: Equilon Enterprises LLC.
Description: Equilon Enterprises LLC submits Notice of Change in Status and Request for Designation as a Category 1 Seller.
Filed Date: 12/26/12.
Accession Number: 20121226–5109.
Comments Due: 5 p.m. ET 1/16/13.

Docket Numbers: ER11–3731–004.
Applicants: LWP Lessee, LLC.
Description: Notice of Non-Material Change in Status of LWP Lessee, LLC.
Filed Date: 12/26/12.
Accession Number: 20121226–5108.
Comments Due: 5 p.m. ET 1/16/13.

Docket Numbers: ER13–623–000.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. TSA–NEP–85 re G–33 Line Emergency Switching Instructions to be effective 4/9/2012.
Filed Date: 12/26/12.
Accession Number: 20121226–5043.
Comments Due: 5 p.m. ET 1/16/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–217–000.
Applicants: Coleman, Timothy.
Description: Form 556—Notice of Self-Certification for Qualifying Cogeneration Facility Status of Timothy Coleman.
Filed Date: 12/27/12.
Accession Number: 20121227–5044.
Comments Due: None Applicable.

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: December 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00410 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–58–000.
Applicants: Blue Canyon Windpower LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Blue Canyon Windpower LLC.
Filed Date: 1/2/13.
Accession Number: 20130102–5143.
Comments Due: 5 p.m. ET 1/23/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1763–001; ER10–1764–001; ER10–1765–001; ER10–1766–001; ER10–1767–001; ER10–1769–001; ER10–1642–003 ER10–1541–002.
Applicants: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc, Entergy Texas, Inc., Entergy New Orleans, Inc., EWO Marketing, Inc., Entergy Power, LLC.
Description: Notice of Non-Material Change in Status of Entergy Arkansas, Inc., et al.
Filed Date: 12/31/12.
Accession Number: 20121231–5242.
Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER12–569–002; ER12–775–001; ER10–1849–001; ER11–2037–001; ER12–2227–002; ER10–1887–001; ER10–1920–003; ER10–1928–003; ER10–1952–002; ER10–1961–001; ER12–1228–001; ER10–2720–003; ER11–4428–003; ER12–1880–002; ER10–1971–010 .
Applicants: Blackwell Wind, LLC, CPV Cimarron Renewable Energy Company, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Ensign Wind, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Sooner Wind, LLC, Gray County Wind Energy, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, NextEra Energy Power Marketing, LLC.
Description: NextEra Companies submit Triennial Market Power Update for the Southwest Power Pool Region.
Filed Date: 12/27/12.
Accession Number: 20121227–5176.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER12–2627–001; ER10–2488–005; ER12–1931–002; ER10–2504–003; ER12–610–003; ER13–338–001.
Applicants: Catalina Solar, LLC, Oasis Power Partners, LLC, Pacific Wind Lessee, LLC, Shiloh Wind Project 2, LLC, Shiloh III Lessee, LLC, Shiloh IV Lessee, LLC.
Description: Triennial Market Power Analysis Update of the EDF Renewable Energy Inc. Southwest Region Companies.
Filed Date: 12/31/12.
Accession Number: 20121231–5255.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER13–690–000.
Applicants: Public Service Company of New Mexico.
Description: PNM Notice of Transmission Rate Change—Part 2 of 3 to be effective 3/2/2013.
Filed Date: 1/2/13.
Accession Number: 20130102–5000.
Comments Due: 5 p.m. ET 1/23/13.

Docket Numbers: ER13–691–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3452; Queue No. W3–106 to be effective 12/18/2012.
Filed Date: 1/2/13.
Accession Number: 20130102–5076.
Comments Due: 5 p.m. ET 1/23/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD13–3–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard EOP–004–2—Event Reporting.
Filed Date: 12/31/12.
Accession Number: 20121231–5233.
Comments Due: 5 p.m. ET 1/30/13.

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: January 2, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00401 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1107–002.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits updated market power analysis for the Southwest Region.
Filed Date: 12/31/2012.
Accession Number: 20121231–5104.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER10–2854–001.
Applicants: ConocoPhillips Company.
Description: Notice of Non-Material Change in Status of ConocoPhillips Company.
Filed Date: 12/31/12.
Accession Number: 20121231–5130.
Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER11–3401–008.
Applicants: Golden Spread Panhandle Wind Ranch, LLC.
Description: Golden Spread Panhandle Wind Ranch, LLC submit Updated Market Power Analysis for Southwest Power Pool, Inc. Region.
Filed Date: 12/31/12.
Accession Number: 20121231–5133.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER11–4683–003; ER11–4684–003; ER11–2489–003; ER12–726–002; ER12–2639–001; ER11–3620–004; ER11–2882–005; ER10–2432–004; ER10–2435–004; ER10–2440–004; ER10–2442–004; ER10–2444–004; ER10–2446–004; ER10–2449–004; ER12–1431–002; ER12–1434–002;

ER12–1432–002; ER12–1435–002; ER10–3139–004; ER12–2510–001; ER12–2511–001; ER12–2512–001; ER12–2513–001.

Applicants: Elizabethtown Energy, LLC, Lumberton Energy, LLC, Hatchet Ridge Wind, LLC, Spring Valley Wind LLC, Ocotillo Express LLC, Lyonsdale Biomass, LLC, ReEnergy Sterling CT Limited Partnership, Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C., Dartmouth Power Associates Limited Partnership, Elmwood Park Power, LLC, Newark Bay Cogeneration Partnership, L.P, Pedricktown Cogeneration Company LP, York Generation Company LLC, ReEnergy Ashland LLC, ReEnergy Fort Fairfield LLC, ReEnergy Livermore Falls LLC, ReEnergy Stratton LLC, Black River Generation, LLC, C.P. Crane LLC, H.A. Wagner LLC, Raven Power Marketing LLC, Brandon Shores LLC.

Description: Notification of Non-Material Change in Status of Elizabethtown Energy, LLC, et al.

Filed Date: 12/31/12.

Accession Number: 20121231–5119.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–672–000.

Applicants: Public Service Company of Colorado.

Description: 2012–12–27–NSP-Tran-to-Load-Agrmt-547 to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5000.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–673–000.

Applicants: PJM Interconnection, L.L.C.

Description: 2012 Annual RTEP Allocation Filing to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5050.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–674–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–31–2012 O, GG MM Clean-up Filing to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5051.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–675–000.

Applicants: Catalina Solar, LLC.

Description: Catalina Solar MBR Compliance Filing to Update Citation to be effective 11/15/2012.

Filed Date: 12/31/12.

Accession Number: 20121231–5066.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–676–000.

Applicants: Calpine Power America—CA, LLC.

Description: Revised Market-Based Rate Tariff to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5067.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–677–000.

Applicants: Shiloh IV Lessee, LLC.

Description: Shiloh IV Lessee MBR Compliance Filing to Update Citation to be effective 12/15/2012.

Filed Date: 12/31/12.

Accession Number: 20121231–5079.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–678–000.

Applicants: Bangor Hydro Electric Company, ISO New England Inc.

Description: Oakfield LGIA to be effective 3/2/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5093.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–679–000.

Applicants: NV Energy, Inc.

Description: NV Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: OATT Revisions to Attachment N—LGIA and Attachment O—SGIA to be effective 3/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5122.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–680–000.

Applicants: Shiloh IV Lessee, LLC.

Description: Shiloh IV Lessee, LLC submits tariff filing per 35.15: Shiloh IV Wind Project FERC Electric Tariff Cancellation to be effective 12/31/2012.

Filed Date: 12/31/12

Accession Number: 20121231–5126

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–681–000.

Applicants: The Empire District Electric Company.

Description: The Empire District Electric Company submits tariff filing per 35.13(a)(2)(i): Revised GFR Template Detail Attachment D to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5127.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–682–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM NQ—Original SA Nos. 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468 to be effective 11/28/2012.

Filed Date: 12/31/12.

Accession Number: 20121231–5144.

Comments Due: 5 p.m. ET 1/22/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR13–1–000.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation Petition for Approval of Amendments to the Regional Delegation Agreement with ReliabilityFirst Corporation.

Filed Date: 12/28/12.

Accession Number: 20121228–5269.

Comments Due: 5 p.m. ET 1/18/13.

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: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00398 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–53–000.

Applicants: LWP Lessee, LLC.

Description: LWP Lessee, LLC submits supplemental statement to support Application for Approval Under Section 203 of the Federal Power Act.

Filed Date: 12/28/12.

Accession Number: 20121228–5146.

Comments Due: 5 p.m. ET 1/16/13.

Docket Numbers: EC13–54–000.

Applicants: Alpaugh 50, LLC, Alpaugh North, LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Alpaugh 50, LLC, *et al.*

Filed Date: 12/28/12.

Accession Number: 20121228–5166.

Comments Due: 5 p.m. ET 1/18/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–003.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits its triennial demonstration of the absence of market power.
Filed Date: 12/28/12.
Accession Number: 20121228–5122.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER10–3079–004; ER12–126–006.
Applicants: Tyr Energy, LLC, Trademark Merchant Energy, LLC.
Description: Updated Market Power Analysis for the Southwest Power Pool Region of Tyr Energy, LLC, *et al.*
Filed Date: 12/28/12.
Accession Number: 20121228–5167.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER12–60–004; ER10–1632–004; ER10–1597–002; ER10–1624–002; ER10–1585–002; ER10–1594–002; ER10–1617–002; ER10–1628–002.
Applicants: Tenaska Power Management, LLC, Tenaska Power Services Co., Kiowa Power Partners, LLC, California Electric Marketing, LLC, New Mexico Electric Marketing, LLC, Tenaska Gateway Partners, Ltd., Alabama Electric Marketing, LLC, Texas Electric Marketing, LLC.
Description: Updated Market Power Analysis of Tenaska Power Management, LLC, *et al.*
Filed Date: 12/27/12.
Accession Number: 20121227–5117.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER13–17–000.
Applicants: Niagara Wind Power, LLC.
Description: Niagara Wind Power, LLC submits tariff filing per 35.19a(b): Refund Report to be effective N/A.
Filed Date: 12/28/12.
Accession Number: 20121228–5099.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–448–001.
Applicants: Arizona Public Service Company.
Description: Compliance Filing to Rate Schedule Nos. 242 and 244 to be effective 1/22/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5078.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–639–000.
Applicants: Broken Bow Wind, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5050.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–640–000.
Applicants: Crofton Bluffs Wind, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5051.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–641–000.
Applicants: Elkhorn Ridge Wind, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5052.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–642–000.
Applicants: Laredo Ridge Wind, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5053.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–643–000.
Applicants: Taloga Wind, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5054.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–644–000.
Applicants: San Juan Mesa Wind Project, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5055.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–645–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmts-544 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5056.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–646–000.
Applicants: Sleeping Bear, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5058.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–647–000.
Applicants: CL Power Sales Eight, L.L.C.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5062.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–648–000.
Applicants: CP Power Sales Nineteen, L.L.C.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5068.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–649–000.
Applicants: CP Power Sales Seventeen, L.L.C.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5073.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–650–000.
Applicants: CP Power Sales Twenty, L.L.C.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5074.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–651–000.
Applicants: Edison Mission Marketing & Trading, Inc.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5075.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–652–000.
Applicants: Edison Mission Solutions, LLC.
Description: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5076.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–653–000.
Applicants: Wildorado Wind, LLC.
Description: Wildorado Wind, LLC submits tariff filing per 35.37: Triennial Market Power Analysis for the SPP Region to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5077.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–654–000.
Applicants: Southwestern Public Service Company.
Description: 2012–12–28–GSEC–SCEC-Kress-CA–654–0.0.0-Filing to be effective 12/28/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5082.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–655–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmts-546 to be effective 1/1/2013.

Filed Date: 12/28/12.
Accession Number: 20121228–5084.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–656–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2012–12–27–NSP-Tran-to Load-Master Agrmts-549 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5098.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–657–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2012–12–27–NSP-Tran-to Load-Master Agrmts-550 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5116.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–658–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Amendment to Extend Terms of Eldorado Co-Tenancy and Communication Agreement to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5118.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–659–000.
Applicants: Coso Geothermal Power Holdings, LLC.
Description: Coso Geothermal Power Holdings, LLC submits tariff filing per 35.13(a)(2)(iii): First Revised MBR to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5120.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–660–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits tariff filing per 35.13(a)(2)(iii): Avista—BPA Parallel Operation Agreement to be effective 12/31/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5136.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–661–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35: FERC Order No. 741 Integrated Marketplace Compliance Filing to be effective 3/1/2014.
Filed Date: 12/28/12.
Accession Number: 20121228–5150.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–662–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1066R4 Northeast Texas Electric Cooperative, Inc. NITSA NOA to be effective 12/1/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5151.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–663–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits tariff filing per 35.13(a)(2)(iii): 2012–12–27–NSP-Tran-to Load-Master Agrmts-541 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5158.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–664–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1518R4 Arkansas Electric Cooperative Corporation NITSA NOA to be effective 12/1/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5163.
Comments Due: 5 p.m. ET 1/18/13.

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: December 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00412 Filed 1–10–13; 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: RP13–421–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits Penalty Revenue Crediting Report for 2011–2012 contract year.
Filed Date: 12/28/12.
Accession Number: 20121228–5107.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–422–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company's submits Penalty Revenue Crediting Report for 2011–2012 contract year.
Filed Date: 12/28/12.
Accession Number: 20121228–5117.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–423–000.
Applicants: Rockies Express Pipeline LLC.
Description: Reservation Charge Credits to be effective 2/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5121.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–424–000.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits Penalty Revenue Crediting Report for 2011–2012 contract year.
Filed Date: 12/28/12.
Accession Number: 20121228–5123.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–425–000.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Company submits Penalty Revenue Crediting Report for 2011–2012 contract year.
Filed Date: 12/28/12.
Accession Number: 20121228–5124.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–426–000.
Applicants: Leaf River Energy Center LLC.
Description: Leaf River Energy Center LLC—Tariff Modifications to Add FSS Overrun Services to be effective 2/1/2013.
Filed Date: 12/28/12.

Accession Number: 20121228–5125.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–427–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/28/12 Negotiated Rates—Citigroup Energy (RTS) Amend 2 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5147.
Comments Due: 5 p.m. ET 1/9/13.

Docket Numbers: RP13–428–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/31/12 Negotiated Rates—United Energy Trading, LLC—(HUB) 5095–89 to be effective 12/29/2012.
Filed Date: 12/31/12.
Accession Number: 20121231–5049.
Comments Due: 5 p.m. ET 1/14/13.

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.

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00404 Filed 1–10–13; 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 rate filings:

Docket Numbers: ER12–1308–002.
Applicants: Palouse Wind, LLC.
Description: Notice of Change in Fact of Palouse Wind, LLC.
Filed Date: 1/2/13.
Accession Number: 20130102–5236.
Comments Due: 5 p.m. ET 1/23/13.

Docket Numbers: ER12–2682–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest Independent Transmission System Operator, Inc. submits Amendment to September 24, 2012 Pro Forma Tariff Sheets Including Proposed Module B–1 to the MISO Tariff.
Filed Date: 12/31/12.
Accession Number: 20121231–5131.
Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–395–000.
Applicants: Safe Harbor Water Power Corporation.
Description: Safe Harbor Water Power Corporation submits Amendment to the November 16, 2012 Filing Letter.
Filed Date: 12/26/12.
Accession Number: 20121226–5061.
Comments Due: 5 p.m. ET 1/16/13.

Docket Numbers: ER13–692–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 2013–01–02_OASIS Filing to be effective 3/4/2013.
Filed Date: 1/2/13.
Accession Number: 20130102–5158.
Comments Due: 5 p.m. ET 1/23/13.

Docket Numbers: ER13–693–000.
Applicants: WSPP Inc.
Description: Amendments to the WSPP Agreement to be effective 3/3/2013.
Filed Date: 1/2/13.
Accession Number: 20130102–5171.
Comments Due: 5 p.m. ET 1/23/13.

Docket Numbers: ER13–694–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of service agreement No. 512.
Filed Date: 1/2/13.
Accession Number: 20130102–5200.
Comments Due: 5 p.m. ET 1/23/13.

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: January 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00402 Filed 1–10–13; 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: EC13–53–000.
Applicants: LWP Lessee, LLC.
Description: Amended Joint Application of LWP Lessee, LLC and TAQA US Lakefield Holdings, LLC for Approval under Section 203 of the FPA and Requests for Expedited Consideration and Confidential Treatment.
Filed Date: 1/3/13.
Accession Number: 20130103–5103.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: EC13–57–000.
Applicants: Northampton Generating Company, L.P.
Description: Supplement to the December 28, 2012 Application for Authorization for Disposition of Jurisdictional Facilities of Northampton Generating Company, L.P.
Filed Date: 1/3/13.
Accession Number: 20130103–5053.
Comments Due: 5 p.m. ET 1/18/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–36–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Refund Report under protest in compliance with the November 20, 2012 Commission Order.
Filed Date: 1/4/13.
Accession Number: 20130104–5025.
Comments Due: 5 p.m. ET 1/25/13.

Docket Numbers: ER12–2484–001.
Applicants: LVI Power, LLC.
Description: LVI Power, LLC submits Notice of Change of company address and update of company ownership.
Filed Date: 1/3/13.
Accession Number: 20130103–5065.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–37–000; ER13–37–001; ER13–38–000
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest Independent Transmission System Operator, Inc submits Deficiency Response to the Commission's December 4, 2012 Letter regarding Proposed SSR Agreement and Associated Rate Schedule for the City of Escanaba, MI.
Filed Date: 1/3/13.
Accession Number: 20130103–5096.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–695–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3454; Queue No. X1–094 to be effective 12/5/2012.
Filed Date: 1/3/13.
Accession Number: 20130103–5034.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–696–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3455; Queue No. X4–012 to be effective 12/5/2012.
Filed Date: 1/3/13.
Accession Number: 20130103–5043.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–697–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Original SA No. 3281 in Docket No. ER12–1746–000 to be effective 12/17/2012.
Filed Date: 1/3/13.
Accession Number: 20130103–5044.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–698–000.
Applicants: Southard Energy Partners LLC.
Description: Southard Energy Partners LLC, FERC Electric Tariff to be effective 2/11/2013.
Filed Date: 1/3/13.
Accession Number: 20130103–5073.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–699–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–01–03 Tariff Amendment—Black Start and System Restoration Plan to be effective 4/3/2013.
Filed Date: 1/3/13.
Accession Number: 20130103–5074.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–700–000.
Applicants: AV Solar Ranch 1, LLC.
Description: Request for Category 1 Seller Status and Revised Market-Based Rate Tariff to be effective 1/4/2013.
Filed Date: 1/3/13.
Accession Number: 20130103–5075.
Comments Due: 5 p.m. ET 1/24/13.

Docket Numbers: ER13–701–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest Independent Transmission System Operator, Inc. submits Notice of Termination of Generator Interconnection Agreement for Project No. G517.
Filed Date: 1/3/13.
Accession Number: 20130103–5090.
Comments Due: 5 p.m. ET 1/24/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: January 4, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00403 Filed 1–10–13; 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: EC13–55–000.
Applicants: Choctaw Generation Limited Partnership, PurEnergy I, LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Confidential Treatment and Waivers of Choctaw Generation Limited Partnership and PurEnergy I, LLC.
Filed Date: 12/28/12.
Accession Number: 20121228–5259.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: EC13–56–000.
Applicants: Fox Energy Company, LLC, Fox Energy OP, L.P., Fox River Power, LLC, Wisconsin Public Service Corporation.
Description: Section 203 Application of Fox Energy Company, LLC, Fox Energy OP, L.P, Fox River Power, LLC, and Wisconsin Public Service Corporation.
Filed Date: 12/28/12.
Accession Number: 20121228–5261.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: EC13–57–000.
Applicants: Northampton Generating Company, L.P.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Northampton Generating Company, L.P.
Filed Date: 12/28/12.
Accession Number: 20121228–5263.
Comments Due: 5 p.m. ET 1/18/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–006; ER10–3081–003.
Applicants: Shell Energy North America (US), L.P., Equilon Enterprises LLC.
Description: Notice of Non-Material Change in Status of Shell Energy North America (US), L.P., *et al.*
Filed Date: 12/28/12.
Accession Number: 20121228–5257.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER10–1484–007.
Applicants: Shell Energy North America (US), L.P.
Description: Updated Market Power Analysis for the Southwest Power Pool Region of Shell Energy North America (US), L.P.
Filed Date: 12/28/12.
Accession Number: 20121228–5258.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER10–3168–004; ER13–445–001; ER11–4063–001; ER11–4060–001; ER11–4061–001.
Applicants: ArcLight Energy Marketing, LLC, Badger Creek Limited, Double ''C'' Limited, High Sierra Limited, Kern Front Limited.
Description: Updated Market Power Analysis for the Southwest Region of ArcLight Energy Marketing, LLC, *et al.*
Filed Date: 12/27/12.
Accession Number: 20121227–5113.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER11–3414–004.
Applicants: Blue Canyon Windpower LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower VI LLC, Cloud County Wind Farm, LLC.
Description: Blue Canyon Windpower LLC, *et. al.* submits Updated Market Power Analysis for Southwest Power Pool Region.
Filed Date: 12/27/12.
Accession Number: 20121227–5173.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER11–3576–007.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Updated Market Power Analysis to be effective 12/28/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5191.
Comments Due: 5 p.m. ET 2/26/13.

Docket Numbers: ER13–631–000.
Applicants: Blue Canyon Windpower LLC.

Description: First Revised MBR to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5152.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–632–000.
Applicants: Blue Canyon Windpower II LLC.
Description: First Revised MBR to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5154.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–634–000.
Applicants: Blue Canyon Windpower V LLC.
Description: First Revised MBR to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5156.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–635–000.
Applicants: Cloud County Wind Farm, LLC.
Description: First Revised MBR to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5157.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–665–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 12–28–2012 LTTR ARR Filing to be effective 3/29/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5207.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–666–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmts-548 to be effective 1/1/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5208.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–667–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Filing to Add MBR Ancillary Service Category Status to be effective 2/26/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5209.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–668–000.
Applicants: UniSource Energy Development Company.
Description: UniSource Energy Development Company submits tariff filing per 35.13(a)(2)(iii): Unisource Energy Dev. Filing to Revise MBR Ancillary Service Category Status to be effective 2/26/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5210.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–669–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 12–28–12 EE Filing to be effective 2/28/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5215.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–670–000.
Applicants: UNS Electric, Inc.
Description: UNS Electric, Inc. submits tariff filing per 35.13(a)(2)(iii): UNS Electric Filing to Revise MBR Ancillary Service Category Status to be effective 2/26/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5221.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–671–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): SA 576—WKN Montana II LGIA—1st Revised to be effective 12/29/2012.
Filed Date: 12/28/12.
Accession Number: 20121228–5230.
Comments Due: 5 p.m. ET 1/18/13.

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: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00413 Filed 1–10–13; 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 rate filings:

Docket Numbers: ER10–2400–002; ER10–2401–002; ER10–2402–002; ER11–3414–004; ER10–2403–002.
Applicants: Blue Canyon Windpower LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower VI LLC, Cloud County Wind Farm, LLC.
Description: Blue Canyon Windpower LLC, *et al.* submits Updated Market Power Analysis for Southwest Power Pool Region.
Filed Date: 12/27/12.
Accession Number: 20121227–5173.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER11–4534–004.
Applicants: Public Service Company of New Mexico.
Description: Errata to Revised PSA to be effective 12/10/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5128.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER12–817–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 12–27–2012 RAR Compliance Filing to be effective 2/27/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5059.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER12–2706–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 12–27–2012 RAR GAP Compliance Filing to be effective 11/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5089.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–624–000.
Applicants: ArcLight Energy Marketing, LLC.
Description: ArcLight Energy Marketing, LLC submits tariff filing per 35.13(a)(2)(iii: AEM Second Revised MBR to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5058.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–625–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmts-545 to be effective 1/1/2013.

Filed Date: 12/27/12.
Accession Number: 20121227–5088.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–626–000.
Applicants: Wisconsin Public Service Corporation.
Description: WPSC Distribution Interconnection Agreement with WEPCO to be effective 1/1/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5098.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–627–000.
Applicants: Alliant Energy Corporate Services, Inc.
Description: Cancellation of AECS Market-Based Rate Wholesale Power Sales Tariff to be effective 12/31/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5116.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–628–000.
Applicants: Wellhead Power Delano, LLC.
Description: Notice of Succession to be effective 12/28/2012.
Filed Date: 12/27/12.
Accession Number: 20121227–5123.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–629–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmt-542 to be effective 1/1/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5140.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–630–000.
Applicants: Arizona Public Service Company.
Description: Triennial Market Power Update and Market-Based Rate Tariff Modification to be effective 3/1/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5147.
Comments Due: 5 p.m. ET 2/25/13.

Docket Numbers: ER13–633–000.
Applicants: Public Service Company of Colorado.
Description: 2012–12–27–NSP-Tran-to Load-Master Agrmts-543 to be effective 1/1/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5155.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–636–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA 1926 METC-Consumers DTIA to be effective 3/1/2013.
Filed Date: 12/27/12.
Accession Number: 20121227–5167.
Comments Due: 5 p.m. ET 1/17/13.

Docket Numbers: ER13–637–000.
Applicants: Southern California Edison Company.
Description: SGIA & Distribution Service Agmt Golden Solar-Leffington Roof Top Solar Project to be effective 2/27/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5000.
Comments Due: 5 p.m. ET 1/18/13.

Docket Numbers: ER13–638–000.
Applicants: Southern California Edison Company.
Description: SGIA & Distribution Service Agmt with Golden Solar-Adler Roof Top Solar Project to be effective 2/27/2013.
Filed Date: 12/28/12.
Accession Number: 20121228–5001.
Comments Due: 5 p.m. ET 1/18/13.

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: December 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00411 Filed 1–10–13; 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 rate filings:

Docket Numbers: ER10–1530–001.
Applicants: Llano Estacado Wind, LLC.
Description: Triennial Updated Market Power Analysis for the Southwest Power Pool, Inc. Region of Llano Estacado Wind, LLC.
Filed Date: 12/31/12.
Accession Number: 20121231–5201.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER10–2331–013; ER10–2343–013; ER10–2319–012; ER10–2320–012; ER10–2317–011; ER10–2322–013; ER10–2324–012; ER10–2325–011; ER10–2332–012; ER10–2326–013; ER10–2327–014; ER10–2328–012; ER11–4609–011; ER10–2330–013.
Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Triton Power Michigan LLC, Utility Contract Funding, L.L.C., Central Power & Lime LLC.
Description: Updated Market Power Analysis and Order 697 Compliance Filing for the Southwest Power Pool, Inc. Region of J.P. Morgan Ventures Energy Corporation.
Filed Date: 12/31/12.
Accession Number: 20121231–5204.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER11–2211–002; ER11–2209–002; ER11–2210–002; ER11–2207–002; ER11–2206–002; ER11–2843–001; ER10–3244–001.
Applicants: Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Oak Creek Wind Power, LLC, Coso Geothermal Power Holdings, LLC.
Description: Updated Market Power Analysis for the Southwest Power Pool, Inc. Region of Alta Wind I, LLC, et al.
Filed Date: 12/31/12.
Accession Number: 20121231–5183.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER11–3777–001; ER10–2042–009; ER10–1938–004; ER10–1937–002; ER10–1898–003; ER10–1934–003; ER10–1893–003; ER10–1867–002; ER10–1862–003.
Applicants: Calpine Oneta Power, LLC, Calpine Energy Services, L.P., Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, CES Marketing V, L.P., CES Marketing IX, LLC, CES Marketing X, LLC, Power Contract Financing, L.L.C., PCF2, LLC.
Description: Updated Market Power Analysis of Calpine Oneta Power, LLC, et al. for the Southwest Power Pool, Inc. Region.
Filed Date: 12/31/12.
Accession Number: 20121231–5197.
Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER11–4055–002; ER12–1566–002; ER12–1470–002; ER10–2977–002; ER11–3987–003; ER10–1290–003; ER10–2814–002; ER10–3026–002.
Applicants: Copper Mountain Solar 1, LLC, Copper Mountain Solar 2, LLC, Energia Sierra Juarez U.S., LLC, Mesquite Power, LLC, Mesquite Solar 1, LLC, San Diego Gas & Electric Company,

Sempra Generation, Termoelectrica U.S. LLC.

Description: Triennial Updated Market Power Analysis for the Southwest Power Pool, Inc. Region of Copper Mountain Solar 1, LLC, et. al.

Filed Date: 12/31/12.

Accession Number: 20121231–5192.

Comments Due: 5 p.m. ET 3/1/13.

Docket Numbers: ER13–683–000.

Applicants: WSPP Inc.

Description: Revisions to the WSPP Agreement List of Members to be effective 12/31/2012.

Filed Date: 12/31/12.

Accession Number: 20121231–5155.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–684–000.

Applicants: NV Energy, Inc.

Description: OATT Revisions to Schedule 04—Energy Imbalance to be effective 3/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5158.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–685–000.

Applicants: Public Service Company of New Mexico.

Description: PNM Notice of Transmission Rate Change—Part 1 of 3 to be effective 3/2/2012.

Filed Date: 12/31/12.

Accession Number: 20121231–5159.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–686–000.

Applicants: Entergy Arkansas, Inc.

Description: Chisholm-SoCo A1 PtP Transfer Agreement to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5160.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–687–000.

Applicants: Public Service Company of New Mexico.

Description: PNM Notice of Transmission Rate Change—Part 3 of 3 to be effective 3/2/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5161.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–688–000.

Applicants: New England Power Pool Participants Committee.

Description: Jan 2013 Membership Filing to be effective 1/1/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5162.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: ER13–689–000.

Applicants: Avista Corporation.

Description: Avista—BPA Parallel Operation Agreement RS T–1110 to be effective 1/2/2013.

Filed Date: 12/31/12.

Accession Number: 20121231–5164.

Comments Due: 5 p.m. ET 1/22/13.

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: January 2, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00400 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–37–000]

CSOLAR IV South, LLC, Wistaria Ranch Solar, LLC, CSOLAR IV West, LLC, CSOLAR IV North, LLC v. California Independent System Operator Corporation; Notice of Complaint

Take notice that on January 3, 2013, pursuant to sections 206 and 306 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC), CSOLAR IV South, LLC, Wistaria Ranch Solar, LLC, CSOLAR IV West, LLC and CSOLAR IV North, LLC (collectively, the CSOLAR Entities or Complainants), filed a complaint against California Independent System Operator Corporation (CAISO or Respondent) alleging that CAISO's interpretation of its Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement is unjust and unreasonable, as more fully described in the complaint.

The Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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 January 23, 2013.

Dated: January 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00369 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–32–000]

CAlifornians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey, v. Pacific Gas and Electric Company, Contra Costa Generating Station LLC for the Oakley Generating Station; Notice of Complaint

Take notice that on December 28, 2012, pursuant to the Federal Power Act (FPA), 16 U.S.C. 824d, 824e, 825e, and 825h, (2012) and Rule 206, 16 CFR 385.206 (2012) of the Rules of Practice and Procedure (Rules) of the Federal

Energy Regulatory Commission (FERC), CAlifornians for Renewable Energy, Inc.; Michael E. Boyd; and Robert M. Sarvey (Complainants) filed a complaint against Pacific Gas and Electric Company (PG&E); and Contra Costa Generating Station LLC for the Oakley Generating Station(Oakley) (Respondents) concerning a Power Purchase Agreement (PPA) between Oakley and PG&E wherein California Public Utilities Commission (CPUC) approved an amended purchase and sale agreement (PSA).

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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: 5:00 p.m. Eastern Time on January 24, 2013.

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00409 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–436–000]

CAlifornians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey v. Pacific Gas and Electric Company; Notice of Complaint

Take notice that on January 3, 2013, pursuant to the Natural Gas Act, 15 U.S.C. 717–717z (2012) and Rule 206, 18 CFR 385.206 (2012) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC); CAlifornians for Renewable Energy, Inc., Michael E. Boyd, and Robert M. Sarvey (Complainants), filed a complaint against Pacific Gas and Electric Company (PG&E or Respondent) alleging that PG&E violated the terms and conditions of their blanket certificate [1] through a failure to meet requirements to maintain its natural gas transmission system.

The Complainants certify that copies of the complaint were served on the contacts for the Respondents as listed on the Commission's list of Corporate Officials and on parties of the regulatory agencies the Complainants reasonably expect to be affected by this complaint.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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: 5:00 p.m. Eastern Time on January 23, 2013.

Dated: January 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00366 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

[1] See Letter Order Pursuant § 375.307 Pacific Gas and Electric Company Docket No. PR10–72–000 Issued: July 18, 2011, Accession Number: 20110718–3048.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–28–000]

Nevada Power Company; Notice of Initiation of Proceeding and Refund Effective Date

On December 31, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL13–28–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed transmission and ancillary service rates by Nevada Power Company. *Nevada Power Company,* 141 FERC ¶ 61,267 (2012).

The refund effective date in Docket No. EL13–28–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00406 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–29–000]

Sierra Pacific Power Company; Notice of Initiation of Proceeding and Refund Effective Date

On December 31, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL13–29–000, pursuant to section 206

of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed transmission and ancillary service rates by Sierra Pacific Power Company. *Sierra Pacific Power Company,* 141 FERC ¶ 61,266 (2012).

The refund effective date in Docket No. EL13–29–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00407 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–26–000]

Startrans IO, LLC; Notice of Initiation of Proceeding and Refund Effective Date

On December 31, 2012, the Commission issued an order that initiated a proceeding in Docket No. EL13–26–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the proposed transmission revenue requirement rates by Startrans IO, LLC. *Startrans IO, LLC,* 141 FERC ¶ 61,271 (2012).

The refund effective date in Docket No. EL13–26–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00405 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2343–081]

Allegheny Energy Supply, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-Filing Process.

b. *Project No.:* 2343–081.

c. *Date Filed:* November 8, 2012.

d. *Submitted by:* Allegheny Energy Supply, LLC.

e. *Name of Project:* Millville Hydroelectric.

f. *Location:* On the Shenandoah River, near the town of Harpers Ferry in Jefferson County, West Virginia. The project does not occupy any lands of United States.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Laura J. Cowan, Project Manager, Kleinschmidt Associates, P.O. Box 278, 400 Historic Drive, Strasburg, PA 17579, Telephone: (717) 983–4056.

i. *FERC Contact:* Michael Spencer at (202) 502–6093 or email at *michael.spencer@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical 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 FirstEnergy as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Allegheny Energy Supply, LLC, filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission. 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 *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. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings with the Commission must include on the first page, project name (Millville Hydroelectric Project) and

number (P–2343–081), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 6, 2013.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, February 6, 2013
Time: 10:00 a.m.
Location: Hampton Inn, 157 Pimlico Drive, Charles Town, West Virginia 25414
Phone: (304) 725–2200

Evening Scoping Meeting

Date: Wednesday, February 6, 2013
Time: 6:00 p.m.
Location: Hampton Inn, 157 Pimlico Drive, Charles Town, West Virginia 25414
Phone: (304) 725–2200

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The applicant and Commission staff will conduct an *Environmental Site Review* of the project on Wednesday, February 6, 2013, starting at 1:00 p.m. All participants should meet at Millville Hydroelectric Project, on the Shenandoah River, WV. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Ms. Laura J. Cowan of Kleinschmidt Associates at (717) 983–4056 on or before February 6, 2013.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: January 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00370 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–30–000; QF03–76–003; QF03–80–003]

CAlifornians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey v. California Public Utilities Commission, Pacific Gas and Electric Company, Contra Costa Generating Station LLC, for the Oakley Generating Station; Notice of Petition for Enforcement

Take notice that on December 27, 2012, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), CAlifornians for Renewable Energy, Inc.; Michael E. Boyd; and Robert M. Sarvey filed a petition requesting the Federal Energy Regulatory Commission (Commission) initiate an enforcement action against Pacific Gas and Electric Company (PG&E); and Contra Costa Generating Station LLC for the Oakley Generating Station.

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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the 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: 5:00 p.m. Eastern Time on January 24, 2013.

Dated: December 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00408 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–32–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on December 19, 2012, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed a prior notice request pursuant to sections 157.205, 157.210, and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon and relocate a compressor from its Adaline Compressor Station located in Marshall County, WV to its Seneca Compressor Station located in Pendleton County, WV. Columbia also seeks authorization to abandon by removal an existing 6,200 horsepower compressor unit at its Seneca Compressor Station. Columbia estimates the cost of the proposed activities to be approximately $6.4 million, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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 at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission, LLC, PO Box 1273, Charleston, West Virginia 25325–1273, by telephone at (304) 357–2359, or by facsimile at (304) 357–3206.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: January 4, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00368 Filed 1–10–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0108; FRL–9769–6]

Release of Draft Document Related to the Review of the National Ambient Air Quality Standards for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft documents for public comment.

SUMMARY: On or about January 8, 2013, the Office of Air Quality Planning and Standards (OAQPS) will make available for public review the draft document titled, *Policy Assessment for the Review of the Lead National Ambient Air Quality Standards, External Review Draft* (PA). This document was prepared as part of the current review of the national ambient air quality standards (NAAQS) for lead (Pb).

DATES: Comments should be received on or before February 4.

ADDRESSES: This document is available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.*

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0108, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *a-and-r-Docket@epa.gov.*
- Fax: 202–566–1741.
- Mail: EPA–HQ–OAR–2010–0108, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- Hand Delivery: Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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–HQ–OAR–2010–0108. The 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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, e.g., 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. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West,

Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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 Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre Murphy, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–0729; fax number: 919–541–0237; email address: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *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 the 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 submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Specific to This Document

Two sections of the Clean Air Act govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in her ''judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;'' ''the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;'' and ''for which * * * [the Administrator] plans to issue air quality criteria * * *''. Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *'' 42 U.S.C. 7408(b). Under section 109 (42 U.S.C. 7409), the EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria. Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *.'' Since the early 1980's, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

Presently, EPA is reviewing the air quality criteria and NAAQS for Pb. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the Lead National Ambient Air Quality Standards.*[1] The draft PA document announced today, when final, will serve to ''bridge the gap'' between the scientific information and the judgments required of the Administrator in determining whether to retain or revise the existing NAAQS for Pb, and, if revision is considered, what revisions may be appropriate. The draft PA builds upon information presented in the third draft *Integrated Science Assessment for Lead*[2] and health and ecological risk assessments developed in the last review.[3] The draft PA will be available on or about January 8, 2013, through the agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review of this draft document at an upcoming public meeting of the CASAC. Information about this public meeting, including the dates and location, will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, the EPA will consider comments received from the CASAC and the public in preparing revisions to this document. The EPA will consider public comments submitted in response to this notice when revising the documents. Comments should be submitted to the docket, as described above. The document that is the subject of today's notice does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Dated: January 7, 2013.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2013–00430 Filed 1–10–13; 8:45 am]

BILLING CODE 6560–50–P

[1] EPA EPA–452/R–11–008; November 2011; Available: *http://www.epa.gov/ttn/naaqs/standards/pb/data/20111117PbIRPfinal.pdf.*

[2] EPA/600/R–10/075C; November 2012; *http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=242655.*

[3] Upon consideration of the evidence newly available in this review with regard to risk and exposure assessment in the REA Planning Document for the review (available at *http://www.epa.gov/ttn/naaqs/standards/pb/data/20110628pbplanningdoc.pdf*), staff concluded, and CASAC Pb Panel generally concurred, that new health and ecological REAs were not warranted by the newly available evidence.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9769–5; Docket ID No. EPA–HQ–ORD–2011–0895]

Draft Research Report: Investigation of Ground Water Contamination Near Pavillion, WY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Comment Period.

SUMMARY: EPA is announcing an extension to the public comment period for the external review of the draft research report titled, ''Investigation of Ground Water Contamination near Pavillion, Wyoming.'' The draft research report was prepared by the National Risk Management Research Laboratory, within the EPA Office of Research and Development, and EPA Region 8. This draft research report is not final as described in EPA's Information Quality Guidelines, and does not represent and should not be construed to represent Agency policy or views. During the extended public comment period, the EPA will post additional technical information on the web. This will include additional details on how the study was conducted, recent information from Phase V sampling, and responses to issues commonly raised by stakeholders. The EPA also intends to meet with key stakeholders during this period. The Agency will continue to review the status of its work on Pavillion in light of the additional information posted in the record and public comments that are received, and will examine a number of options going forward.

DATES: The public comment period began December 14, 2011, and ends September 30, 2013. Comments should be submitted to the docket or received in writing by the EPA by September 30, 2013.

ADDRESSES: The draft ''Investigation of Ground Water Contamination near Pavillion, Wyoming.'' is available via the Internet on the EPA Region 8 site at: *http://www.epa.gov/region8/superfund/wy/pavillion/EPA_ReportOnPavillion_Dec-8-2011.pdf.*

Comments may be submitted electronically via *http://www.regulations.gov,* by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

Additional Information: For information on the docket, *www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI), Mail Code: 2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: 202–566–1752; facsimile: 202–566–1753; or email: *ORD.Docket@epa.gov.*

For information on the draft report, please contact Rebecca Foster, U.S. Environmental Protection Agency, P.O. Box 1198, Ada, OK 74821; telephone: 580–436–8750; facsimile: 580–436–8529; or email: *foster.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About Pavillion Ground Water Investigation

Pavillion, Wyoming is located in Fremont County, about 20 miles northwest of Riverton. The concern at the site is potential ground water contamination, based on resident complaints about smells, tastes, and adverse changes in water quality of their domestic wells. In collaboration with ORD, Region 8 has been conducting a ground water investigation. The purpose of this ground water investigation is to better understand the basic ground water hydrology and how the constituents of concern may be occurring in the aquifer. More information is available at *http://www.epa.gov/region8/superfund/wy/pavillion/.*

II. How To Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0895, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0895. Please ensure that your comments are submitted within the specified comment period. It is the EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless comments include 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 *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send email comments directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, the EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If the EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.*, 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. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: January 7, 2013.

Lek G. Kadeli,

Principal Deputy Assistant Administrator.

[FR Doc. 2013–00358 Filed 1–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9007–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 12/31/2012 Through 01/04/2013

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: *http://www.epa.gov/compliance/nepa/eisdata.html*.

SUPPLEMENTARY INFORMATION: As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA.

While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp*.

Draft EISs

EIS No. 20130001, Draft Supplement, BLM, AK, Hardrock Mineral Leasing in the White Mountains National Recreation Area, Supplement to the Eastern Interior Draft Resource Management Plan, AK, Comment Period Ends: 04/11/2013, Contact: Jeanie Cole 907–474–2340.

EIS No. 20130002, Draft EIS, BIA, CA, Shu'Luuk Wind Project, Campo Indian Reservation, Lease Approval, San Diego County, CA, Comment Period Ends: 02/25/2013, Contact: Lenore Lamb 951–276–6625 ext. 254.

Dated: January 8, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–00461 Filed 1–10–13; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, January 16, 2013, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street NE., Washington, DC 20507.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

This Notice issued January 9, 2013.

Dated: January 9, 2013.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2013–00588 Filed 1–9–13; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202)–452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202)–263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), Supplement to the Daily Report of Specific Issues (FR 2004SD ad hoc), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004.

OMB Control number: 7100–0003.

Effective Date: March 31, 2013.

Frequency: Weekly, daily.

Reporters: Dealers in the U.S. government securities market.

Estimated annual reporting hours: FR 2004A—3,058 hours, FR 2004B—3,822 hours, FR 2004C—3,276 hours, FR 2004SI—2,293 hours, FR 2004SD—1,103 hours, FR 2004SD ad hoc—1,092 hours, and FR 2004WI, 3,360 hours.

Estimated average hours per response: FR 2004A—2.8 hours, FR 2004B—3.5

hours, FR 2004C—3.0 hours, FR 2004SI—2.1 hours, FR 2004SD—2.1 hours, FR 2004SD ad hoc—2.0 hours, and FR 2004WI—1.0 hour.

Number of respondents: 21.

General description of report: This information collection is authorized by sections 2A, 12A(c), 14, and 15 of the Federal Reserve Act (12 U.S.C. 225a, 263c, 353–359, and 391) and is required to obtain or retain the benefit of dealer status. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on position, transaction, financing, and fails for the most recently issued on-the-run Treasury securities (the most recently issued Treasury securities for each maturity class). When unusual trading practices occur for a specific security, this information can be collected on a daily basis on the FR 2004SD for either on-the-run Treasury securities or off-the-run Treasury securities. The FR 2004SD ad hoc collects up to 10 ad hoc data items when critical information is required for additional market surveillance. The FR 2004WI collects daily data on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis.

Current Actions: On August 20, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 50102) requesting public comment for 60 days on the extension, with revision, of the FR 2004. The comment period for this notice expired on October 19, 2012. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, January 8, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–00386 Filed 1–10–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 121–0120]

Motorola Mobility LLC and Google Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement;

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 4, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Motorola/Google, File No. 121–0120'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/motorolagoogleconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Feinstein or Pete Levitas (202–326–2555), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Proposed Consent Order to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 3, 2013), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 4, 2013. Write ''Motorola/Google, File No. 121–0120'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/motorolagoogleconsent* by following the instructions on the web-based form. If this Notice appears at *http://regulations.gov#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Motorola/Google, File No. 121–0120'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 4, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Agreement'') with Motorola Mobility LLC (formerly Motorola Mobility, Inc. (''Motorola''), a wholly-owned subsidiary of Respondent Google Inc.), and Google Inc. (''Google''), which is designed to settle allegations that Motorola and Google violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by engaging in unfair methods of competition and unfair acts or practices relating to the licensing of standard essential patents (''SEPs'') for cellular, video codec, and wireless LAN standards. The Complaint alleges that, after committing to license the SEPs on fair, reasonable, and non-discriminatory (''FRAND'') terms Motorola sought injunctions and exclusion orders against willing licensees, undermining the procompetitive standard-setting process. After purchasing Motorola for $12.5 billion in June 2012, Google continued Motorola's anticompetitive behavior.

The Proposed Consent Order has been placed on the public record for thirty (30) days for comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's Proposed Consent Order.

The purpose of this analysis is to facilitate comments on the Proposed Consent Order. This analysis does not constitute an official interpretation of the Proposed Consent Order, and does not modify its terms in any way. The Agreement has been entered into for settlement purposes only and does not constitute an admission by Motorola or Google that the law has been violated as alleged or that the facts alleged, other than jurisdictional facts, are true.

Background

American consumers rely on standardized technology for the interoperability of consumer electronics and other products. Manufacturers of these products participate in standard-setting organizations (''SSOs'') such as the European Telecommunications Standards Institute (''ETSI''), the Institute of Electrical and Electronics Engineers (''IEEE''), and the International Telecommunication Union (''ITU'') that agree upon and develop standards based on shared technologies that incorporate patents. SSOs and the standards they promulgate have procompetitive benefits; they encourage common technological platforms that many different manufacturers ultimately incorporate into their respective products.[2] Standards foster competition among these manufacturers' products and facilitate the entry of related products. Overall, standards benefit the market by encouraging compatibility among all products, promoting interoperability of competing devices, and lowering the costs of products for consumers.

Many SSOs require that a firm make a licensing commitment, such as a FRAND commitment, in order for its patented technology to be included in a standard. SSOs have this policy because the incorporation of patented technology into a standard induces market reliance on that patent and increases its value. After manufacturers implement a standard, they can become ''locked-in'' to the standard and face substantial switching costs if they must abandon initial designs and substitute different technologies. This allows SEP holders to demand terms that reflect not only ''the value conferred by the patent itself,'' but also ''the additional value—the hold-up value—conferred by the patent's being designated as standard-essential.'' [3] The FRAND commitment is a promise intended to mitigate the potential for patent hold-up.[4] In other words, it restrains the exercise of market power gained by a firm when its patent is included in a standard and the standard is widely adopted in the market.[5]

Despite the significant procompetitive benefits of standard setting, particularly the interoperability of technology that arises from efficient and effective standards, standard setting is a collaborative process among competitors that often displaces free market competition in technology platforms. FRAND commitments by SSO members are critical to offsetting the potential anticompetitive effects of such agreements while preserving the procompetitive aspects of standard setting.

Seeking and threatening injunctions against willing licensees of FRAND-encumbered SEPs undermines the integrity and efficiency of the standard-setting process and decreases the incentives to participate in the process and implement published standards. Such conduct reduces the value of standard setting, as firms will be less likely to rely on the standard-setting process. Implementers wary of the risk of patent hold-up may diminish or abandon entirely their participation in the standard-setting process and their

[2] As the Supreme Court has recognized, when properly formulated standards ''can have significant procompetitive advantages.'' *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.,* 486 U.S. 492, 501 (1988).

[3] *Apple, Inc.* v. *Motorola, Inc.,* 869 F. Supp. 2d 901, 913 (N.D. Ill. 2012) (Posner, J., sitting by designation).

[4] As the Commission explained in its unanimous filing before the United States International Trade Commission (''ITC''), incorporating patented technologies into standards without safeguards risks distorting competition because it enables SEP owners to negotiate high royalty rates and other favorable terms, after a standard is adopted, that they could not credibly demand beforehand. The exercise of this leverage is known as patent hold-up. See Third Party United States Federal Trade Commission's Statement on the Public Interest filed on June 6, 2012 in *In re Certain Wireless Communication Devices, Portable Music & Data Processing Devices, Computers and Components Thereof,* Inv. No. 337–TA–745, available at *www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf; In re Certain Gaming and Entertainment\Consoles, Related Software, and Components Thereof,* Inv. No. 337–TA–752, available at *http://www.ftc.gov/os/2012/06/1206ftcgamingconsole.pdf.*

[5] As the Ninth Circuit recently stated, a FRAND commitment is ''a guarantee that the patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction, but will instead proffer licenses consistent with the commitment made.'' *Microsoft Corp.* v. *Motorola, Inc.,* 696 F.3d 872, 884 (9th Cir. 2012) (citing *Apple,* 869 F. Supp. 2d at 914).

reliance on standards. If firms forego participation in the standard-setting process, consumers will no longer enjoy the benefits of interoperability that arise from standard setting, manufacturers have less incentive to innovate and differentiate product offerings, and new manufacturers will be deterred from entering the market.

The Proposed Complaint

Motorola sought to exploit the market power that it acquired through the standard-setting process by breaching its promises to license its SEPs on FRAND terms. ETSI, ITU, and IEEE require that firms disclose whether they will commit to license their SEPs on FRAND terms in order for the SSO to decide if the patents should be included in the relevant cellular, video codec, or wireless LAN standards. Motorola promised to license its patents essential to these standards on FRAND terms, inducing ETSI, ITU, and IEEE to include its patents in cellular, video codec, and wireless LAN standards. These commitments created express and implied contracts with the SSOs and their members. In acquiring Motorola and its patent portfolio, Google affirmatively declared that it would honor Motorola's FRAND commitments.[6]

Relying on Motorola's promise to license its SEPs on FRAND terms, electronic device manufacturers implemented the relevant standards and were locked-in to using Motorola's patents. Motorola then violated the FRAND commitments made to ETSI, ITU, and IEEE by seeking, or threatening, to enjoin certain competitors from marketing and selling products compliant with the relevant standards, like the iPhone and the Xbox, from the market unless the competitor paid higher royalty rates or made other concessions. At all times relevant to the allegations in the Proposed Complaint, these competitors—Microsoft and Apple—were willing to license Motorola's SEPs on FRAND terms.

Specifically, Motorola threatened exclusion orders and injunctions in various forums against these willing licensees. Motorola filed patent infringement claims at the ITC where the only remedy for patent infringement is an exclusion order. Because of the ITC's remedial structure, filing for an exclusion order before the ITC on a FRAND-encumbered SEP significantly raises the risk of patent hold-up in concurrent licensing negotiations because an exclusion order may be entered by the ITC before a FRAND rate is reached. Motorola also filed for injunctive relief in various federal district courts, which also raises the risk of patent hold-up.

Had Google been successful in obtaining either an injunction or exclusion order against its competitors' products, it could have imposed a wide variety of costs to consumers and competition. These products could have been kept off the market entirely, diminishing competition and denying consumers access to products they wish to purchase, such as the iPhone and Xbox. Alternatively, Google's conduct might have increased prices because manufacturers, when faced with the threat of an injunction, are likely to surrender to higher royalty rates for SEPs. Other manufacturers, deterred by increased licensing fees, might exit the market altogether, or limit their product lines. In the end, prices would likely rise both because of higher royalties and because of less product-market competition. Ultimately, end consumers may bear some share of these higher costs, either in the form of higher prices or lower quality products.

Consumers would also suffer to the extent that Google's conduct impaired the efficacy of the standard-setting process or diminished the willingness of firms to participate in standard- setting processes. Relatedly, such FRAND violations may diminish the interest of SSOs in using new patented technologies—a step that could reduce the technical merit of those standards as well as their ultimate value to consumers. This could result in increased costs or inferior standards. Innovation by implementers would suffer and consumers would lose the benefits of lower costs, interoperability, and rapid technological development that efficient standard-setting enables.

The Proposed Complaint alleges that Motorola and Google's conduct violates Section 5 of the FTC Act, both as an unfair method of competition and an unfair act or practice.

1. Unfair Method of Competition

Google and Motorola's conduct constitute an unfair method of competition and harms competition by threatening to undermine the integrity and efficiency of the standard-setting process. FRAND commitments help ensure the efficacy of the standard-setting process and that the outcome of that process is procompetitive. Conversely, that process is undermined when those promises are reneged. Motorola's conduct threatens to increase prices and reduce the quality of products on the market and to deter firms from entering the market. Moreover, Motorola's conduct threatens to deny consumers the many procompetitive benefits that standard setting makes possible. Motorola's conduct may deter manufacturers from participating in the standard setting process and relying on standards, and SSOs from adopting standards that incorporate patented technologies.

Consistent with these principles, courts have found that patent holders may injure competition by breaching FRAND commitments they made to induce SSOs to standardize their patented technologies.[7] Each of these cases, brought under Section 2 of the Sherman Act, involved allegations of bad faith or deceptive conduct by the patent holder before the standard was adopted. However, under its stand-alone Section 5 authority, the Commission can reach opportunistic conduct that takes place after a standard is adopted that tends to harm consumers and undermine the standard-setting process.'' [8] For example, in *Negotiated Data Solutions, LLC* (''*N-Data*''),[9] the Commission condemned similar conduct as ''inherently 'coercive' and 'oppressive.' '' [10] The respondent, N-Data, acquired SEPs from a patent holder that had committed to license them to any requesting party for a one-time flat fee of $1,000. After it acquired these SEPs, N-Data reneged on this licensing commitment. ''Instead, N-Data threatened to initiate, and in some cases prosecuted, legal actions against companies refusing to pay its royalty demands, which [were] far in excess of [the $1,000 one-time flat fee].'' [11] The Commission found that N-Data's ''efforts

[6] *See* Letter from Allen Lo, Deputy General Counsel, Google, to Luis Jorge Romero Saro, Director-General, ETSI (Feb. 8, 2012); Letter from Allen Lo, Deputy General Counsel, Google, to Gordon Day, President, IEEE (Feb. 8, 2012) available at *http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/press/motorola/pdf/sso-letter.pdf;* Letter from Allen Lo, Deputy General Counsel, Google, to Hamadoun Toure, Secretary-General, ITU (Feb. 8, 2012).

[7] *See Broadcom Corp.* v. *Qualcomm, Inc.,* 501 F.3d 297, 313–15 (3d Cir. 2007); *In re Rambus, Inc.,* No. 9302, 2006 WL 2330117 (F.T.C. Aug. 2, 2006), available at *http://www.ftc.gov/os/adjpro/d9302/060802commissionopinion.pdf, rev'd on other grounds Rambus* v. *F.T.C.,* 522 F.3d 456 (D.C. Cir. 2008); *Research in Motion, Ltd.* v. *Motorola, Inc.,* 644 F. Supp. 2d 788, 796–97 (N.D. Tex. 2008); *Apple Inc.* v. *Samsung Elecs. Co.,* No. 11–CV–01846, 2012 U.S. Dist. LEXIS 67102, at *27–28 (N.D. Cal. May 14, 2012).

[8] The Commission's investigation did not give it reason to believe that Motorola acted with bad faith or an intent to deceive at the time it first made these FRAND commitments to IEEE, ETSI, and ITU.

[9] *In re Negotiated Data Solutions LLC* (*N-Data*), File No. 051–0094, 2008 WL 258308 (FTC Jan. 22, 2008).

[10] *N-Data,* 2008 WL 258308, at *37 (analysis to aid public comment).

[11] *Id.* at *34–36.

to exploit the power it enjoy[ed] over those practicing the [relevant] standard and lacking any practical alternatives'' were inherently ''coercive'' and ''oppressive'' as these firms were, ''as a practical matter, locked into [the] standard.'' [12] As here, the Commission found that N-Data's opportunistic breach of its licensing commitment had the tendency of leading to higher prices for consumers and undermining the standard-setting process.

Google and MMI's opportunistic violations of their FRAND commitments have the potential to harm consumers by excluding products from the market as a result of an injunction or by leading to higher prices because manufacturers are forced, by the threat of an injunction, to pay higher royalty rates. As explained in *N-Data,* courts have traditionally viewed opportunistic breaches as conduct devoid of countervailing benefits.[13] As Judge Posner has explained, when a promisor breaches opportunistically, ''we might as well throw the book at the promisor. * * * Such conduct has no economic justification and ought simply to be deterred.'' [14] As in *N-Data,* ''the context here is in standard-setting,'' and ''[a] mere departure from a previous licensing commitment is unlikely to constitute an unfair method of competition under Section 5.'' [15]

2. Unfair Act or Practice

Google and Motorola's violations of their FRAND commitments also constitute unfair acts or practices under Section 5 because they are ''likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.'' [16] If these practices continue, consumers will likely pay higher prices because many consumer electronics manufacturers will pass on some portion of unreasonable or discriminatory royalties they agree to pay to avoid an injunction or exclusion order. Consumers will not be able to avoid this injury, due to the industry-wide lock-in induced by Motorola's FRAND commitments. Moreover, this practice has no apparent ''countervailing benefits,'' either to those upon whom demands have been made, or to ultimate consumers, or to competition.[17]

The Proposed Consent

The Proposed Consent Order is tailored to prevent Google—through its wholly owned subsidiary, Motorola—from using injunctions or threats of injunctions against current or future potential licensees who are willing to accept a license on FRAND terms. Under this Order, before seeking an injunction on FRAND-encumbered SEPs, Google must: (1) Provide a potential licensee with a written offer containing all of the material license terms necessary to license its SEPs, and (2) provide a potential licensee with an offer of binding arbitration to determine the terms of a license that are not agreed upon. Furthermore, if a potential licensee seeks judicial relief for a FRAND determination, Google must not seek an injunction during the pendency of the proceeding, including appeals. Nothing in the Order limits Google or a potential licensee from challenging the validity, essentiality, claim of infringement or value of the patents at issue, and either party may object to a court action on jurisdictional or justiciability grounds, or on the ground that an alternative forum would be more appropriate. The Proposed Consent Order also does not prevent Google from pursuing legal claims regarding its FRAND-encumbered SEPs other than a claim for injunctive relief, such as an action seeking damages for patent infringement. The Order does not define FRAND but requires Google to offer, and follow, specific procedures that will lead to that determination.

The Proposed Consent Order prohibits Google from revoking or rescinding any FRAND commitment that it has made or assumed unless the relevant standard no longer exists, Google no longer owns the SEPs encumbered by the FRAND commitment, or such SEPs are no longer enforceable. Motorola made FRAND commitments on the understanding that they were irrevocable, and Google, in acquiring Motorola's FRAND-encumbered SEPs, must continue to honor those agreements.

The Proposed Consent Order further prohibits Google and Motorola from continuing or enforcing existing claims for injunctive relief based on FRAND-encumbered SEPs. Google and Motorola are similarly prohibited from bringing future claims for injunctive relief based on FRAND-encumbered SEPs. For both current and future claims for injunctive relief, Google and Motorola must follow specific negotiation procedures, described below, that are intended to protect the interests of potential willing licensees while allowing Google and Motorola to seek injunctions only after the licensee refuses to engage in the negotiation process. However, if a potential licensee indisputably demonstrates that it is not willing to pay Google a reasonable fee for use of Google's FRAND-encumbered SEPs, Google is permitted by this Order to seek injunctive relief.

Outside the processes outlined in the Order, Google is permitted to seek injunctive relief only in the following four narrowly-defined circumstances: (1) The potential licensee is not subject to United States jurisdiction; (2) the potential licensee has stated in writing or in sworn testimony that it will not accept a license for Google's FRAND-encumbered SEPs on any terms; (3) the potential licensee refuses to enter a license agreement for Google's FRAND-encumbered SEPs on terms set for the parties by a court or through binding arbitration; or (4) the potential licensee fails to assure Google that it is willing to accept a license on FRAND terms. The Proposed Consent Order provides

[12] *Id.* at *37. Both Section 5 and common law precedents support the conclusion that parties engage in coercive and oppressive conduct when they breach commitments after those commitments have induced others to make relationship-specific investments and forego otherwise available alternatives. In *Holland Furnace Co.* v. *FTC,* 295 F.2d 302 (7th Cir. 1961), the Commission found a Section 5 violation when furnace salesmen dismantled furnaces for cleaning and inspection and refused to reassemble them until customers agreed to buy additional parts or services. *Id.* at 305. In *Alaska Packers' Ass'n* v. *Domenico,* 117 F. 99 (9th Cir. 1902), the Ninth Circuit likewise found that seamen acted coercively by threatening to strike unless the owners of a fishing vessel agreed to pay them wages higher than those they had negotiated before the vessel set sail. *Id.* at 102–03. In each case, the victims could have turned to alternatives *ex ante* (before their furnaces had been dismantled or their vessel had set sail for remote waters), but were ''locked in,'' and therefore vulnerable to exploitation, *ex post. Id.* at 102 (explaining that, ''at a time when it was impossible for the [vessel owners] to secure other men in their places,'' the seamen ''refused to continue the services they were under contract to perform unless the [owners] would consent to pay them more money''); Neil W. Averitt, *The Meaning of ''Unfair Acts or Practices'' in Section 5 of the Federal Trade Commission Act,* 70 Geo. L.J. 225, 253 (1981) (observing that the consumers in *Holland Furnace,* because they ''could not escape the need to restore their units to service, * * * willingly or not, * * * often had to purchase replacements from the respondent'').

[13] *N-Data,* 2008 WL 258308, at *38 (Analysis to Aid Public Comment).

[14] Richard A. Posner, Economic Analysis of Law 130 (5th ed. 1998).

[15] *N-Data,* 2008 WL 258308, at *37 (Analysis to Aid Public Comment).

[16] 15 U.S.C. 45(n) (1992). Section 45(n) codified limiting principles set forth in the 1980 FTC Policy Statement on Unfairness. *See* Letter from Federal Trade Commission to Senators Ford and Danforth (Dec. 17, 1980), *reprinted in* H.R. Rep. No. 156, Pt. 1, 98th Cong., 1st Sess. 33–40 (1983), *available at http://www.ftc.gov/bcp/policystmt/ad-unfair.htm,* appended to the Commission's decision in *International Harvester,* 104 F.T.C. at 949, 1061 (1984).

[17] *N-Data,* 2008 WL 258308, at *38 (Analysis to Aid Public Comment).

Google with a form letter, attached to the Proposed Consent Order as Exhibit B, for requesting a potential licensee to affirm that it is willing to pay a FRAND rate for Google's FRAND-encumbered SEPs, and Google must provide a copy of the Proposed Consent Order along with the form letter. Google may not, however, seek an injunction simply because the potential licensee challenges the validity, value, infringement or essentiality of Google's FRAND-encumbered patents.

The Proposed Consent Order provides potential licensees with two avenues for resolving licensing disputes that involve Google's FRAND-encumbered SEPs. The first is a framework for resolution that a potential licensee may voluntarily elect. Under this path, Google and the potential licensee agree to negotiate the terms of the license for at least six (6) months (unless a license agreement is reached sooner); after the negotiation period concludes, Google may offer a license agreement, or, if the potential licensee requests a license after this negotiation period, Google must provide a proposed license within two months of the request. Google's proposed license agreement must be a binding, written offer that contains all material terms and limitations. Under this procedure, the potential licensee either accepts the proposed license or informs Google of the terms that it accept and the terms that it believes are inconsistent with Google's FRAND commitments; for each term that it disagrees with, the potential licensee must provide an alternative term that it believes is consistent with Google's FRAND commitment. The potential licensee may then go to court for a FRAND determination or propose binding arbitration to resolve the disputed provisions of Google's proposed license agreement. If a court decides that it cannot resolve the disputed terms, the parties are to go to binding arbitration to finalize the terms of the license agreement.

In the event that the potential licensee does not choose to pursue the path set forth above for resolving the licensing dispute, Google is nevertheless prohibited from seeking injunctive relief unless it takes the following steps. At least six months before seeking an injunction, Google must provide the potential licensee with the Proposed Consent Order and an offer to license Google's FRAND-encumbered patents containing all material terms; Google's offer may require that the potential licensee in turn offer Google a license for the potential licensee's FRAND-encumbered SEPs within the same standard. If no agreement is reached, at least sixty days before initiating a claim for injunctive relief, Google must offer the potential licensee the option to enter binding arbitration to determine the terms of a license agreement between the parties. The Proposed Consent Order describes the terms and conditions that Google must follow should the potential licensee accept the offer for binding arbitration, although the parties are free to agree to their own terms. Google's license offers will be irrevocable until it makes the offer to arbitrate, and Google's offers to arbitrate will be irrevocable until thirty (30) days after Google files for injunctive relief.

Under these provisions, if the potential licensee seeks a court's determination of a FRAND-license-rate between the parties instead of accepting Google's offer to arbitrate, Google may not file for injunctive relief as long as the potential licensee goes to court within seven (7) months of Google providing a license offer, or within three months of Google's offer to arbitrate. But the potential licensee must, in connection with its court action, provide Google with assurances that it will abide by the license terms set by the court and pay royalties based on a final court determination or Google will be free to seek injunctive relief. The Proposed Consent Order provides Google with a form letter, attached as Exhibit A, for requesting that the potential licensee agree to be bound by the court's FRAND determination.

Under the terms of the Proposed Consent Order, Google retains the option to file for injunctive relief against a potential licensee that itself files a claim for injunctive relief against Google based on the potential licensee's FRAND-encumbered SEPs, unless that potential licensee has followed the procedures similar to those set out by the Proposed Consent Order for Google.

Finally, the Proposed Consent Order prohibits Google from selling or assigning its FRAND-encumbered SEPs to third parties unless those parties agree to assume Google's FRAND commitments, abide by the terms of the Proposed Consent Order, and condition any further sale or assignment of Google's FRAND-encumbered SEPs on the same.

In sum, the Proposed Consent Order improves upon the commitments made by Google in February 2012 to ETSI, IEEE, and ITU to honor Motorola's prior FRAND assurances and limit its pursuit of injunctive relief in connection with Motorola's SEPs by providing clear mechanisms for Google to do so. The Order also clarifies and defines Google's FRAND commitments by prohibiting Google from seeking injunctive relief against implementers who are willing to license Google's SEPs. The Proposed Consent Order also contains standard reporting, notification, and access provisions designed to allow the Commission to monitor compliance. It terminates ten (10) years after the date the Order becomes final.

By direction of the Commission, Commissioner Ohlhausen dissenting.

Richard C. Donohue,

Acting Secretary.

Statement of Commissioner Rosch

A majority of the Commission has voted today to issue a Complaint and Order against Google Inc. (''Google'') to remedy Google's breaking the commitments of Motorola Mobility, Inc. (''MMI'') to license standard-essential patents (''SEPs'') on terms that are fair, reasonable and non-discriminatory (''FRAND''). Google succeeded to MMI's FRAND commitments when it acquired MMI. Google has agreed in a consent decree not to seek an injunction against infringement of those SEPs and instead to license the SEPs on the FRAND terms to which MMI agreed. I concur in the Commission's decision to issue the Complaint and Order against Google. I issue this Separate Statement for four reasons.[18]

First, I do not agree with the Complaint's allegation or the majority's assertion that an injunction enforcing SEPs would constitute ''patent hold-up.'' (Compl. ¶¶ 2, 13–14, 19; Commission Statement at 2–3.) That allegation is superfluous. It does not add anything to the Commission's competition mission or jurisprudence. To the contrary, proof of such an allegation would only burden the staff, adding an element that the staff need not prove. There is increasing judicial recognition, coinciding with my own view, that a seeking an injunction is inherently antithetical to a commitment instead to license patents on fair, reasonable, and non-discriminatory terms.[19] Indeed, the Complaint itself

[18] I am also troubled by Section IV.F of the Proposed Order, which provides for a limited ''defensive use'' exception to Google's commitment not to seek injunctive relief on its FRAND-encumbered SEPs. That is, under certain circumstances, Google may seek injunctive relief against a firm that itself files a claim for injunctive relief against Google based on the firm's FRAND-encumbered SEPs. However, my concerns in this regard are tempered by the Commission's ability to reconsider this aspect of the Proposed Order based on submissions received during the public comment period.

[19] *See, e.g., eBay, Inc.* v. *MercExchange, LLC,* 547 U.S. 388 (2006). The majority expressly acknowledges that in *Microsoft Corp.* v. *Motorola, Inc.,* 696 F.3d 872, 884 (9th Cir. 2012), the Ninth Circuit stated that ''[i]mplicit in such a sweeping promise is, at least arguably, a guarantee that the

describes Google's conduct at issue as being simply a breach of a commitment to license its SEPs on FRAND terms. (Compl. ¶ 1, 25–27.) In other words, the concept of ''patent hold up'' has nothing to do with Google's conduct. It is a construct that applies as a matter of theory.

Second, while the majority correctly asserts that the proposed Complaint in this matter alleges that Google's practices in seeking an injunction ''constitute unfair methods of competition and unfair acts or practices, in violation of Section 5'' of the FTC Act, the lion's share of the Commission's Statement, as well as the Complaint, is devoted to analysis of Google's conduct as a ''standalone'' unfair method of competition claim under Section 5. (Commission Statement at 1–3.) I would have given equal prominence to the unfair acts and practices claim.

''Unfair acts or practices'' claims based on alleged breaches of contract have repeatedly been made by the Commission. *Orkin Exterminating Co.,* 108 F.T.C. 263 (1986), *aff'd, Orkin Exterminating Co.* v. *FTC,* 849 F.2d 1354 (11th Cir. 1988); *Negotiated Data Solutions LLC (N-Data),* 73 Fed. Reg. 5,846 (FTC 2008) (aid to public comment); *see also C&D Electronics, Inc.,* 109 F.T.C. 72 (1987).

Moreover, the Commission has brought a number of consumer protection cases involving petitioning activity. *See, e.g., Spiegel, Inc.* v. *FTC,* 540 F.2d 287 (7th Cir. 1976) (upholding the Commission's finding that the filing of lawsuits in distant locations was an unfair act); *J.C. Penny Co.,* 109 F.T.C. 54 (1987) (consent decree resolving similar concerns). *Noerr* was neither raised nor held to apply in these cases.

There is reason to believe that seeking an injunction on a SEP would be a breach of contract actionable as an unfair act or practice.[20] More specifically, when there is a SEP, a FRAND commitment is given by the owner of the SEP in exchange for inclusion of the SEP in the standard, and seeking an injunction instead of a license if there is infringement of the SEP is a breach of that FRAND commitment.

That conclusion is not contrary to the Supreme Court's decision in *eBay, Inc.* v. *MercExchange LLC,* 547 U.S. 388 (2006). To be sure, a majority of the Supreme Court declined to rule in that case that injunctions were never permitted as a matter of law. *See id.* at 393–94. But a SEP was not involved in that case.

The lack of any allegations in the Complaint of injury to consumers to date does not undercut the ''unfair acts or practices'' claim. (Compl. ¶¶ 4, 30.) Both Section 5(n) of the FTC Act and our Unfairness Policy Statement treat as an ''unfair act or practice'' any practice that not only actually harms consumers but also any practice that is ''likely'' to do so. 15 U.S.C. 45(n); *Int'l Harvester Co.,* 104 F.T.C. 949, 1070 (1984). Here, there is ''reason to believe'' that an injunction would ''likely'' harm consumers in the fashion described in *C&D Electronics* even if it did not actually do so. 109 F.T.C. at 80 (separate statement of Chairman Daniel Oliver: ''[T]he activity here may provide disincentives that will result in services not being available to consumers at all.''). The Complaint alleges, for example, that Google's conduct has a tendency to exclude products from the market, to cause higher consumer prices, and to diminish innovation. (Compl. ¶¶ 3, 28.)

If seeking injunctive relief were not challenged under the ''unfair acts or practices'' prong of Section 5, that would leave the ''unfair methods of competition'' prong as the only basis of liability. As discussed below, my colleagues and I disagree on which, if any, principles ought to limit liability based on that theory. My dissent to the consent decree in the Bosch case[21] was mainly based on that decree's treatment of ''unfair methods of competition'' as the sole basis of liability and the mischief that might cause.

Third, I do not agree to invoke a standalone unfair methods of competition claim under Section 5 because it is not clear what the ''limiting principles'' of such a claim would be. I joined Chairman Leibowitz in pleading a similarly unlimited claim in the Intel case. *See* Statement of Chairman Leibowitz and Commissioner Rosch, Intel Corporation, Docket No. 9341 (Dec. 16, 2009). But, at the time, I identified several ''limiting principles'' on our Section 5 authority. *See* Concurring and Dissenting Statement of Commissioner J. Thomas Rosch, Intel Corporation, Docket No. 9341 (Dec. 16, 2009); *see also Boise Cascade* v. *FTC,* 637 F.2d 573 (9th Cir. 1980); *Official Airline Guides* v. *FTC,* 630 F.2d 920 (2d Cir. 1980); *E.I. duPont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2d Cir. 1984).

Since that time, I have described several other ''limiting principles'' that should be considered.[22] For example, the requirement that a respondent have monopoly or near-monopoly power provides a limiting principle for the standalone use of Section 5 unfair methods of competition claims that the Commission could defend in an appellate court; it would also not unsettle ''settled principles of Section 2 law'' as defined by the Supreme Court case law under Section 2, *see, e.g., Verizon Commc'ns Inc.* v. *Law Offices of Curtis V. Trinko, LLP,* 540 U.S. 398, 407 (2004); *Spectrum Sports, Inc.* v. *McQuillan,* 506 U.S. 447, 458–59 (1993), as well as the language of Section 2 itself. Absent those limiting principles, which are not identified in the Complaint, I think Section 5 is not properly circumscribed.

To be sure, the potential anticompetitive harm that is threatened when injunctive relief is sought for alleged infringement of an SEP may be especially pernicious: a false FRAND commitment not only may cripple competition for inclusion in the standard (so-called ''ex ante competition''); it may also cripple competition among those using the standard (so-called ''ex post'' competition). *See Broadcom Corp.* v. *Qualcom, Inc.,* 501 F.3d 297 (3d Cir. 2007). This may be a limiting principle. But the Complaint does not allege that

patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction, but will instead proffer licenses consistent with the commitment made.'' And in *Apple, Inc.* v. *Motorola, Inc.,* No. 1:11–cv–08540, 2012 U.S. Dist. LEXIS 89960, at *45 (N.D. Ill. June 22, 2012), Judge Posner, sitting by designation as a district court judge, stated that ''I don't see how, given FRAND, I would be justified in enjoining Apple from infringing the '898 [patent] unless Apple refuses to pay a royalty that meets the FRAND requirement. By committing to license its patents on FRAND terms, Motorola committed to license the '898 to anyone willing to pay a FRAND royalty and thus implicitly acknowledged that a royalty is adequate compensation for a license to use that patent. How could it do otherwise?''

[20] As I have stated in the past, injunctive relief should be prohibited only when the potential licensee is a ''willing licensee'' under FRAND terms. *See also* Commission Statement at 1–2. That is not what the consent decree provides. Nor is it the relief I would agree to. The only exception to this is when a federal court or some other neutral arbitrator has defined those terms. *Cf.* Opinion of the Commission on Remedy at 8, Evanston Northwestern Healthcare Corp., Docket No. 9315 (Apr. 28, 2008) (requiring disputes to be resolved through final offer arbitration, sometimes referred to as ''baseball style arbitration''). In the event that a licensee refuses to comply with a federal court order or another neutral arbitrator's order defining those terms, I think it is appropriate to enforce the court's order against the licensee. (Compl. ¶ 16.)

[21] Robert Bosch GmbH, Docket No. C–4377, FTC File No. 121 0081, *available at http://www.ftc.gov/os/caselist/1210081/index.shtm.*

[22] *See* J. Thomas Rosch, The Great Doctrinal Debate: Under What Circumstances is Section 5 Superior to Section 2?, Remarks Before the New York State Bar Association (Jan. 27, 2011), *available at http://www.ftc.gov/speeches/rosch/110127barspeech.pdf;* J. Thomas Rosch, Promoting Innovation: Just How ''Dynamic'' Should Antitrust Law Be?, Remarks Before USC Gould School of Law (Mar. 23, 2010), *available at http://www.ftc.gov/speeches/rosch/100323uscremarks.pdf.*

standalone Section 5 actions are limited to especially pernicious practices, let alone the practices at issue here.

Beyond that, the Commission, with its expertise in identifying deception, brings something to the analysis that others cannot bring. As Commissioner and former Chairman Bill Kovacic observed, the FTC is a better competition agency because of its consumer protection mission.[23] The fact that the Commission has a comparative advantage in identifying deception might also be a second ''limiting principle.'' But the Complaint does not allege that either.

The Complaint does allege that Google has monopoly power. (Compl. ¶ 21.) But the Complaint does not allege monopoly power as a limitation on the Commission's use of a standalone Section 5 unfair methods of competition claim. *See* Concurring and Dissenting Statement of Commissioner Rosch, Intel Corp., FTC Docket No. 9341 (Dec. 16, 2009), *available at http://www.ftc.gov/os/adjpro/d9341/091216intelstatement.pdf.* This might be understandable if Google faced treble damage liability in a private action under Section 5 as long as there was any chance that Google would face an unlimited standalone Section 5 unfair competition claim. But Section 5 belongs to the Commission and the Commission alone, and even the Commission cannot seek treble damages for a standalone Section 5 unfair methods of competition violation.[24]

Fourth, I object to language in the Agreement Containing Consent Order that is tantamount to a denial of liability. Specifically, Google has refused to admit any facts other than jurisdictional facts and has refused to admit that a violation of the law has occurred. (ACCO ¶¶ 2, 4.) As I have previously explained,[25] the Commission should require respondents either to admit or to ''neither admit nor deny'' liability in Commission consent decrees, and this change should be reflected in the Commission's Rules of Practice. *See* Rule 2.32, 16 CFR 2.32.

Dissenting Statement of Commissioner Maureen K. Ohlhausen

I voted against this consent agreement and dissent from imposing liability on an owner of a standard essential patent (''SEP'') merely for petitioning the courts or the International Trade Commission (''ITC''). The Commission announced this enforcement policy in *In re Robert Bosch GmbH,* stating that in ''appropriate circumstances'' it will sue patent holders for seeking injunctive relief against ''willing licensees'' of a SEP.[26] I dissented then in large part because I question whether such conduct, standing alone, violates Section 5 [27] and because the *Noerr-Pennington* doctrine [28] precludes Section 5 liability for conduct grounded in the legitimate pursuit of an injunction [29] or any threats incidental to it,[30] outside of a handful of well-established exceptions not alleged there. Not only does today's decision raise many of the same concerns for me as did *Bosch,*[31] the Commission is now expanding its new policy to impose both competition and consumer protection liability on Google for the same type of conduct alleged in *Bosch.*[32]

Because I fear the legacy of our actions in this area will be greater uncertainty for patent holders about their contractual obligations, intellectual property protections, and Constitutional rights, as well as conflict between the Commission and other institutions with authority in these matters, I decline to join in another undisciplined expansion of Section 5. I outline my chief concerns below.

First, the Commission is offering ambiguous guidance to market participants.[33] Although I believe strongly the courts and other stakeholders are generally better suited to define the use and treatment of SEPs,[34] if the Commission insists on

[23] *See* William E. Kovacic, *Competition Policy, Consumer Protection, and Economic Disadvantage,* 25 J. L. & Pol'y 101, 114 (2007) (observing that ''consumer protection laws are important complements to competition policy''); *see also* Opinion of the Commission on Liability, Rambus Inc., FTC Docket No. 9302 (2006), *available at http://www.ftc.gov/os/adjpro/d9302/060802commissionopinion.pdf.*

[24] *See* Rosch, The Great Doctrinal Debate, *supra* note 5, at 8–10. Commissioner Kovacic expressed concern in his dissent from the N-Data settlement that such liability might lie under ''little FTC Acts'' at the state level. *See* Dissenting Statement of Commissioner William E. Kovacic, *In re Negotiated Data Solutions,* File No. 051–0094 (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080122kovacic.pdf.* However, an exhaustive study of state ''little FTC Acts'' had found that most of those statutes have such significant limitations that there is little likelihood of follow-on litigation. *See* Rosch, The Great Doctrinal Debate, *supra* note 5, at 12 n.27.

[25] *See* Dissenting Statement of Commissioner J. Thomas Rosch, In the Matter of Facebook, Inc., File No. 092 3184, Docket No. C–4365 (Aug. 10, 2012), *available at http://www.ftc.gov/speeches/rosch/120810facebookstatement.pdf.*

[26] *In re* Robert Bosch GmbH, FTC File No. 121–0081, Statement of the Commission, at 2 & n.7 (Nov. 26, 2012), *available at http://www.ftc.gov/os/caselist/1210081/121126boschcommissionstatement.pdf.*

[27] *See In re* Robert Bosch GmbH, FTC File No. 121–0081, Statement of Commissioner Ohlhausen (Nov. 26, 2012), *available at http://www.ftc.gov/os/caselist/1210081/121126boschohlhausenstatement.pdf.* The Commission has historically required evidence of deception or other similar conduct harming the standard-setting process before taking action. *See, e.g., In re* Rambus, Inc., Dkt. No. 9302 (FTC Aug. 2, 2006) (Commission opinion) (finding deception that undermined the standard-setting process), *rev'd, Rambus Inc.* v. *FTC,* 522 F.3d 456 (D.C. Cir. 2008); *In re* Union Oil Co. of Cal., 138 F.T.C. 1 (2003) (Commission opinion) (same); *In re* Dell Computer Corp., 121 F.T.C. 616 (1996) (consent order) (alleging same).

[28] *See Eastern R.R. Presidents Conference* v. *Noerr Motor Freight,* 365 U.S. 127 (1961); *United Mine Workers of Am.* v. *Pennington,* 381 U.S. 657 (1965).

[29] *See, e.g.,* California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508 (1972) (applying *Noerr-Pennington* doctrine to petitioning of judicial branch).

[30] *See, e.g.,* ABA Section of Antitrust Law, Monograph 25, The Noerr-Pennington Doctrine 60–65 (2009) (collecting cases regarding protection of conduct incidental to petitioning).

[31] A federal court has addressed this issue on the same nucleus of facts and held that *Noerr* immunizes Google's predecessor-in-interest, Motorola, from competition claims based on its litigation against Apple. *See* Apple, Inc. v. Motorola Mobility, Inc., No. 3:11-cv-00178–BBC, 2012 WL 3289835, at *12–14 (W.D. Wis. Aug. 10, 2012) (dismissing Apple's Sherman Act and state unfair competition claims and holding that Motorola's filing of litigation in the federal courts and ITC on its FRAND-encumbered SEPs was immune under *Noerr*). I disagree with the majority's interpretation of the cases it relies on to preclude *Noerr*'s application here. ''The *Noerr-Pennington* doctrine derives from the Petition Clause of the First Amendment and provides that 'those who petition any department of government for redress are generally immune from *statutory liability* for their petitioning conduct.'" *Kearney* v. *Foley & Lardner, LLP,* 590 F.3d 638, 643–44 (9th Cir. 2009) (quoting *Sosa* v. *DIRECTV, Inc.,* 437 F.3d 923, 929 (9th Cir. 2006)) (emphasis added). The Commission today is not pursuing a private breach of contract claim against Google but seeking to impose statutory liability under Section 5 on Google (and presumably other SEP-holders) merely for petitioning the government.

[32] *See* Complaint ¶¶ 31–32.

[33] A brief mention of potentially relevant factors in a consent complaint or order is in my opinion not enough to meaningfully and comprehensively outline the Commission's philosophy on enforcing pure Section 5 claims. The scope of Section 5 warrants more serious reflection and inquiry before being applied to the conduct of market participants. *See* ABA Section of Antitrust Law, Antitrust Law Developments 661 (7th ed. 2012) (''FTC decisions have been overturned despite proof of anticompetitive effect where the courts have concluded that the agency's legal standard did not draw a sound distinction between conduct that should be proscribed and conduct that should not.'').

[34] Federal courts and the ITC rarely award injunctive relief on FRAND-encumbered patents, and any decision they make must follow sober, careful, and informed analysis. *See eBay* v. *MercExchange,* 547 U.S. 388, 391 (2006) (requiring plaintiff seeking an injunction to demonstrate (1) irreparable injury, (2) inadequacy of remedies at law, (3) that the balance of hardships weighs in favor of the plaintiff, and (4) that the public interest would not be disserved by a permanent injunction). The only potentially relevant case that has come to our attention relates to an injunction on use of a patent covered by certain wireless local area network standards. The court did not make it clear whether the patents at issue were declared ''essential,'' but from the opinion they are described as part of the core technology embodied in the standards. It also appears from the court's opinion that the defendant would have been satisfied with a license for the patented technology. *See*

interposing itself here it should at least offer a clear position. However, the majority says little about what ''appropriate circumstances'' may trigger an FTC lawsuit other than to say that a fair, reasonable, and non-discriminatory (''FRAND'') commitment generally prohibits seeking an injunction.[35] By articulating only narrow circumstances when the Commission deems a licensee unwilling (limitations added since *Bosch*),[36] and not addressing the ambiguity in the market about what constitutes a FRAND commitment, the Commission will leave patent owners to guess in most circumstances whether they can safely seek an injunction on a SEP. Moreover, the Commission gives no principled basis for expanding liability beyond an unfair method of competition to include an ''unfair act or practice'' on what is essentially the same conduct here as in *Bosch.* This expansion of liability sows additional seeds of confusion as to what can create liability and even the statutory basis of that liability.[37]

Second, the consent agreement creates doctrinal confusion. The Order contradicts the decisions of federal courts, standard-setting organizations (''SSOs''), and other stakeholders about the availability of injunctive relief on SEPs and the meaning of concepts like willing licensee and FRAND. For example, the Complaint alleges that Google breached its SSO commitments by seeking injunctive relief on its SEPs.[38] However, a federal judge in the Western District of Wisconsin held Motorola did not breach its contract with two of the relevant SSOs:

There is no language in either the ETSI or IEEE contracts suggesting that Motorola and the standards-setting organizations intended or agreed to prohibit Motorola from seeking injunctive relief. In fact, both policies are silent on the question of injunctive relief. Moreover, in light of the fact that patent owners generally have the right to seek injunctive relief both in district courts, 35 U.S.C. 283, and in the International Trade Commission, 19 U.S.C. 1337(d), I conclude that any contract purportedly depriving a patent owner of that right should clearly do so. The contracts at issue are not clear. Therefore, I conclude that Motorola did not breach its contracts simply by requesting an injunction and exclusionary order in its patent infringement actions.[39]

The Commission also treats Apple as a willing licensee, disregarding a federal judge's decision that Apple revealed itself as unwilling on the eve of trial.[40] As the judge wrote: ''[Apple's intentions] became clear only when Apple informed the court * * * that it did not intend to be bound by any rate that the court determined.''[41] The judge further concluded Apple was trying to use the FRAND rate litigation simply to determine ''a ceiling on the potential license rate that it could use for negotiating purposes * * *.''[42]

In light of this decision, the majority is walking a fine line to claim Google should not be able to seek injunctive relief on these facts. The Order allows Google to seek injunctive relief if a party ''has stated in writing or in sworn testimony that it will not license the FRAND Patent on any terms''—as Apple did in federal district court.[43] But the Complaint attempts to skirt this issue by vaguely claiming that ''[a]t all times *relevant to this Complaint,* these implementers [including Apple] were willing licensees * * *.''[44] I believe it is quite ''relevant'' that Apple told a federal judge after years of negotiation and litigation with Motorola that it would only abide by the court-determined royalty rates to the extent it saw fit.[45] I cannot endorse characterizing this conduct as that of a willing licensee and in so doing contradict the finding of a federal judge and create further confusion about the meaning of the term.

Third, the allegations in the complaint that Google and Motorola's conduct constitutes an ''unfair act or practice'' fail this agency's unfairness standard. To show an unfair act or practice, the Commission must prove that the challenged conduct ''causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.''[46] In this matter, we are essentially treating sophisticated technology companies, rather than end-users, as ''consumers'' under our consumer protection authority. That runs counter to the historical, and in my view correct, approach that we have taken in pursuing our consumer protection mission, which is to protect

Commonwealth Scientific and Indus. Research Org. v. *Buffalo Tech. Inc.,* 492 F. Supp. 2d 600 (E.D. Tex. 2007) (applying *eBay* factors and holding that permanent injunction warranted for infringement of technology embodied in the 802.11a and 802.11g standards adopted by the Institute of Electrical and Electronics Engineers, despite arguments by the defendant that a compulsory license would be sufficient).

[35] References to FRAND here encompass ''RAND'' or ''reasonable and non-discriminatory'' terms as well.

[36] These limitations include when the potential licensee (a) is outside the jurisdiction of the United States; (b) has stated in writing or sworn testimony that it will not license the SEP on any terms; (c) refuses to enter a license agreement on terms set in a final ruling of a court—which includes any appeals—or binding arbitration; or (d) fails to provide written confirmation to a SEP owner after receipt of a terms letter in the form specified by the Commission. *See* Decision and Order at 7–8 (hereinafter ''Order''). They also include certain instances when a potential licensee has brought its own action seeking injunctive relief on its FRAND-encumbered SEPs. *See* Order at 11–12.

[37] Former Commissioner Kovacic dissented similarly from the *N-Data* consent in 2008, objecting to, among other things, the lack of clarity provided by the Commission as to the basis of liability, given the simultaneous use of unfair method of competition and unfairness claims in that consent. *In re* Negotiated Data Solutions LLC, FTC File No. 051–0094, Dissenting Statement of Commissioner William E. Kovacic, at 2–3 (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080122kovacic.pdf.*

[38] *See* Complaint ¶ 1. Notably, Research in Motion Corp., whom Motorola sought to enjoin from using SEPs and with whom Motorola settled its litigation, recently explained to the ITC that ''[t]he FRAND concept, which dates back to the development of the GSM wireless networks roughly 20 years ago, was never understood among industry participants to preclude a patent holder from seeking injunctions in appropriate situations.'' Submission of Research in Motion Corporation, *In re* Certain Wireless Communications Devices, Portable Music and Data Processing Devices, Computers and Components Thereof, Inv. No. 337–TA–745, at 4 (Int'l Trade Comm'n July 9, 2012).

[39] *Apple, Inc.* v. *Motorola Mobility, Inc.,* No. 11–cv–178–bbc, slip op. at 29 (W.D. Wis. Oct. 29, 2012).

[40] *Compare Apple, Inc.* v. *Motorola Mobility, Inc.,* No. 11–cv–178–bbc, slip op. at 5 (W.D. Wis. Nov. 8, 2012) (dismissing matter after finding Apple was not willing to accept court's FRAND rate) *with* Complaint ¶¶ 25–27 (identifying Apple and Microsoft as willing licensees).

[41] *Motorola,* No. 11–cv–178–bbc, slip op. at 5 (W.D. Wis. Nov. 8, 2012).

[42] *Id.* These events highlight another issue that the Commission does not address: the possibility that companies who need to license SEPs can engage in opportunistic conduct by delaying paying a license fee to a SEP holder for many years or by colluding to pay the SEP holder a low rate. *See, e.g., Sony Elecs.* v. *Soundview Techs.,* 157 F. Supp. 2d 180 (D. Conn. 2001) (denying motion to dismiss where plaintiff alleged conspiracy by potential licensees to fix price of patent license); *Golden Bridge Tech.* v. *Nokia Inc.,* 416 F. Supp. 2d 525 (E.D. Tex. 2006) (denying motion to dismiss where plaintiff alleged per se violation of Sherman Act arising from a boycott ousting a patented technology from an industry standard); U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition 50–55 (2007), *available at http://www.ftc.gov/reports/innovation/P040101PromotingInnovationandCompetitionrpt0704.pdf.*

[43] Order at 7.

[44] Complaint ¶ 25 (emphasis added).

[45] *Apple, Inc.* v. *Motorola Mobility, Inc.,* No. 11–cv–178–bbc, slip op. at 2 (W.D. Wis. Nov. 2, 2012) (stating ''[i]n its response to Motorola's motion for clarification on the specific performance issue, Apple states that it will not commit to be bound by any FRAND rate determined by the court and will not agree to accept any license from Motorola unless the court sets a rate of $1 or less for each Apple phone. Apple's Resp. Br., dkt. #448 at 8. In other words, if Apple is unsatisfied with the rate chosen by the court, it 'reserves the right to refuse and proceed to further infringement litigation.' *Id.* at 2.'').

[46] 15 U.S.C. 45(n).

end users of products or services. Departing from this approach makes the FTC into a general overseer of all business disputes simply on the conjecture that a dispute between two large businesses may affect consumer prices, which is a great expansion of our role and is far afield from our mission of protecting consumers. Further, the unfairness count in the complaint alleges merely speculative consumer harm, at best, and thus fails to comply with the Commission's Unfairness Statement.[47]

Fourth, even taking the much-criticized *N-Data* consent decree as a starting point, it is unclear whether this case meets the requirements identified by the Commission in that matter. In *N-Data,* the Commission alleged that there was a clear promise to license by N-Data's predecessor-in-interest, which N-Data subsequently broke.[48] The evidence presented to me in the instant matter does not reveal a clear promise by Motorola not to seek an injunction on the SEPs at issue and at least one court has found there was no such promise. Nor does there appear to have been any reasonable expectation on the part of members of the relevant SSOs—the Institute of Electrical and Electronics Engineers (''IEEE''), the European Telecommunications Standards Institute (''ETSI''), and the International Telecommunications Union (''ITU'')—that SEP holders, including Google and Motorola, had waived their right to seek injunctions on their SEPs. At least one of the SSOs at issue in this matter, ETSI, went so far as to explicitly reject an outright ban on injunctions.[49] And the one federal court that has issued an injunction against what appears to have been a willing licensee on a RAND-encumbered patent (not identified expressly as a SEP but a core technology embodied in the standards) did so five years ago on the 802.11a and 802.11g IEEE-adopted wireless local area network standards.[50] Thus, it should have been a reasonable expectation since that time to IEEE members (including the affected parties here) that an injunction could issue in certain situations even on a RAND-encumbered SEP against a potentially-willing licensee.

In sum, I disagree with my colleagues about whether the alleged conduct violates Section 5 but, more importantly, believe the Commission's actions fail to provide meaningful limiting principles regarding what is a Section 5 violation in the standard-setting context, as evidenced by its shifting positions in *N-Data, Bosch,* and this matter. Because I cannot ignore the jurisdictional conflicts and doctrinal contradictions that we are inviting with this policy and its inconsistent application, I dissent.

[FR Doc. 2013–00465 Filed 1–10–13; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act.

DATES: *Effective Date:* February 11, 2013.

FOR FURTHER INFORMATION CONTACT: B. Michael Verne, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue NW., Room 301, Washington, DC 20580, Phone (202) 326–3100.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Note that while the filing fee thresholds are revised annually, the actual filing fees are not similarly indexed and, as a result, have not been adjusted for inflation in over a decade. The new thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original threshold [million]	Adjusted threshold [million]
7A(a)(2)(A)	$200	$283.6
7A(a)(2)(B)(i)	50	70.9
7A(a)(2)(B)(i)	200	283.6
7A(a)(2)(B)(ii)(i)	10	14.2
7A(a)(2)(B)(ii)(i)	100	141.8
7A(a)(2)(B)(ii)(II)	10	14.2
7A(a)(2)(B)(ii)(II)	100	141.8
7A(a)(2)(B)(ii)(III)	100	141.8
7A(a)(2)(B)(ii)(III)	10	14.2
Section 7A note: Assessment and Collection of Filing Fees[1] (3)(b)(1)	100	141.8

[47] *See* FTC Policy Statement on Unfairness, Appended to Int'l. Harvester Co., 104 F.T.C. 949, 1070 (1984) (''First of all, the injury must be substantial. The Commission is not concerned with trivial or merely speculative harms.''). As an initial matter, consumers do not have a right to purchase a good that a court or the ITC has found to infringe a patent. Thus, the only possible cognizable harm is the risk that the threat of an injunction may raise prices or reduce innovation through deterring the adoption of beneficial technologies. There is no compelling evidence that either type of harm exists in this matter, and it is far from certain that such harm is likely to occur in the future, particularly because it is so rare for the courts or the ITC to issue injunctions or exclusion orders for SEP-encumbered technologies.

[48] *In re* Negotiated Data Solutions LLC, FTC File No. 051–0094, Complaint (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080923ndscomplaint.pdf.*

[49] *See, e.g.,* Submission of Qualcomm Incorporated in Response to the Commission's Request for Written Submissions, *In re* Certain Wireless Communications Devices, Portable Music and Data Processing Devices, Computers and Components Thereof, Inv. No. 337–TA–745, at 5 (Int'l Trade Comm'n July 9, 2012) (''Language whereby a patentee making a FRAND commitment would have waived all right to injunction was debated and briefly included in an [intellectual property rights] policy adopted in 1993. However, when the current policy was adopted in 1994, that provision was removed. The only permissible inference from this sequence is that the ETSI membership turned their minds to the question of waiver of injunction and affirmatively decided to exclude any such waiver from the content of the FRAND commitment.'') (footnotes omitted).

[50] *See Commonwealth,* 492 F. Supp. 2d at 602 (applying *eBay* factors and holding that permanent injunction warranted for infringement of technology that was ''core technology'' for the 802.11a standard and ''embodie[d]'' in the 802.11g standard).

Subsection of 7A	Original threshold [million]	Adjusted threshold [million]
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	100	141.8
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	500	709.1
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3)	500	709.1

[1] Public Law 106–553, Sec. 630(b) amended Sec. 18a note.

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801–803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original threshold	Adjusted threshold [million]
$10 million	$14.2
$50 million	70.9
$100 million	141.8
$110 million	156.0
$200 million	283.6
$500 million	709.1
$1 billion	1,418.1

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2013–00378 Filed 1–10–13; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Medicare Payment Advisory Commission Nomination Letters

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. For appointments to MedPAC that will be effective May 1, 2013, I am announcing the following: Letters of nomination should be submitted between January 15 and March 8, 2013, to ensure adequate opportunity for review and consideration of nominees prior to the appointment of new members.

ADDRESSES:

GAO: MedPACappointments@gao.gov.

GAO: 441 G Street NW., Washington, DC 20548.

MedPAC: 601 New Jersey Avenue NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: *GAO:* Office of Public Affairs, (202) 512–4800.

42 U.S.C. 1395b–6.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2013–00335 Filed 1–10–13; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10458]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate 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.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* Consumer Research Supporting Outreach for Health Insurance Marketplace. *Use:* The Centers for Medicare and Medicaid Services is requesting clearance for two surveys to aid in understanding levels of awareness and customer service needs associated with the Health Insurance Marketplace established by the Affordable Care Act. Because the Marketplace will provide coverage to the almost 50 million uninsured in the United States through individual and small employer programs, we have developed one survey to be administered to individual consumers most likely to use the Marketplace and another to be administered to small employers most likely to use the Small Business Health Options portion of the Marketplace. These brief surveys, designed to be conducted quarterly, will give CMS the ability to obtain a rough indication of the types of outreach and marketing that will be needed to enhance awareness of and knowledge about the Marketplace for individual and business customers. CMS' biggest customer service need is likely to be providing sufficient education so consumers: (a) can take advantage of the Marketplace and (b) know how to access CMS' customer service channels. The surveys will provide information on media use, concept awareness, and conceptual or content areas where education for customer service delivery can be improved. Awareness and knowledge gaps are likely to change over time based not only on effectiveness of CMS' marketing efforts, but also of those of state, local, private sector, and nongovernmental organizations. *Form Number:* CMS–10458 (OCN: 0938-New). *Frequency:* Quarterly. *Affected Public:* Individuals or households, Private Sector (business or other for-profits). *Number of Respondents:* 40,200. *Total Annual Responses:* 40,200. *Total Annual Hours:* 2,480. (For policy questions regarding this collection contact Clarese Astrin at 410–786–5424. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference

the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by March 12, 2013:

1. *Electronically.* You may submit 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) 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.

Dated: January 8, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–00467 Filed 1–10–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10408 and CMS–10338]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate 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 function; (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.

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Early Retiree Reinsurance Program Survey of Plan Sponsors; *Use:* Under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR Part 149, employment-based plans that offer health coverage to early retirees and their spouses, surviving spouses, and dependents are eligible to receive tax-free reimbursement for a portion of the costs of health benefits provided to such individuals. The statute limits how the reimbursement funds can be used, and requires the Secretary of HHS to develop a mechanism to monitor the appropriate use of such funds. The survey that is the subject of this information collection request, is part of that mechanism. CMS published a 60-day FR Notice on September 28, 2012 (77 FR 59615). The comment ended on November 27, 2012. No comments were received in response to this notice. *Form Number:* CMS–10408 (OCN: 0938–1150); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; Public Sector; *Number of Respondents:* 927; *Total Annual Responses:* 927; *Total Annual Hours:* 10,197. (For policy questions regarding this collection contact David Mlawsky at (410) 786–6851. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added PHS Act section 2719, which provides rules relating to internal claims and appeals and external review processes. On July 23, 2010, interim final regulations (IFR) set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations. The DOL claims procedure regulation requires an employee benefit plan to provide third-party notices and disclosures to participants and beneficiaries of the plan. In addition, paragraphs (b)(3)(ii)(C) and (b)(2)(ii)(C) of the IFR add an additional requirement that non-grandfathered group health plans and issuers of non-grandfathered health policies provide to the claimant, free of charge, any new or additional evidence considered, or generated by the plan or issuer in connection with the claim. Paragraph (b)(3)(i) of the IFR requires issuers offering coverage in the individual health insurance market to also generally comply with the DOL claims procedure regulation as updated by the Secretary of HHS in paragraph (b)(3)(ii) of the IFR for their internal claims and appeals processes.

Furthermore, PHS Act section 2719 and the IFR provide that non-grandfathered group health plans, issuers offering group health insurance coverage, and self-insured nonfederal governmental plans (through the IFR amendment dated June 24, 2011) must comply either with a state external review process or a federal external review process. The IFR provides a basis for determining when such plans and issuers must comply with an applicable state external review process and when they must comply with the federal external review process. Plans and issuers that are required to participate in the Federal external review process must have electronically elected either the HHS-administered process or the private accredited IRO process as of January 1, 2012, or, in the future, at such time as the plans and issuers use the federal external review process. Plans and issuers must notify HHS as soon as possible if any of the above information changes at any time after it is first submitted. The election requirements associated with this ICR are articulated through guidance published June 22, 2011 at *http://cciio.cms.gov/resources/files/hhs_srg_elections_06222011.pdf.* The election requirements are necessary for the federal external review process to provide an independent external review as requested by claimants. *Form Number:* CMS–10338 (OCN: 0938–1099); *Frequency:* Occasionally; *Affected Public:* State, Local, Tribal Governments; business or other for-profit; not-for-profit institutions; *Number of Respondents:* 46,773; *Number of Responses:* 218,657,161;

Total Annual Hours: 930,267. (For policy questions regarding this collection, contact Linda Greenberg at (301) 492–4225. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 11, 2013:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: January 8, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–00468 Filed 1–10–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10078]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate 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.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title:* Program for Matching Grants to States for the Operation of High Risk Pools; *Use:* The Centers for Medicare and Medicaid Services (CMS) is requiring the information in this information collection request as a condition of eligibility for grants that were authorized in the Trade Act of 2002, the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The information is necessary to determine if a state applicant meets the necessary eligibility criteria for a grant as required by law. The respondents will be states that have a high risk pool as defined in sections 2741, 2744, or 2745 of the Public Health Service Act. The grants will provide funds to states that incur losses in the operation of high risk pools. High risk pools are set up by states to provide health insurance to individuals that cannot obtain health insurance in the private market because of a history of illness. *Form Number:* CMS–10078 (OCN: 0938–0887); *Frequency:* Occasionally; *Affected Public:* State, Local and Tribal Governments; *Number of Respondents:* 31; *Total Annual Responses:* 31; *Total Annual Hours:* 1,240. (For policy questions regarding thiscollection contact Paul Scholz at (410) 786–6178. For all other issues call (410) 786–326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by March 12, 2013:

1. *Electronically.* You may submit 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) 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.

Dated: January 8, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–00473 Filed 1–10–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Child Support Noncustodial Parent Employment Demonstration (CSPED).

OMB No.: 0970–NEW.

Description:

The Office of Child Support Enforcement (OCSE) within the Administration for Children and Families (ACF) is proposing data collection activity as part of the Child Support Noncustodial Parent Employment Demonstration (CSPED). In October 2012, OCSE issued grants to eight state child support agencies to provide employment, parenting, and child support services to non-custodial parents who are having difficulty meeting their child support obligation. The overall objective of the CSPED evaluation is to document and evaluate the effectiveness of the approaches taken by these eight CSPED grantees. This evaluation will yield information about effective strategies for improving child support payments by providing non-custodial parents employment and other services through child support programs. It will generate extensive information on how these programs operated, what they cost, the effects the programs had, and whether the benefits of the programs exceed their costs. The information gathered will be critical to informing decisions related to future investments in child support-led employment-focused programs for non-custodial parents who have difficulty meeting their child support obligations.

The CSPED evaluation will include the following two interconnected components or ''studies'':

1. Implementation and Cost Study. The goal of the implementation and cost

study is to provide a detailed description of the programs—how they are implemented, their participants, the contexts in which they are operated, their promising practices, and their costs. The detailed descriptions will assist in interpreting program impacts, identifying program features and conditions necessary for effective program replication or improvement, and carefully documenting the costs of delivering these services. Key activities of the implementation and cost study will include: (1) Conducting semi-structured interviews with program staff and selected community partner organizations to gather information on program implementation and costs; (2) conducting focus groups with program participants to elicit participation experiences; (3) administering a web-based survey to program staff and community partners to capture broader staff program experiences; and (4) collecting data on study participant service use, dosage, and duration of enrollment throughout the demonstration using a web-based Management Information System (MIS).

2. Impact Study. The goal of the impact study is to provide rigorous estimates of the effectiveness of the eight programs using an experimental research design. Program applicants who are eligible for CSPED services will be randomly assigned to either a program group that is offered program services or a control group that is not. The study MIS that will document service use for the implementation study will also be used by grantee staff to conduct random assignment for the impact study. The impact study will rely on data from surveys of participants, as well as administrative records from state and county data systems. Survey data will be collected twice from program applicants. Baseline information will be collected from all noncustodial parents who apply for the program prior to random assignment. A follow-up survey will be collected from sample members twelve months after random assignment. A wide range of measures will be collected through surveys, including measures of employment stability and quality, barriers to employment, parenting and co-parenting, and demographic and socio-economic characteristics. In addition, data on child support obligations and payments, Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid receipt, involvement with the criminal justice system, and earnings and benefit data collected through the Unemployment Insurance (UI) system will be obtained from state and county databases.

This 60-Day Notice covers the following data collection activities: (1) Guides for the semi-structured interviews with program staff and community partners, (2) focus group guides for program participants, (3) the web-based survey to document program staff and partner experiences, (4) the MIS functions for tracking participation in the program, (5) the introductory script which program staff will use to introduce the study to participants, (6) the baseline survey used to capture participant characteristics prior to randomization, (7) the MIS functions for conducting random assignment, and (8) the extraction of child support, benefit, earnings, and criminal justice data extracted from state and county administrative data systems.

Respondents:

Respondents include program applicants, study participants, grantee staff and community partners, as well as state and county staff responsible for extracting data from government databases for the evaluation. Specific respondents per instrument are noted in the burden tables below.

Annual Burden Estimates

The following instruments, part of the baseline data collection and site Management Information Systems (MIS), are proposed for public comment under this 60-Day **Federal Register** Notice.

IMPLEMENTATION AND COST STUDY

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Total annual burden hours
Semi-structured interview topic guide with program staff and community partners	120	2	1	240	80
Focus group guide with program participants	240	1	1.5	360	120
Web survey of program staff and community partners	200	2	0.5	200	66.7
Study MIS for grantee and partner staff to document program participation	200	1,500	0.0333	10,000	3,333.3

IMPACT STUDY

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Total annual burden hours
Introductory script:					
Grantee staff	120	105	0.1667	2,100	700
Program applicants [1]	12,600	1	0.1667	2,100	700
Baseline survey:					
Study participants	12,000	1	0.5833	7,000	2333.3
Study MIS for grantee staff to conduct random assignment	120	105	0.1667	2,100	700
State and county administrative records	32	2	8	512	170.7

[1] Five percent of program applicants are not expected to agree to participate in the study; thus there are 5% more program applicants than study participants.

Estimated Total Annual Burden Hours: 8,204.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–00416 Filed 1–10–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. 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 Reports Clearance Officer at (301) 443–1984.

HRSA especially 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.

Information Collection Request Title: Patient Survey-Health Centers (OMB No. 0915–xxxx) NEW.

The Health Center program supports Health Centers (HCs), Migrant Health Centers (MHCs), Health Care for the Homeless (HCH) programs, and Public Housing Primary Care (PHPC) programs. Health Centers (HCs) receive grants from HRSA to provide primary and preventive health care services to medically underserved populations.

The proposed Patient Survey will collect nationally in-depth information about HC patients, their health status, the reasons they seek care at the HCs, their diagnoses, the services they utilize at HCs and elsewhere, the quality of those services, and their satisfaction with the care they receive, through personal interviews of a stratified random sample of HC patients. Prior to the national study, a cognitive pre-test will be conducted to refine and test the survey instrument in different languages, and to test the survey sampling methodologies and procedures. The pre-test will include cognitive interviews to ensure that the questions are being understood as was intended. Interviews conducted in the pre-test and the national study are estimated to take approximately 1 hour and 15 minutes each.

The Patient Survey builds on previous periodic Patient User-Visit Surveys, which were conducted to learn about the process and outcomes of care in HCs and MHCs, HCHs, and PHPCs. The original questionnaires were derived from the National Health Interview Survey (NHIS) and the National Ambulatory Medical Care Survey (NAMCS) conducted by the National Center for Health Statistics (NCHS). Conformance with the NHIS and NAMCS allowed comparisons between these NCHS surveys and the previous HC and HCH User-Visit Surveys. The new Patient Survey was developed using a questionnaire methodology similar to that used in the past and will also potentially allow some longitudinal comparisons for HCs and HCHs with the previous User-Visit survey data, including monitoring of processes and outcomes over time. In addition, this survey will be conducted in languages not used during previous surveys (which were conducted in English and Spanish) to include patients from different racial and ethnic backgrounds, including Chinese (Mandarin and Cantonese), Korean, and Vietnamese. With the exception of Spanish speakers, other racial and ethnic subgroups were not able to participate in the previous surveys.

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 annual estimate of burden is as follows:

SURVEY PRETEST

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee/Site Recruitment	2	3	6	3.00	18.00

SURVEY PRETEST—Continued

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Patient Recruitment (At clinic)	21	1	21	.17	3.57
Patient Survey (Administered at clinic)	16	1	16	1.25	20.00
Patient Recruitment (Through local advertisements/flyers/word-of-mouth)	71	1	71	.08	5.68
Patient Survey (Administered following local advertising)	55	1	55	1.25	68.75
Total Pretest					116.00

NATIONAL STUDY

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Grantee/Site Recruitment and Training	165	3	495	3.75	1,856.25
Patient Recruitment	9,207	1	9,207	.17	1,565.19
Patient Survey	6,600	1	6,600	1.25	8,250.00
Total National Study					11,671.44

Addresses: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: January 3, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–00364 Filed 1–10–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service Forms To Implement the Privacy Rule

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (0MB) for review. This proposed information collection project was previously published in the **Federal Register** (77 FR 60219) on October 2, 2012, and allowed 60 days for public comment, as required by 3506(c)(2)(A). No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0030, ''IHS Forms to Implement the Privacy Rule (45 CFR parts 160 & 164).'' *Type of Information Collection Request:* Extension, without revisions, of currently approved information collection, 0917–0030, ''IHS Forms to Implement the Privacy Rule (45 CFR parts 160 & 164).'' *Form Number(s):* IHS–810, IHS–912–1, IHS–912–2, IHS–913 and IHS–917. *Need and Use of Information Collection:* This collection of information is made necessary by the Department of Health and Human Services Rule entitled ''Standards for Privacy of Individually Identifiable Health Information'' (Privacy Rule) (45 CFR parts 160 and 164). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, creates national standards to protect individuals' personal health information, and gives patients increased access to their medical records. 45 CFR 164.508, 164.522, 164.526 and 164.528 of the Rule require the collection of information to implement these protection standards and access requirements. The IHS will continue to use the following data collection instruments to meet the information collection requirements contained in the Rule.

45 CFR 164.508: This provision requires covered entities to obtain or receive a valid authorization for its use or disclosure of protected health information for other than for treatment, payment and healthcare operations. Under the provision individuals may initiate a written authorization permitting covered entities to release their protected health information to entities of their choosing. The form IHS–810, ''Authorization for Use or Disclosure of Protected Health Information,'' is used to document an individual's authorization to use or disclose their protected health information.

45 CFR 164.522: Section 164.522(a)(1) requires a covered entity to permit individuals to request that the covered entity restrict the use and disclosure of their protected health information. The covered entity may or may not agree to the restriction. The form IHS–912–1, ''Request for Restrictions(s),'' is used to document an individual's request for restriction of their protected health information, and whether IHS agreed or disagreed with the restriction. Section 164.522(a)(2) permits a covered entity to terminate its agreement to a restriction if the individual agrees to or requests the termination in writing. The form IHS–912–2, ''Request for Revocation of Restriction(s),'' is used to document the agency or individual request to terminate a formerly agreed to restriction regarding the use and

disclosure of protected health information.

45 CFR 164.528 and 45 CFR 5b.9(c): This provision requires covered entities to permit individuals to request that the covered entity provide an accounting of disclosures of protected health information made by the covered entity. The form IHS–913, ''Request for an Accounting of Disclosures,'' is used to document an individual's request for an accounting of disclosures of their protected health information and the agency's handling of the request.

45 CFR 164.526: This provision requires covered entities to permit an individual to request that the covered entity amend protected health information. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must inform the individual that the amendment is accepted. If the covered entity denies the requested amendment, in whole or in part, the covered entity must provide the individual with a written denial. The form IHS–917, ''Request for Correction/Amendment of Protected Health Information,'' will be used to document an individual's request to amend their protected health information and the agency's decision to accept or deny the request.

Completed forms used in this collection of information are filed in the IHS medical, health and billing record, a Privacy Act System of Records Notice. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides the estimated burden hours for this information collection:

Data collection instrument	Number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
Authorization for Use or Disclosure of Protected Health Information (OMB Form No. 0917–0030, IHS–810)	500,000	1	20/60	166,667
Request for Restriction(s) (OMB Form No. 0917–0030, IHS–912–1)	15,000	1	10/60	2,500
Request for Revocation of Restriction(s) (OMB Form No. 0917–0030, IHS–912–2)	5,000	1	10/60	833
Request for Accounting of Disclosures (OMB Form No. 0917–0030, IHS–913)	15,000	1	10/60	2,500
Request for Correction/Amendment of Protected Health Information (OMB Form No. 0917–0030, IHS–917)	7,500	1	15/60	1,875
Total Annual Burden		5		174,375

* For ease of understanding, burden hours are provided in actual minutes.

The total estimated burden for this collection of information is 174,375 hours. There are no capital costs, operating costs and/or maintenance costs to respondents.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct your comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection, or to obtain a copy of the data collection instruments and/or instruction(s) contact: Tamara Clay, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–4750, send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to: *Tamara.Clay@ihs.gov.*

Comment Due Date: February 11, 2013. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: December 27, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2013–00363 Filed 1–10–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs; Announcement Type: Meeting Notice

AGENCY: Indian Health Service, HHS.

ACTION: Meeting Notice.

SUMMARY: The purpose of this Notice is to announce an Indian Health Service (IHS) Listening Session on the draft Policy on Conferring with Urban Indian Organizations (UIOs). IHS will provide an opportunity for interested parties to provide oral comments on the draft Policy on Conferring with UIOs that was published in the **Federal Register** on July 26, 2012.

Name of Listening Session: IHS Urban Listening Session.

Type of Meeting: Open Listening Session.

DATES: January 22, 2013.

Time: 1 p.m. to 3 p.m. Eastern Time—Approximate end time.

ADDRESSES: The Listening Session will be held at: Indian Health Service Headquarters, 801 Thompson Avenue, Rhoades Conference Center, Reyes Building 4th floor, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: The link to the **Federal Register** is: *https://www.federalregister.gov/articles/2012/07/26/2012-18300/draft-policy-on-conferring-with-urban-indian-organizations.* Information about the Urban Indian health program and a registration link for this Listening Session are available on the IHS Web site: *www.ihs.gov.*

Cost: There is no cost to attend the Listening Session.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Wolfe, Director, IHS Office of Urban Indian Health Programs. Phone: (301) 443–4680. Email: *urbanconfer@ihs.gov.*

Reasonable Accommodations: Individuals who require reasonable accommodations should submit a request to the Contact Person listed on this notice at least 1 day prior to the meeting.

Dated: January 7, 2013.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2013–00472 Filed 1–10–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translational SEP.

Date: January 24, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ernest W. Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *lyonse@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00384 Filed 1–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Initial Review Group Mental Health Services Research Committee.

Date: February 7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Disorders Involving Children and Their Families.

Date: February 11, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Adult Disorders.

Date: February 13, 2013.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00383 Filed 1–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, U.S.-China Program for Biomedical Collaborative Research.

Date: February 8, 2013.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of

Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, K99 Pathway to Independence Awards.

Date: February 8, 2013.

Time: 12:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00382 Filed 1–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Mental Health Council, January 24, 2013, 08:30 a.m. to January 24, 2013, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852, which was published in the **Federal Register** on December 13, 2012, 77 FR 74198.

The time for each session has changed. The open session will still start at 08:30 a.m. but will now recess at 01:00 p.m. The closed session will now start at 02:00 p.m. and will still end at 05:00 p.m. The meeting is partially Closed to the public.

Dated: January 7, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00385 Filed 1–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0005]

Agency Information Collection Activities: Application for Family Unity Benefits, Form Number I–817; Revision of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2012, at 77 FR 65703, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 11, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2009–0021. When submitting comments by email, please make sure to add [Insert OMB Control Number 1615–0005] in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a currently approved information.

(2) *Title of the Form/Collection:* Application for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* USCIS Form I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(5) *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: 2,384 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,768 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *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 202–272–8377.

Dated: January 8, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–00471 Filed 1–10–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application To Establish a Centralized Examination Station

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

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Application to Establish a Centralized Examination Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 12, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Establish a Centralized Examination Station.

OMB Number: 1651–0061.

Form Number: None.

Abstract: A Customs and Border Protection (CBP) port director decides when his or her port needs one or more Centralized Examination Stations (CES). If it is decided that a CES is needed, the port director solicits applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility; the fairness of fee structure; and knowledge of cargo handling operations and of CBP procedures. The names of all corporate officers and all employees who will come in contact with uncleared cargo will also be provided so that CBP may perform background investigations. The CES application is provided for by 19 CFR 118.11 and is authorized by 19 USC 1499, Tariff Act of 1930.

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: January 8, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–00415 Filed 1–10–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Rybix® (Tramadol Hydrochloride) Tablets

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of Rybix® (tramadol hydrochloride) tablets. Based upon the facts presented, CBP has concluded in the final determination that India is the country of origin of the Rybix (tramadol hydrochloride) tablets for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 26, 2012. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination on or before February 11, 2013.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch: (202) 325–0041.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 26, 2012, pursuant to subpart B of Part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of Rybix (tramadol hydrochloride) tablets, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H215656, was issued at the request of Shionogi Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP concluded that, based upon the facts presented, tramadol hydrochloride from India, blended with excipients and packaged into dosage form in France, was not substantially transformed in France,

such that India is the country of origin of the finished Rybix (tramadol hydrochloride) tablets for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: December 26, 2012.

Jeremy Baskin,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H215656

December 26, 2012

MAR–02 OT:RR:CTF:VS KSG

CATEGORY: Origin

Alan M. Kirschenbaum
Hyman, Phelps & McNamara P.C.
700 13th Street, NW.
Suite 1200
Washington, DC 20815

RE: U.S. Government procurement; Trade Agreement Act; Country of Origin of Rybix ODT; substantial transformation

Dear Mr. Kirschenbaum:

This is in response to your eruling request, submitted April 6, 2012, requesting a final determination on behalf of Shionogi Inc., pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR Part 177) which was forwarded to this office for a response. Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 et seq.). CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Rybix ODT (tramadol hydrochloride orally disintegrating tablets). As a U.S. importer, Shionogi Inc. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

FACTS:

Rybix ODT is a pharmaceutical product used for the management of moderate to moderately severe pain in adults. The active pharmaceutical ingredient (''API''), tramadol hydrochloride, is manufactured in India. The API is shipped to France where it undergoes four stages of manufacturing. Inactive ingredients (excipients) used in production in France are: aspartame, copovidone, crospovidone, ethylcellulose, magnesium stearate, mannitol 60, mannitol M300, mint rootbeer flavor, and silicon dioxide.

The first stage of French manufacturing is preparation of tramadol hydrochloride granules (the API). The API and silicon dioxide are de-lumped and granulated with a suspension of ethylcellulose, copovidone, silicon dioxide, and ethanol. The uncoated granules are sieved and sized. These granules are then coated and sieved to remove any granules larger than 710 microns.

The second stage of French manufacturing is preparation of the tablet blend. A number of excipients such as mint rootbeer flavor, aspartame, crospovidone, mannitol 60, and mannitol M300, are de-lumped by passing them through a sieve. An excipient is defined on *www.thefreedictionary.com* as ''an inactive substance that serves as the vehicle or medium for a drug'' or ''a substance, such as sugar or gum, used to prepare a drug or drugs in a form suitable for administration.'' The excipients are combined to make a flavor preblend. The tramadol hydrochloride coated granules are also de-lumped by passing them through a screen and then the flavor preblend is added and blended. The blended product is discharged into polyethylene-lined drums.

The third stage of French manufacturing is tablet compression. Magnesium stearate is sprayed onto upper and lower punch faces on a tablet press (to prevent sticking) and tablets are formed. The bulk tablets are collected in polyethylene-lined foil bags, which are heat-sealed and packaged in fiberboard drums.

The fourth stage of French manufacturing is packaging in child-resistant blister packs. The tablets are fed through a tablet feeder and packaged into cold form blisters sealed with child-resistant blister lidstock. The blister pack cards are then packed into cartons of 30 tablets each with FDA-compliant labeling, packaged in cartons and shipped to the importer's warehouses in the U.S.

ISSUE:

What is the country of origin of imported Rybix ODT (tramadol hydrochloride), processed as described above?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers if certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. government. Under the rule of origin set forth under 19 U.S.C. 2518(4)(B), an article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In determining whether a substantial transformation occurs in the manufacture of chemical products such as pharmaceuticals, CBP has consistently examined the complexity of the processing, and whether the final article retains the essential identity and character of the raw material. To that end, CBP has generally held that the processing of pharmaceutical products from bulk form into measured doses, filtering and packaging does not result in a substantial transformation. *See* Headquarters Ruling Letter (''HRL'') H197582, dated August 9, 2012, HRL 561975, dated April 3, 2002, HRL 561544, dated May 1, 2000.

In HRL 561975, dated April 3, 2002, an anesthetic drug known as sevofurane was imported in bulk form from Japan and in the U.S., processed into dosage form, filtered and subjected to FDA testing. CBP held that the imported good did not undergo a substantial transformation in the U.S.—the chemical and physical properties of the drug remained the same, and the medicinal use did not change.

Likewise, in HRL 561544, dated May 1, 2000, the testing, filtering and sterile packaging of Geneticin Sulfate bulk powder to create Geneticin Selective antibiotic, was not found to have substantially transformed the antibiotic substance because the processing only involved the removal of impurities from the bulk chemical and the placement of the chemical into smaller packaging.

In HRL H040735, dated January 21, 2009, CBP considered whether imported Sumatriptan was substantially transformed in the UK, where it was compounded with sodium chloride and water using helium USP for a processing aid to reduce dissolved air. The pharmaceutical then went through a series of sterilizing filters, and was filled into an empty capsule subassembly. The drug capsule subassembly, which contained the dose of sumatriptan succinate, and the actuator subassembly, which consisted of a nitrogen gas powered ram and piston, were then combined. CBP held that the active ingredient which was produced in India, did not undergo a substantial transformation even though the injection system was sophisticated and valuable. The active ingredient did not undergo a change in character.

In this case, the processing in France does not result in a change in the medicinal use of the finished product and the active ingredient retains its chemical and physical properties and is merely put into a dosage form and packaged. The active ingredient does not undergo a change in name, character or use. Accordingly, we find that there no substantial transformation occurs in France, and the imported product would be considered a product of India for purposes of government procurement.

HOLDING:

Based upon the facts in this case, we find that the imported Rybix ODT (tramadol hydrochloride) is not substantially transformed in France. The country of origin for government procurement purposes is India.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. 177.29. Any party-at-interest other

than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Jeremy Baskin

Acting Executive Director
Office of Regulations and Rulings,
Office of International Trade

[FR Doc. 2013–00414 Filed 1–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–02]

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 possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 3, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2013–00152 Filed 1–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5613–N–12]

Privacy Act; Notification of New Privacy Act System of Records, Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation Random Assignment and Service Tracking (RAST) System

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establishment of a new Privacy Act System of Records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation Random Assignment and Service Tracking (RAST) System. This system will be used by HUD's Office of Policy Development and Research (PD&R) and its contractors to conduct a random assignment and impact evaluation study of the impact that different types of pre-purchase counseling have on mortgage preparedness, homeowner outcomes, and loan performance for prospective low-to-moderate income, first-time homebuyers. Refer to the ''Purpose'' section to obtain detailed information about the purpose of this study.

DATES: *Effective Date:* This action shall be effective without further notice on *February 11, 2013* unless comments are received that would result in a contrary determination.

Comments Due Date: February 11, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., (Attention: Capitol View Building, 4th Floor), Washington, DC 20410, Telephone Number (202) 402–8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation Random Assignment and Service Tracking (RAST) System. Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records, and require published notice of the existence and character of the system of records. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: December 11, 2012.

Jerry E. Williams,

Chief Information Officer.

PDR/RRE.01

SYSTEM NAME:

Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation Random Assignment and Service Tracking (RAST) System.

SYSTEM LOCATION:

Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation data files are to be located at Abt Associates Inc., 55 Wheeler Street, Cambridge, MA 02138; Abt Associates Inc., 4550 Montgomery Avenue, Bethesda, MD 20814; Abt Associates Inc., 275 Seventh Avenue, Suite 2700, New York, NY 10001; Sage Computing Inc., 11491 Sunset Hills Road, Suite 350, Reston, VA 20190; HUD Office of Policy Development and Research, 451 7th Street SW., Rm. 8120, Washington, DC 20410; HUD Records Management Facility, 451 7th Street SW., Rm. B229, Washington, DC 20410.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Households enrolled in the Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the RAST system are as follows:

STUDY PARTICIPANT INTAKE DATA:

Name; Social Security Number; study identifier; birth date; contact information (home address, telephone numbers, email address); co-borrower(s) on home loan; demographic characteristics of the household (e.g., race/ethnicity, gender, marital status); number of children and other adults in the household; income sources and total family income; employment and earnings for the household; co-borrower name and contact information; veteran's status, educational level; first-time homebuyer status; early-stage borrower status; reliable access to transportation; language competency (English or Spanish); prior experience completing pre-purchase counseling or education; regular access to a computer and Internet; the stage in the home purchase process and preparedness for home purchase (e.g., the extent of respondents' home search prior to pre-qualification, intended down payment amount, expected timeline for home purchase); financial characteristics (e.g., income sources and total family income, financial literacy, non-housing savings/debts, budgeting activities, and employment and earnings, learning and planning preferences); participant's experience with the study's recruitment and enrollment process; random assignment of counseling services and whether or not study participants sought and received them; opinions on the pre-purchase counseling and education services study participants may have received; contact information for him or herself and the first and last name of a family members or friends.

CO-BORROWER(S) INTAKE DATA:

Name, Social Security Number

LENDER INTAKE DATA:

Lender's Name; MSA/City/Branch; Data Transfer Date; Client's First Name; Client's Last Name; Address, City, State, Zip; Preferred Phone Number; Alternative Phone Number; Email; Date of Birth; Date customer gave consent for contact information to be sent to the study team; Date customer first contacted lender about home loan; Unique Customer Identifier; First-time homebuyer status; Presence of a co-borrower; Name and first-time homebuyer status of co-borrower(s);

LENDER ORIGINATION AND LOAN PERFORMANCE DATA:

Loan number; Date of closing; Purchase price; Monthly income; Back end ratio; Front end ratio; Down payment; Initial LTV; Mortgage type; Mortgage terms; Interest rate (initial and information on any fixed period or adjustment caps for ARMs); Closing costs and fees; Ever 30 days delinquent; Ever 90 days delinquent; Prepayment; Foreclosure; Bankruptcy; Updated mortgage balance; recruitment call outcomes and dispositions; recruitment call experiences;

HUD ADMINISTRATIVE DATA:

Loan number; Date of closing; Purchase price; Monthly income; Back end ratio; Front end ratio; Down payment; Initial LTV; Mortgage type; Mortgage terms; Interest rate *(initial and information on any fixed period or adjustment caps for ARMs);* Closing costs and fees; Ever 30 days delinquent; Ever 90 days delinquent; Prepayment; Foreclosure; Bankruptcy; Updated mortgage balance;

PRE-PURCHASE COUNSELING AND EDUCATION DATA:

First contact date with counseling agency; date of first online pre-purchase education session, how many times a study participant signs into online education system to complete all pre-purchase modules; length of time spent completing each module; if pre-purchase online education module was started, but not completed; date completed online pre-purchase education modules; test scores of online pre-purchase modules; date(s) of group education session(s); length of time of session(s); how many participants in group education/workshop; how many household members attended; date of first telephone counseling session; length of time for telephone counseling session; date of in-person counseling session; length of time for in-person counseling session; topics covered during counseling session; counselor's name and position at agency; action steps before or during counseling session, recommendations to study participants; counseling and education outcomes; general information about housing counseling agency (mission, lead agency, budget, partnerships, target population); staff requirements, number of staff, training for staff; contacting study participants; type of pre-purchase education delivered; topics covered; type of pre-purchase counseling delivered; topics covered; collecting service tracking data; and experience participating in study.

EQUIFAX DATA:

Risk scores (Vantage Score and Beacon 09/FICO); Total non-housing debt balance; Sum of balances for all open auto finance accounts on file with update within the last 3 months; Sum of balances for all open bankcard accounts on file with update within the last 3 months; Sum of balances for all open personal finance/student loan accounts on file with update within the last 3 months; Total monthly payment non-housing debt; Total monthly payment auto debt; Total monthly payment credit card debt; Total monthly payment student loan debt; Individual's monthly housing expenses (for numerator of front-end-ratio); Individual's monthly debt payments (for numerator of back-end-ratio); Indicator for loan type (e.g. FHA, VA, conventional); Indicator for whether a home was purchased since enrollment; Date of home purchase/closing if home was purchased since enrollment; Total housing debt balance; Total monthly payment on housing debt; Housing debt from first mortgage; Monthly payment on housing debt from first mortgage; Housing debt from subordinate mortgage(s); Monthly payment on housing debt from subordinate mortgage(s); Total HELOC balance; HELOC balance on first mortgage; HELOC balance on subordinate mortgages; Total HELOC monthly payment; HELOC monthly payment on first mortgage; HELOC monthly payment on subordinate mortgages; Indicator for whether a mortgage was refinanced; Indicator for presence of a subordinate mortgage; Ever 30 days past due on mortgage payment within the past 12 months; Ever 60 days past due on mortgage payment within the past 12 months; Ever 90 days past due on mortgage payment within the past 12 months; Ever 120 days past due on mortgage payment within the past 12 months; Number of first mortgage accounts on file with any of the following within the last 24 months: charge off, bankruptcy, internal collection (i.e. collection being handled by original creditor and not a third party); Number of home equity line accounts on file with any of the following ever: charge off, bankruptcy, internal collection (i.e. collection being handled by original creditor and not a third party); Experienced bankruptcy since enrollment; and Experienced foreclosure since enrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 501, 502, Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2. 12 U.S.C. 1701z–2(g) provides the authority to request social security numbers from individuals interested in participating in a research study.

PURPOSE:

The Pre-purchase Homeownership Counseling Demonstration and Impact Evaluation will examine the impact that different types of pre-purchase counseling have on mortgage preparedness, homeowner outcomes, and loan performance for prospective low-to moderate income, first-time homebuyers. Clients participating in the study will be asked to complete an eligibility assessment and baseline survey at the time they are enrolled in the study. Additionally, some study participants will be asked to participate in semi-structured follow-up interviews that seek to learn about participants' experiences with enrollment and interaction with participating counseling agencies. Participating counseling agencies' staff will be asked to participate in semi-structured interviews that seek to understand provision of counseling in each jurisdiction and provide the study team information on counseling and education services that study participants receive. Staff at lenders will be asked to participate in semi-structured interviews that seek to understand the recruitment process and provide the study team a weekly outcome report for recruitment calls through to the enrollment and intervention period to determine the impact of two different pre-purchase education and counseling interventions through a randomized experimental design. A computer program will be used to randomly assign program participants to one of the two interventions or the control group: (1) Home buyers will receive education and counseling in person at local agency; and (2) Home buyers will receive education and counseling over the Internet and telephone; and (3) Control group homebuyers will not receive any counseling. The purpose of these data collection activities is to collect the information needed to evaluate the impact of pre-purchase housing counseling. Specifically, this evaluation will recruit 7,000 low-to-moderate income, first-time homebuyers who have pre-qualified for a home purchase loan. Upon study enrollment, study participants will be randomly assigned to one of three research groups: two treatment groups (one for each intervention type) and a control group that will not receive any pre-purchase counseling services. The collection of data received from study participants, lenders, counseling agencies, and other entities is vital to understand where potential borrowers begin in the process, how they are affected by pre-purchase education and counseling, and if their behaviors have changed as a result of the evaluation. To collect and organize the data required to perform the analyses, the RAST System will serve as the central collection point for maintaining participant's data and generating the reports needed for analysis. Conducting this study will allow HUD to provide reliable counseling and better monitory the performance and services provided by HUD-approved and HUD-funded counseling agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a.

1. To authorized Abt SRBI researchers to collect the data from study participants to match these primary study data with other datasets for tracking (e.g., matching with change of address databases); to track and locate study participants throughout the study and to manage the data collection process; for statistical analysis and to develop findings for this research study to allow HUD and researchers to understand the impact of pre-purchase homeownership counseling on a range of outcomes for low-to-moderate and middle- income, first-time homebuyers; and link data from one phase of data collection to another or to match primary study data with other datasets for data collection purposes in order to ascertain the impact of pre-purchase counseling on homebuyer outcomes. The production of aggregate statistical data will be without any personal identifiers, which will not be used to make decisions concerning the rights, benefits, or privileges of specific individuals under any HUD loan program.

2. To make public use of file in non-identifiable form for disclosure to authorized researchers for additional statistical analysis.

3. To Credit Bureaus to obtain credit report data on study participants.

4. To Local and National organizations (counseling agencies) to enroll study participants in different pre-purchase education and counseling intervention group.

5. To FHA Approved lenders to determine participant's enrollment after the study and to track information received from lenders participating in the study.

Discretionary disclosures that may be applicable to this system of records notice are found on the Department Privacy Web site under Appendix 1.[1]

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Pre-Purchase Homeownership Counseling Demonstration and Impact Evaluation data files are to be located at Abt Associates Inc., 55 Wheeler Street, Cambridge, MA; Abt Associates Inc., 4550 Montgomery Avenue, Bethesda, MD; Abt SRBI Inc., 275 Seventh Avenue, Suite 2700, New York, NY 10001; Sage Computing Inc., 11491 Sunset Hills Road, Suite 350, Reston, VA 20190, HUD Records Management Facility, 451 7th St. SW., Rm. B229, Washington, DC 20410. Three years after satisfactory close of project, per the Records Disposition Schedule, 67 Federal Records Center, 4205 Suitland Road, Suitland, MD 20746–8001. Back-up data is stored offsite at: Abt Associates Inc., 55 Wheeler St., Cambridge, MA 02138; Iron Mountain Storage: Bethesda: 8928 McGaw Court, Columbia, MD 21045; Cambridge: 21 Terry Ave., Burlington, MA 01803; 75 Bearfoot Road, Northboro, MA 01532; 96 High Street, Billerica, MA 01821. All hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building. All electronic files: Data files used for analysis will be stored in a separate location from files with identifying information to minimize the risk that an unauthorized user could use the unique identification number to link de-identified files with the identifiers. Access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role.

RETRIEVABILITY:

Records within the random assignment data file will be retrieved by name, Social Security Number, study identification number, or date of birth.

SAFEGUARDS:

Safeguards: Electronic files: All personal data will be encrypted and maintained on a secure workstation or server that is protected during the storage, retrieval, access, and disposal

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

process that is firewall protected and a complex password in a directory that can only be accessed by the network administrators and the analysts actively working on the data. Access rights to the data are granted to limited researchers on a need-to-know basis, and the level of access provided to each researcher is based on the minimal level required that individual to fulfill his research role. All data users will be aware of and trained on their responsibilities to protect participants' personal information, including the limitations on uses and disclosures of data. Backup media will be encrypted. Data will never be stored on a laptop or on a movable media such as CDs, diskettes, or USB flash drives without encryption. Hardcopy files: All hard copy forms with personal identifying data (the participant agreement/informed consent form) will be stored securely in a locked cabinet that can only be accessed by authorized individuals working on the data. The locked cabinet will be stored in a locked office in a limited-access building, (e.g. Study team interviewers will securely store any hard copy documents with personal protected information, such as tracking letters.)

RETENTION AND DISPOSAL PROCESS:

Records Disposition Schedule,[2] 2225.6, REV–1, Appendix 67, Policy Development and Research Records, provides disposition instructions for Headquarters and Field Office records produced in connection with activities conducted under Title V of the Housing and Urban Development Act of 1970 (Pub. L. 91–609, 84 Stat. 1784; 12 U.S.C. 17Dlz–1). Per the Records Disposition Schedule 67, project case files reflecting a complete history of each project from initiation through research, development, design, testing, and demonstration, records should retire to Federal Records Center 3 years after satisfactory close of project that volume warrants. Destroy 6 years after satisfactory close of project. (NARA Job NCl–207–78–6, item 5). In accordance with the Records Disposition Schedule, the Contractor will return all electronic and hard copy study records to PD&R under the retention period for records. Hard copy forms that are no longer needed for the study will be shredded. The data will not be used after the final acceptance of the report by HUD. Upon request of the agency, Abt Associates will permanently destroy all electronic personally-identifiable information on the system using the methods described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006). Encrypted versions of the data may remain on backup media for a longer period of time, but will be similarly permanently destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Carol Star, Director of the Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone Number (202) 402–6139.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Chief Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW. (Attention: Capitol View Building, 4th Floor), Washington, DC 20721. Written requests must include the full name, Social Security Number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records and for applicants who want to appeal initial agency determination appear in 24 CFR part 16.

(i) In relation to contesting contents of records, the Chief Privacy Officer at HUD, 451 Seventh Street SW., (Attention: Capitol View Building, 4th Floor), Washington, DC 20410; and,

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Original data collected directly from study participants, study participant lenders and counseling agencies, third party data (e.g. National Change of Address database, credit bureaus) and administrative data from HUD.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2013–00460 Filed 1–10–13; 8:45 am]

BILLING CODE 4210–67–P

[2] *http://www.hud.gov/offices/adm/hudclips/handbooks/admh/2225.6/index.cfm.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2012–N195: FXES11130300000–134–FF03E00000]

Endangered and Threatened Wildlife and Plants; Draft Revised Indiana Bat Summer Survey Guidelines

Correction

In notice document 2013–00213, appearing on pages 1879–1880 in the issue of Wednesday, January 9, 2013, make the following correction:

On page 1879, in the third column, the sub-agency ''Fish and Wildlife Service'' was omitted and is corrected to read as set forth above.

[FR Doc. C1–2013–00213 Filed 1–10–13; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.13.CD00.B9510.00]

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection, 1028–0095.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on an information collection request (ICR) that we have sent to the Office of Management and Budget (OMB) for review and approval. The ICR concerns the paperwork requirements for the National Institutes for Water Resources (NIWR) USGS Competitive Grant Program. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on January 31, 2013.

DATES: Submit written comments by February 11, 2013.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your

submission with #1028–0095. Please also submit a copy of your comments to Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 (mail); or *smbaloch@usgs.gov* (email). Please reference Information Collection 1028–0095.

FOR FURTHER INFORMATION CONTACT: Earl Greene, Acting Chief Office of External Research, U.S. Geological Survey, 5522 Research Park Drive, MS 436, Baltimore, Maryland 21228 (mail) at (443) 498–5505 (Phone); or *eagreene@usgs.gov* (email). You may find additional information about this information collection at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Institutes for Water Resources (NIWR) USGS Competitive Grant Program.

OMB Control Number: 1028–0095.

Abstract: The NIWR–USGS National Competitive Grant Program issues an annual call for proposals to support research on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the USGS and the state water resources research institutes authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 et seq.). The program is conducted in conjunction with the State Water Resources Research Institutes. The NIWR cooperates with the USGS in establishing total programmatic direction, reporting on the activities of the Institutes, coordinating and facilitating regional research and information and technology transfer, and in operating the NIWR–USGS Student Internship Program. Any investigator at an accredited institution of higher learning in the United States is eligible to apply for a grant through a water research institute or center established under the provisions of the Act. Proposals involving substantial collaboration between the USGS and university scientists are encouraged. Proposals may be for projects of 1 to 3 years in duration and may request up to $250,000 in federal funds. Successful applicants must match each dollar of the federal grant with one dollar from nonfederal sources. An annual progress and final technical report for all projects is required at the end of the project period. This program is authorized by the Water Resources Research Act of 1984, as amended (42 U.S.C. 10303(g)).

No questions of a ''sensitive'' nature are asked.

Frequency of Collection: Annually.

Affected Public: Research investigators at accredited institutions of higher education.

Respondent's Obligation: Voluntary (necessary to receive benefits).

Estimated Number of Respondents: We expect to receive approximately 65 applications and award 7 grants per year.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the annual reporting burden to be 3,984 hours. This includes 60 hours per applicant to prepare and submit the application; and 12 hours (total) per grantee to complete the interim and final technical reports.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: To comply with the public consultation process, on August 28, 2012, we published a **Federal Register** notice (77 FR 52052) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day public comment period, which ended October 29, 2012. In response to our **Federal Register** Notice, we received one comment, which consisted of a general invective about the U.S. Government and did not pertain to this information collection. We are again soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 27, 2012.

Earl Greene,

Acting Chief, Office of External Research, U.S. Geological Survey.

[FR Doc. 2013–00375 Filed 1–10–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX13EN05ESB0500]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of currently approved information Collection, 1028–0096, Department of the Interior Climate Science Centers (DOI CSCs).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on April 30, 2013.

DATES: Submit written comments by March 12, 2013.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax); or *smbaloch@usgs.gov* (email). Please Reference Information 1028–0096 in the subject line.

FOR FURTHER INFORMATION CONTACT: Nadine Hartke by mail at U. S. Geological Survey, MS 400 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192, or by telephone at 703–648–4607.

SUPPLEMENTARY INFORMATION: *Abstract:* The name of this information collection has been updated from ''Department of the Interior Regional Climate Science Centers'' to ''Department of the Interior Climate Science Centers (DOI CSCs).'' The primary objective of the National Climate Change and Wildlife Science Center (NCCWSC) is to complete science projects on the effects of climate and global change on fish, wildlife and

their habitats. Additionally, the NCCWSC has the responsibility to manage DOI Climate Science Centers that are co-located at cooperating organizations at non-USGS facilities. The DOI CSCs include USGS staff that report to a national USGS office. The NCCWSC works in close partnership with the climate change science and natural and cultural resource management communities to understand high priority science needs and to develop science information tools that can help resource managers develop strategies for responding to climate change. This program provides funding for researchers through cooperative agreements that involve climate change science as a major component.

OMB Control Number: 1028–0096.

Title: Department of the Interior Climate Science Centers.

Respondent Obligation: Voluntary.

Frequency of Collection: Upon release of Program Announcements.

Estimated Annual Number of and Description of Respondents: An estimated 40 institutions of higher education and other non-profit organizations may respond.

Estimated Annual Number of Respondents: 40.

Estimated Completion Time: 20 hours per response.

Estimated Annual Burden Hours: 800 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting will average 20 hours per response. This includes time to develop a technical proposal, budget sheets, perform internal proposal reviews, secure support letters, and submit the proposal through Grants.gov.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost:'' There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Dated: January 4, 2013.

T. Douglas Beard, Jr.,

Chief NCCWSC, U.S. Geological Survey.

[FR Doc. 2013–00374 Filed 1–10–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Proposed Shu'luuk Wind Project on the Campo Indian Reservation in San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead Federal agency, with the Campo Band of Mission Indians (Tribe) as a cooperating agency, intends to file a DEIS with the U.S. Environmental Protection Agency (EPA) for the Proposed Shu'luuk Wind Project in San Diego County, California. This notice also advises the public that the DEIS is now available for public review and provides the date, time, and location of public meetings.

DATES: Written comments on the DEIS must arrive 45 days after EPA publishes its Notice of Availability in the **Federal Register**. Two public hearings will be held, one on January 29, 2013, and the other on January 30, 2013 from 6 p.m. to 9 p.m., and the BIA will accept written comments at the hearings and throughout the comment period. Oral comments will also be taken at each public hearing by a court reporter.

ADDRESSES: You may mail or hand-deliver written comments to Robert Eben, Superintendent, Southern California Agency, Bureau of Indian Affairs, 1451 Research Park Drive, Riverside, CA 92507. The January 29, 2013 public hearing will be held at the Alpine Community Center, 1830 Alpine Boulevard, Alpine, California. The January 30, 2013 public hearing will be held at the Campo Indian Reservation Tribal Hall, 31690 Church Road, Campo, California. See the **SUPPLEMENTARY INFORMATION** section of this notice for instructions on submitting comments and locations where the DEIS is available for review.

FOR FURTHER INFORMATION CONTACT: Lenore Lamb, Southern California Agency, Bureau of Indian Affairs, 1451 Research Park Drive, Riverside, CA 92507, telephone (951) 276–6625 (ext. 254).

SUPPLEMENTARY INFORMATION: Public review of the DEIS is part of the administrative process for the BIA evaluation of the lease between the Tribe and the developer to enable construction and operation of the proposed Shu'luuk Wind Project. Subsequent to the approval of the lease, a wind energy project would be developed on the Campo Indian Reservation in southeastern San Diego County, approximately 60 miles east of San Diego. A Notice of Intent to prepare the DEIS was published in the **Federal Register** on May 20, 2011. The BIA held public scoping meetings for the project environmental review on June 21, 2012, and June 22, 2012, at the Mountain Empire High School, 3305 Buckman Springs Road, Pine Valley, California, and the Campo Indian Reservation Tribal Hall, 31690 Church Road, Campo, California, respectively. Pursuant to Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations (40 CFR 1506.10), the publication of this Notice of Availability in the **Federal Register** initiates a 45-day public comment period.

Background: The proposed action consists of BIA approval of a lease between the Tribe and Invenergy Wind California, LLC to construct and operate a renewable energy facility for up to 35 years on the Campo Indian Reservation. The purpose of the project is to improve the economic conditions of the Campo Band and to provide environmental benefits for the San Diego region through the construction and operation of a renewable energy facility.

The project site is located on the Campo Indian Reservation in southeastern San Diego County, California. The lease area would be up to 900 acres, based on final project design, which is dependent upon which alternative is ultimately selected. The actual disturbance area would be less than the lease area. The project would

be a wind energy project with one alternative that may include some solar energy generation. The approval of the lease would allow Invenergy, LLC to develop and operate a wind power generation facility capable of generating up to 250 MW of electricity, and would consist of up to 85 turbines, depending on which alternative is selected. Each of the four alternatives, with the exception of the No Action Alternative, would achieve the generation of electricity from wind turbines installed by Invenergy.

The manufacturer and model of the wind turbines have not yet been selected for the Shu'luuk Wind Project as the advancement in technology continues throughout the project site approval process. The turbines for the proposed project would have a tower hub height of up to 309 feet, a rotor diameter up to 414 feet, and a total height (to tip) of up to 515 feet. Each turbine would be set on a concrete foundation, and turbines would be connected by underground electrical cable to a project substation. The substation would be sited on a two-acre area and would consist of a graveled, fenced area containing transformer and switching equipment and an area for vehicle parking. Up to five miles of new three-phase 138 kV overhead interconnection transmission circuit would be constructed within the Campo Indian Reservation from the project collector substation to a San Diego Gas & Electric (SDG&E) pole located on private land. Other required facilities, all located within the Campo Indian Reservation, would include: up to three permanent meteorological towers; temporary material laydown areas during construction; temporary office areas; an operations and maintenance facility; approximately 25 miles of new access roads; approximately 22 miles of improved existing roads; an electrical collection and communications system; and a temporary concrete batch plant. The wind power generation facility would operate year-round for a minimum of 25 years. Construction of the proposed project is anticipated to take between 11 and 24 months depending on the alternative selected. In addition to the No Action Alternative, three alternatives are evaluated in the DEIS.

Alternative 1 consists of 250 MW generated from up to 85 3–MW wind turbines. Each turbine would have a hub height up to 309 feet, rotor diameter up to 414 feet, and tip height up to 515 feet.

Alternative 2 consists of 200 MW generated primarily from up to 80 2–MW wind turbines (totaling 160 MW from wind) in combination with up to 40 1–MW solar photovoltaic (PV) panels (totaling 40 MW from solar). Each turbine would generate 2 MW, have a hub height up to 305 feet, a rotor diameter up to 375 feet, and a tip height up to 493 feet.

Alternative 3 consists of 160 MW generated from up to 71 3–MW to 2.3–MW wind turbines. Each turbine would have a hub height of up to 308 feet, rotor diameter of up to 407 feet, and tip height of up to 515 feet.

Environmental issues addressed in this DEIS include effects on land resources, water resources, air quality, biological resources, climate change, cultural resources, socioeconomic conditions, resource use patterns, traffic, noise, visual and aesthetic resources, public health and safety, and cumulative effects.

Directions for Submitting Comments: Please include your name, return address, and ''EIS Comments, Shu'luuk Wind Project, San Diego County, CA,'' on the first page of your written comments.

Locations Where the DEIS is Available for Review: The DEIS is available for review at the Bureau of Indian Affairs Southern California office, 1451 Research Park Drive, Riverside, CA 92507; at the offices of Campo EPA, Suite 4, 36190 Church Rd, Campo, CA 91906; and at the Campo-Morena Village Branch Library, San Diego County Library System, 31356 Hwy 94, Campo, CA 91906. Comments can be submitted electronically to shuluukcomments@aecom.com. The DEIS is also available online at *http://www.shuluukwind.com/.* To obtain a compact disk copy of the DEIS please provide your name and address in writing or by voicemail to Lenore Lamb. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability: Comments, including the names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday excluding holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to Sec. 1503.1 of the CEQ Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of Interior regulations (43 CFR part 46), implementing the procedural requirements of NEPA (42 U.S.C. 4371 et seq.), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: October 12, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–00439 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT–92000–12XL5017AR–L51100000–GA0000–LVEMJ12CJ610, UTU89060]

Notice of Competitive Coal Lease Sale, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM), Utah State Office will reoffer certain coal resources described below as the Dry Canyon B Tract (UTU–89060) in Carbon County, Utah, for competitive sale by sealed bid, in accordance with the Federal regulations for competitive lease sale notices and the Mineral Leasing Act of 1920, as amended. The initial application (UTU–85539) for the lands contained in the Dry Canyon Tract were offered for lease on November 15, 2011, as originally applied for on March 28, 2007. No bids were received at the original offering of this lease.

DATES: The lease sale will be held at 1:00 p.m. on March 6, 2013. The sealed bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received by or before 10:00 a.m. on March 6, 2013.

The BLM cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned. The outside of the sealed envelope containing the bid must clearly state the envelope contains a bid for Coal Lease Sale UTU–89060, and that it is not to be opened before the date and hour of the sale.

ADDRESSES: The lease sale will be held in the BLM's Utah State Office, Monument Conference Room, Fifth Floor, 440 West 200 South, Salt Lake City, Utah. Sealed bids can be hand delivered to the cashier, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah, during normal business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Sealed bids may also be sent by certified mail, return receipt requested to the Cashier, BLM Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Jeff McKenzie, 440 West 200 South, Suite 500 Salt Lake City, Utah 84101–1345 or telephone 801–539–4038. 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 coal lease sale is being held in response to a lease by application (LBA) submitted by Wasatch Natural Resources, LLC, to the BLM on April 27, 2012. All coal LBAs submitted to the BLM for processing on or after November 7, 2005, are subject to processing costs on a case by case basis (43 CFR 3000.10(d)(1), (70 FR 58872, October 7, 2005). The processing cost rules implemented for coal LBAs at 43 CFR 3473.2(f) (70 FR 58876, October 7, 2005) require the applicant who nominates a tract for a competitive lease sale to pay the processing fee (43 CFR 3000.11) prior to publication of the sale notice. Wasatch Natural Resources, LLC, paid the BLM a processing fee in the amount of $6,600. The successful bidder must pay to the BLM the cost recovery amount of all costs the BLM incurs processing the coal lease sale and all processing costs that BLM incurs after the date of the sale notice leading to lease issuance (43 CFR 3473.2(f)). If the successful bidder is someone other than the applicant, the BLM will refund to the applicant the processing fee specified in this sale notice. If there is no successful bidder, the applicant remains responsible for all processing fees. The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah, approximately 3 miles northeast of Helper, Utah, on both private and BLM surfaces with federally-administered minerals. They are described as follows:

Salt Lake Meridian

T. 12 S., R.10 E.,
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, N½;
Sec. 28, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 29, E½SE¼;
Sec. 33, all.

T. 13 S., R.10 E.,
Sec. 3, all;
Sec. 4, lots 1–4, S½N½, N½S½;
Sec. 8, lot 4;
Sec. 10, N½, W½SW¼;
Sec. 11, N½, SE¼.

Containing approximately 4,325.01 acres.

Wasatch Natural Resources, LLC, submitted the application for the coal lease. The application indicates that the company plans to mine the coal through new or rehabilitated entries if it obtains the lease. The coal in the Dry Canyon B tract has three minable coal beds; the Aberdeen, the Kenilworth; and, the D seam bed. The minable portions of the coal beds in this area are approximately ten feet in thickness for the Aberdeen; approximately 8 feet in thickness for the Kenilworth and approximately 6 feet in thickness for the D seam. The tract contains approximately 42.2 million tons of recoverable high-volatile A/B bituminous coal. The coal quality in the coal beds on an ''as received basis'' is as follows: (1) *Aberdeen:* 13,414 Btu/lb., 2.35 percent moisture, 5.57 percent ash, 41.86 percent volatile matter, 49.83 percent fixed carbon and 0.49 percent sulfur; (2) *Kenilworth:* 13,287 Btu/lb., 2.06 percent moisture, 6.91 percent ash, 42.88 percent volatile matter, 48.26 percent fixed carbon and 0.72 percent sulfur; and, (3) *D:* 12,470 Btu/lb., 6.00 percent moisture, 8.00 percent ash, 39.00 percent volatile matter, 47.00 percent fixed carbon and 0.50 percent sulfur.

The Dry Canyon B Tract may be leased to the qualified bidder of the highest cash amount, provided that the high bid meets or exceeds the fair market value (FMV) for the tract. The Department of the Interior has established a minimum bid of $100 per acre or fraction thereof. The minimum bid is not intended to represent the FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, a royalty rate of 12.5 percent of the value of coal mined by surface methods, and a royalty of 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.257.

The BLM signed a Determination of National Environmental Policy Act (NEPA) Adequacy (DNA) on February 18, 2009. The DNA was the result of analyzing numerous previously prepared NEPA documents. On February 20, 2009, a Finding of No Significant Impacts (FONSI)/Decision Record (DR) was signed based on the DNA. No appeals of the BLM decision to lease were filed during the appeal period that ended on March 24, 2009. The BLM held a public hearing and requested comments on the NEPA review and the FMV of the Dry Canyon Tract on August 13, 2009. No comments were received and the FONSI/DR remains in effect.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (Room 500), 440 West 200 South, Salt Lake City, Utah 84101. All case file documents and written comments submitted by the public on FMV or royalty rates except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room (Suite 500).

Approved.

Juan Palma,

State Director.

[FR Doc. 2013–00459 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKF02000.16100000.DP0000.LXSS094L0000]

Notice of Availability of a Supplement to the Eastern Interior Draft Resource Management Plan/Environmental Impact Statement for Leasing of Hardrock Minerals in the White Mountains National Recreation Area, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as

amended, the Bureau of Land Management (BLM) is announcing the availability of a Supplement to the Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Eastern Interior Planning Area (Alaska) and the extension of the comment period for the Draft RMP/EIS. The purpose of the Supplement is to analyze and obtain public comment on opening part of the White Mountains National Recreation Area to hardrock mineral leasing.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS and Supplement thereto within 90 days after the Environmental Protection Agency (EPA) publishes its notice of availability of the Supplement in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Eastern Interior Draft RMP/EIS and Supplement by any of the following methods:

- *Web site: http://www.blm.gov/ak/st/en/prog/planning.html.*
- *Fax:* 907–474–2282.
- *Mail:* Eastern Interior Field Office, Attention—Eastern Interior Draft RMP/EIS, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

Copies of the Supplement to the Eastern Interior Draft RMP/EIS are available at the Fairbanks District Office at the above address; at the Alaska State Office, Public Information Center, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513; and on the following Web site: *http://www.blm.gov/ak/st/en/prog/planning.html.*

FOR FURTHER INFORMATION CONTACT: Jeanie Cole, 907–474–2340 or *j05cole@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: The Supplement to the Eastern Interior Draft RMP/EIS amends Alternative D to address hardrock mineral leasing in the White Mountains National Recreation Area (NRA). Section 1312 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 460mm–4, withdrew the lands within the White Mountains NRA from location, entry, and patent under the Mining Law of 1872, but allows the Secretary to ''permit the removal of the nonleasable minerals'' from these lands, provided the Secretary makes a finding that such disposition would not have significant adverse effects on the administration of the NRA. The BLM has interpreted section 1312 as allowing for the disposal of previously locatable minerals within the NRA by lease, as described in its regulations at 43 CFR part 3500 and 3580, subpart 3585.

The White Mountains RMP issued in 1986 recommended opening about 44 percent of the NRA to hardrock mineral leasing. This decision was never implemented.

The BLM published a Notice of Availability for the Eastern Interior Draft RMP/EIS in the **Federal Register** on February 24, 2012 (77 FR 11154). The Environmental Protection Agency (EPA) published its Notice of Availability of the Draft RMP/EIS in the **Federal Register** on March 2, 2012 (77 FR 12835), beginning a 150-day public comment period. This notice announces the extension of the comment period for the Draft RMP/EIS for 90 days after EPA publishes its notice of availability of the Supplement in the **Federal Register**. The Draft RMP/EIS considered hardrock mineral leasing in the White Mountains NRA as an alternative considered but not analyzed in detail.

In the Draft RMP/EIS, the BLM previously described that the provisions under ANILCA for hardrock mineral leasing in the White Mountains NRA (implemented by 43 CFR 3585) applied only to removal of hardrock minerals from unperfected mining claims that existed before November 16, 1978. Since there are no longer any mining claims of record within the NRA, it was thought that no one could meet the requirements to lease hardrock minerals. This understanding was incorrect, as the BLM, through its regulations at 43 CFR part 3500 and subpart 3580, has interpreted Section 1312 of ANILCA as allowing for the disposal of hardrock minerals by lease even in the absence of an underlying unperfected mining claim subject to certain findings by the Secretary.

In order to analyze in detail and obtain public comment on an alternative involving hardrock mineral leasing in the White Mountains NRA, the BLM has issued a Supplement to the Eastern Interior Draft RMP/EIS. The Supplement amends Alternative D to include hardrock mineral leasing. This alternative would recommend making approximately 160,000 acres in the White Mountains NRA available for hardrock mineral leasing. The Supplement describes the additions to Alternative D, assumptions for analysis, and the environmental effects associated with hardrock mineral leasing. A decision on whether or not to recommend opening the NRA to hardrock mineral leasing as a feature of the agency preferred alternative in the Proposed RMP/Final EIS will be made after reviewing and considering public comments on the Draft RMP/EIS and the Supplement.

Pursuant to section 810 of ANILCA, the BLM evaluated the effects of the alternative presented in the Supplement on subsistence activities and determined that there may be a significant restriction on subsistence uses. The BLM will hold public hearings related to section 810 of ANILCA in conjunction with public meetings on the Supplement, in the affected region. The BLM will announce notice of specific dates and locations for public meetings and ANILCA hearings, through public notices, media releases, and/or mailings.

Public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except federal holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

Ted A. Murphy,

Acting State Director.

[FR Doc. 2013–00316 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW144977]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW144977, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Black Hills Exploration & Productions Inc., Chesapeake AEZ Exploration LLC, Chesapeake Exploration LLC, Fossil Creek Resources LLC, Jastera LC, Khody Land & Minerals Company, Nerd Gas Company LLC, and Slawson Exploration Company Inc., for noncompetitive oil and gas lease WYW144977 for land in Niobrara County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW144977 effective April 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Debra A. Olsen,
Land Law Examiner.

[FR Doc. 2013–00319 Filed 1–10–13; 8:45 am]
BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW174767]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW174767, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Empire Petroleum Corporation for competitive oil and gas lease WYW174767 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW174767 effective October 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Debra A. Olsen,
Land Law Examiner.

[FR Doc. 2013–00317 Filed 1–10–13; 8:45 am]
BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173743]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173743, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Marlin Oil Co., LLC, for competitive oil and gas lease WYW173743 for land in Weston County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 18⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW173743 effective January 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a

valid lease to any other interest affecting the lands.

Debra A. Olsen,

Land Law Examiner.

[FR Doc. 2013–00318 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW180328]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW180328, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Fidelity Exploration & Production Company and Finley Resources, Inc., for noncompetitive oil and gas lease WYW180328 for lands in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW180328 effective February 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Debra A. Olsen,

Land Law Examiner.

[FR Doc. 2013–320 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164926]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164926, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Wildfire Partners, Inc., for competitive oil and gas lease WYW164926 for lands in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164926 effective February 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2013–00323 Filed 1–10–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11860; 2200–1100–665]

Notice of Intent To Repatriate Cultural Items: Northwest Museum of Arts & Culture, Spokane, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Northwest Museum of Arts & Culture, also known as the Eastern Washington State Historical Society, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Northwest Museum of Arts & Culture.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Northwest Museum of Arts & Culture at the address below by February 11, 2013.

ADDRESSES: Ms. Valerie Wahl, The Northwest Museum of Arts & Culture, Spokane, WA 99201, telephone (509) 363–5307.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Northwest Museum of Arts & Culture, also the Eastern Washington State Historical Society, Spokane, WA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The funerary objects described below were excavated by Donald Collier, Alfred E. Hudson, and Arlo Ford during the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt) whose waters would soon cover the area. This undertaking was known as ''The Columbian Basin Archaeological Survey'' or the ''Collier, Hudson, and Ford Project.'' It was a multi-institutional venture of the Eastern Washington State Historical Society (now the Northwest Museum of Arts & Culture), the University of Washington, and the State College of Washington (now Washington State University). It was also a multi-agency venture of the Bureau of Reclamation, Bureau of Indian Affairs, Civilian Conservation Corps, and the Works Project Administration (including the National Youth Administration).

In 1940, the Eastern Washington State Historical Society became the repository for the collections of the project, as mandated by the Bureau of Reclamation. Portions of the land from which the funerary objects were removed were non-Federal lands, and other portions were Federal lands at the time of removal. Moreover, the Federal lands fell under the management authority of several different agencies. Consequently, there has been a question of control over the collection. After several years of research, the Northwest Museum of Arts & Culture has been unable to determine additional specifics regarding the control of objects from each site. Therefore, absent additional information, the Northwest Museum of Arts & Culture is assuming responsibility under NAGPRA with regard to publishing this notice and repatriating the unassociated funerary objects to the culturally affiliated tribe.

During the period July 1939 to September 1940, funerary objects were systematically removed from Site 8 (45–ST–8) by Donald Collier, Alfred E. Hudson, and Arlo Ford during the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt). The objects were accessioned by the Eastern Washington State Historical Society in 1940 (EWSHS Accession #1027). The one unassociated funerary object is a projectile point.

During the period July 1939 to September 1940, funerary objects were systematically removed from Site 48 (45–ST–48) by Donald Collier, Alfred E. Hudson, and Arlo Ford during the construction of the Grand Coulee Dam and its reservoir (Lake Roosevelt), The objects were accessioned by the Eastern Washington State Historical Society in 1940 (EWSHS Accession #1027). The three unassociated funerary objects are two copper ornaments and a blue glass bead.

The unassociated funerary objects described above are consistent with cultural items typically found in context with Native American burials in eastern Washington State. Furthermore, accession numbers, as well as field notes and journal entries, indicate that the cultural items were found in connection with human remains. Extensive museum documentation, the geographic locations of the sites, burial patterns, and consultation with the Spokane Tribe of the Spokane Reservation verify that the cultural items were removed from sites that are within the aboriginal territory of the bands of Indians now known as the Spokane Tribe of the Spokane Reservation.

Determinations Made by the Northwest Museum of Arts & Culture

Officials of the Northwest Museum of Arts & Culture have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the four cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Spokane Tribe of the Spokane Reservation.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Ms. Valerie Wahl, The Northwest Museum of Arts & Culture, Spokane, WA 99201, telephone (509) 363–5307, before February 11, 2013. Repatriation of the unassociated funerary objects to the Spokane Tribe of the Spokane Reservation may proceed after that date if no additional claimants come forward.

The Northwest Museum of Arts & Culture is responsible for notifying the Spokane Tribe of the Spokane Reservation that this notice has been published.

Dated: December 5, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–00456 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11892; 2200–1100–665]

Notice of Inventory Completion: The Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and the Spokane Tribe of the Spokane Reservation. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Museum of Anthropology at Washington State University. Repatriation of the human remains associated funerary items to the Spokane Tribe of the Spokane Reservation may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Museum of Anthropology at Washington State University at the address below by February 11, 2013.

ADDRESSES: Mary Collins, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 335–4314.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology at Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of

the museum, institution, or Federal agency that has control of the Native American human remains associate funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Spokane Tribe of the Spokane Reservation.

History and Description of the Remains

In 1979, human remains representing, at minimum, one individual were removed from archaeological site 45ST174 in Stevens County, WA. The remains were recovered from the surface in an area disturbed by bulldozer work associated with road construction. Archaeologists working for the Washington Archaeological Research Center at Washington State University collected the remains. In 1979, the human remains and associated funerary items were transferred to the University of Idaho. In 2000, they were returned to the Museum of Anthropology at Washington State University. No known individuals were identified. The two associated funerary objects are fragments of antler digging stick handles. The associated funerary items suggest the burial is from the Late Prehistoric Period.

The site is within the traditional territory of the Spokane Tribe of the Spokane Reservation. Historical, ethnographic, linguistic, and archaeological information links the site to the Spokane Tribe of the Spokane Reservation.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Spokane Tribe of the Spokane Reservation.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Museum of Anthropology at Washington State University Pullman, WA 99164–4910, telephone (509) 335–4314, before February 11, 2013. Repatriation of the human remains and associated funerary objects to the Spokane Tribe of the Spokane Reservation may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying the Spokane Tribe of the Spokane Reservation that this notice has been published.

Dated: December 7, 2012.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–00437 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11902; 2200–1100–665]

Notice of Inventory Completion: Natural History Museum of Utah, Salt Lake City, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Natural History Museum of Utah has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Natural History Museum of Utah. Repatriation of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Natural History Museum of Utah at the address below by February 11, 2013.

ADDRESSES: Duncan Metcalfe, Natural History Museum of Utah, 301 Wakara Way, Salt Lake City, UT 84108, telephone (801) 581–3876.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Natural History Museum of Utah. The human remains and associated funerary objects were removed from San Pete and Utah counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Natural History Museum of Utah professional staff and representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah, and the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)). On January 15, 2010, a report of historic-period human remains believed to be affiliated with the Numic tribes of Utah was issued to representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Skull Valley Band of Goshute Indians of Utah; and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah [hereafter referred to as ''The Tribes'']

History and Description of the Remains

In about 1953, human remains representing, at minimum, three individuals were removed by children from site 42SP5 near the town of Indianola, in San Pete County, UT. The remains were found under a series of shallow overhangs under large flat rocks. Seven to ten juniper poles were placed over the burials, which were placed on juniper bark. The human remains and associated funerary objects were donated to the University of Utah in 1953. Transfer of the University of Utah's anthropology collections to the Natural History Museum of Utah occurred on November 10, 1972. No known individuals were identified. The 72 associated funerary objects are 1 lot of lead balls, 1 lot of caps and shells, 1 lot of wood fragments, 13 pieces of horse tack, 3 saddle fragments, 1 knife sheath, 1 rifle and barrel, 1 lot of bullet molds, 1 file, 1 pair of scissors, 2 knives, 1 hammer, 2 pairs of pliers, 1 beaded bracelet, 1 elbow pipe, 1 shaped glass, 1 shaft straightener, 7 textile fragments, 6 buckskin fragments, 13 pieces of metal, 7 unworked faunal bones, 2 buttons, and 4 awls.

In about 1966, human remains representing, at minimum, one individual were found at the base of a rockslide at the mouth of Spanish Fork Canyon, in Utah County, UT. The human remains and associated funerary objects were donated to the University of Utah in 1966. Transfer of the University of Utah's anthropology collections to the Natural History Museum of Utah occurred on November 10, 1972. No known individuals were identified. The 5 associated funerary objects include 1 tinkler cone, 2 pieces of unworked wood, 1 lot of equestrian tack, and 1 wood tool.

The result of an osteological analysis indicates that the human remains listed in this notice are Native American. Based on the geographic location of the burial and the presence of historic material cultural in the mound, it has been determined that the human remains are affiliated with the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, who inhabited this area during the protohistoric and contact period.

Determinations Made by the Natural History Museum of Utah

Officials of the Natural History Museum of Utah have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 77 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Duncan Metcalfe, Natural History Museum of Utah, 301 Wakara Way, Salt Lake City, UT 84108, telephone (801) 581–3876, before February 11, 2013. Repatriation of the human remains and associated funerary objects to the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah, may proceed after that date if no additional claimants come forward.

The Natural History Museum of Utah is responsible for notifying The Tribes that this notice has been published.

Dated: December 11, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–00448 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11916; 2200–1100–665]

Notice of Inventory Completion: U.S. Department of Energy Oak Ridge Office, Oak Ridge, TN; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Energy Oak Ridge Office has corrected an inventory of human remains and associated funerary object published in a Notice of Inventory Completion in the **Federal Register** on November 16, 2012. This notice corrects the list of tribes culturally affiliated with the human remains and associated funerary object identified in the earlier notice. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object may contact the U.S. Department of Energy Oak Ridge Office. Repatriation of the human remains and associated funerary object to the Indian tribes stated below may proceed may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a culturally affiliation with the human remains and associated funerary object should contact the U.S. Department of Energy Oak Ridge Office at the address in this notice by February 11, 2013.

ADDRESSES: Katatra Vasquez, U.S. Department of Energy Oak Ridge Office, P.O. Box 2001, SE–32, Oak Ridge, TN 37831, telephone (865) 576–0835.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary object in the possession of the U.S. Department of Energy Oak Ridge Office. The human remains and associated funerary object were removed from Roane County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the list of tribes culturally affiliated with the human remains and associated funerary object identified in the Notice of Inventory Completion published in the **Federal Register** (77 FR 68818–68819, November 16, 2012). In addition to the Eastern Band of Cherokee Indians, the Cherokee Nation and the United Keetoowah Band of Cherokee Indians in Oklahoma have been determined to be culturally affiliated with the human remains and associated funerary object.

Correction

In the **Federal Register** (77 FR 68818–68819, November 16, 2012), paragraph eight, sentence two is corrected by replacing ''the Eastern Band of Cherokee Indians'' with ''the Cherokee Nation; the Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.''

In the **Federal Register** (77 FR 68818–68819, November 16, 2012), paragraph nine, bullet point three is corrected by replacing ''the Eastern Band of Cherokee Indians'' with ''the Cherokee Nation; the Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.''

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Katatra Vasquez, U.S. Department of Energy Oak Ridge Office, P.O. Box 2001, SE–32, Oak Ridge, TN 37831, telephone (865) 576–0835 before February 11, 2013. Repatriation of the human remains and associated funerary object to the the Cherokee Nation; the Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The U.S. Department of Energy Oak Ridge Office is responsible for notifying the Cherokee Nation; Chickasaw Nation; Choctaw Nation of Oklahoma; Eastern Band of Cherokee; Eastern Shawnee Tribe of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Quapaw Tribe of Indians; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma, that this notice has been published.

Dated: December 12, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–00453 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11893; 2200–1100–665]

Notice of Inventory Completion: The Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Museum of Anthropology at Washington State University. Repatriation of the human remains associated funerary items to the Confederated Tribes of the Colville Reservation may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Museum of Anthropology at Washington State University at the address below by February 11, 2013.

ADDRESSES: Mary Collins, Museum of Anthropology at Washington State University, Pullman, WA 99164–4910, telephone (509) 335–4314.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Anthropology at Washington State University, Pullman, WA. The human remains and associated funerary objects were removed from Stevens County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains associate funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation.

History and Description of the Remains

In 1980, human remains representing, at minimum, six individuals were removed by a county road crew from the Addy Sand Pit in Stevens County, WA. The remains include the nearly complete skeletal remains of an adult male, the nearly complete skeleton of an adult of unknown sex, the partial post cranial remains of an adult of unknown sex, the complete cranial and partial post cranial remains of a juvenile of unknown sex, and the partial cranial and post cranial remains of two juveniles of unknown sex. The remains were transferred to archaeologists from the University of Idaho, who recorded the location as archaeological site 45ST296. In 2000, the remains were transferred to the Museum of Anthropology at Washington State University. No known individuals were identified. The three associated funerary objects include one lot of shell and animal bone fragments, one stone flake, and one dentalia shell bead.

In 1981, human remains representing, at minimum, three individuals were removed from a disturbed talus slope area near Addy, WA, by unknown persons. The location has been described as archaeological site 45ST297. The remains were transferred to the Stevens County Coroner in June of 1981. The coroner transferred the remains to the University of Idaho the following month. In 2000, the remains were transferred to the Museum of Anthropology at Washington State University. No known individuals were identified. No associated funerary objects are present.

In 1983, human remains representing, at minimum, five individuals were removed by a private homeowner who was building a basement in the community of Kettle Falls in Stevens County, WA. The remains were transferred to archaeologists from the University of Idaho who recorded the location as archaeological site 45ST312. In 2000, the remains were transferred to the Museum of Anthropology at Washington State University. No known individuals were identified. The 32 associated funerary objects are 3 battered cobbles, 13 tabular stone knives, 1 glass bottleneck fragment, 1 glass button, 1 bone fishing leister point, 10 stone flakes, and 3 lots of charcoal fragments.

These sites are within the traditional territory of the Confederated Tribes of the Colville Reservation. Historical, ethnographic, linguistic, and archaeological information links these sites to the Confederated Tribes of the Colville Reservation.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 14 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 35 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human

remains and associated funerary objects and the Confederated Tribes of the Colville Reservation.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Museum of Anthropology at Washington State University Pullman, WA 99164–4910, telephone (509) 335–4314, before February 11, 2013. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation may proceed after that date if no additional claimants come forward.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes of the Colville Reservation that this notice has been published.

Dated: December 7, 2012.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–00417 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11900; 2200–1100–665]

Notice of Inventory Completion: Fort Collins Museum of Discovery, Fort Collins, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fort Collins Museum of Discovery (formerly The Fort Collins Museum) has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Fort Collins Museum of Discovery. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Fort Collins Museum of Discovery at the address below by February 11, 2013.

ADDRESSES: Dr. Brenda Martin, NAGPRA Coordinator, Fort Collins Museum of Discovery, 408 Mason Court, Fort Collins, CO 80524, telephone (970) 420–1154.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Fort Collins Museum of Discovery, Fort Collins, CO. The human remains were most likely removed from the Four Corners region of the southwestern United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fort Collins Museum of Discovery professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pawnee Nation of Oklahoma; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

Sometime before 1941, human remains representing, at minimum, one individual were removed from an unknown location. After 1941, an unknown individual donated the remains to the Fort Collins Pioneer Museum (now the Fort Collins Museum of Discovery). Although specific provenience of the human remains is unknown, osteological analysis conducted by physical anthropologists and by independent forensic scientists determined that the remains are of Native American ancestry from the southwestern region of the United States. No known individual was identified. No associated funerary objects are present.

During a 2002 consultation with Plains and Ute tribes, there was a consensus that the Puebloan groups should be consulted regarding repatriation and disposition of this individual. These suggestions and additional scientific findings led to consultation by letter and telephone in 2005 with Indian tribes whose aboriginal territory includes the Four Corners Region of the Southwest (Apache and Navajo Counties, AZ; Dolores, La Plata, Las Animas, Montezuma San Juan and San Miguel Counties, CO; McKinley, Rio Arriba, Sandoval, or San Juan Counties, NM), the area from which this individual was most likely removed based on the collecting history of museum donors. In 2012, further consultation was conducted with representatives from the Hopi Tribe, Arizona; Pueblo of Acoma, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, at Acoma Pueblo. The Navajo Nation, Arizona, New Mexico, & Utah, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, were contacted via telephone and electronic mail.

Determinations Made by the Fort Collins Museum of Discovery

Officials of the Fort Collins Museum of Discovery have determined that:

• Based on the lamdoid flattening (cradle boarding) noted on the posterior region of the cranium, the human remains are Native American.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were likely removed is the aboriginal land of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Jemez, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; and the Pueblo of Zia, New Mexico.

• Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

• Other credible lines of evidence, indicate that the land from which the Native American human were removed is the aboriginal land of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico [hereafter referred to as ''The Tribes''].

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Dr. Brenda Martin, NAGPRA Coordinator, Fort Collins Museum of Discovery, 408 Mason Court, Fort Collins, CO 80524, 970–420–1154, before February 11, 2013. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The Fort Collins Museum of Discovery is responsible for notifying the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Pawnee Nation of Oklahoma; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; and The Tribes that this notice has been published.

Dated: December 11, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–00451 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11901; 2200–1100–665]

Notice of Inventory Completion: Natural History Museum of Utah, Salt Lake City, UT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Natural History Museum of Utah has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Natural History Museum of Utah. Repatriation of the human remains and associated funerary objects to the Indian tribe

stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Natural History Museum of Utah at the address below by February 11, 2013.

ADDRESSES: Duncan Metcalfe, Natural History Museum of Utah, 301 Wakara Way, Salt Lake City, UT 84108, telephone (801) 581–3876.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Natural History Museum of Utah. The human remains and associated funerary objects were removed from Weber and Box Elder counties, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Natural History Museum of Utah professional staff and representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah, and the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)). On January 15, 2010, a report of historic-period human remains believed to be affiliated with the Numic tribes of Utah was issued to representatives of the Confederated Tribes of the Goshute Reservation, Nevada and Utah; Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Skull Valley Band of Goshute Indians of Utah; and the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah [hereafter referred to as ''The Tribes'']].

History and Description of the Remains

In about 1929, human remains representing, at minimum, one individual were removed by schoolchildren from a mound located on the property of Mound Fort School, just east of Washington Avenue, in the city of Ogden, Weber County, UT. The human remains and associated funerary objects were donated to the University of Utah in 1929. Transfer of the University of Utah's anthropology collections to the Natural History Museum of Utah occurred on November 10, 1972. No known individuals were identified. The 10 associated funerary objects received with the human remains are 1 metal ball, 1 leather sheath, 1 piece unworked wood, 2 saddle horn fragments, 2 pieces worked bone, 2 fragments of unworked bone, and 1 shell bead.

In about 1931, human remains representing, at minimum, nine individuals were removed by schoolchildren from a mound one block south of Weber County High School in the city of Ogden, Weber County, UT. The human remains and associated funerary objects were donated to the University of Utah in 1931. Transfer of the University of Utah's anthropology collections to the Utah Museum of Natural History occurred on November 10, 1972. No known individuals were identified. The 6 associated funerary objects are 1 lot leather straps, 1 piece of groundstone, a metal knife, 2 unworked faunal bone, and a shell pendant. These objects indicate that the human remains are from the contact period.

In about 1940, human remains representing, at minimum, three individuals were found at the base of a rockslide on the Bonneville Terrace southeast of Brigham City, in Box Elder County, UT. The human remains and associated funerary objects were donated to the University of Utah in 1940. Transfer of the University of Utah's anthropology collections to the Utah Museum of Natural History occurred on November 10, 1972. No known individuals were identified. The 13 associated funerary objects are a bow fragment, a spoon, a worked horn, 1 lot of horse tack, a metal punch, 1 piece of worked wood, gunshot, two mirrors, a harness ring, an awl, and two pieces of unworked faunal bone. These objects indicate that the human remains are from the contact period.

The result of an osteological analysis indicates that the human remains listed in this notice are Native American. Based on the geographic location of the burial and the presence of historic material cultural in the mound, it has been determined that the human remains are affiliated with the Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)), who inhabited this area during the protohistoric and contact period.

Determinations Made by the Natural History Museum of Utah

Officials of the Natural History Museum of Utah have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 29 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)).

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Duncan Metcalfe, Natural History Museum of Utah, 301 Wakara Way, Salt Lake City, UT 84108, telephone (801) 581–3876, before February 11, 2013. Repatriation of the human remains and associated funerary objects to the Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie)) may proceed after that date if no additional claimants come forward.

The Natural History Museum of Utah is responsible for notifying The Tribes that this notice has been published.

Dated: December 11, 2012.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2013–00449 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11886; 2200–1100–665]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Illinois State Museum has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a likely cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Illinois State Museum. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Illinois State Museum at the address below by February 11, 2013.

ADDRESSES: Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Illinois State Museum, Springfield, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

Consultation

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

History and Description of the Remains

In September 2011, human remains representing, at minimum, one individual were recovered during Phase II archaeological excavations conducted by the Illinois State Archaeological Survey (ISAS) at the Joe Louis site (11CK284), located on the right bank of the Little Calumet River in Cook County, IL. Human remains consisting of one cranial fragment (frontal bone) were found in the fill of a prehistoric pit (Feature 47) that evidently had a domestic function and was not a formal human interment. The human remains were identified by an ISAS skeletal analyst. In October 2011, the human remains were transferred to the Illinois State Museum (ISM 2011–143) in compliance with the state's Human Skeletal Remains Protection Act (20 ILCS 3440). No known individual was identified. No associated funerary objects are present.

Archaeological records, oral traditions, and linguistic relationships suggest that the human remains may be ancestral Winnebago (Ho-Chunk). First, the Joe Louis site is a single-component occupation of the Fisher phase (circa A.D. 1000–1400), a ''developmental'' phase of the broader Oneota tradition that likely evolved into the ''classic'' Oneota Huber phase (A.D. 1400–1625). Huber ceramics are similar to ceramics made by the Iowa tribe, and there is widespread agreement that Huber and some other Oneota phases were ancestral to the Iowa, Otoe, Missouria, and Winnebago (Ho-Chunk) tribes. Second, Winnebago oral traditions record a protohistoric Ho-Chunk village (Gušge hon□k, or ''skunk run'') in the general vicinity of the Joe Louis site. Third, language similarities indicate that the Chiwere-speaking Iowa, Otoe, and Missouria tribes split from the Winnebago tribe at about A.D. 1600, several centuries after the Joe Louis site was occupied. In conclusion, human remains from the Joe Louis site have a plausible shared group identity with all of the Chiwere-Winnebago speaking tribes (i.e. Ho-Chunk, Iowa, Otoe, Missouria, Winnebago).

The archaeological and geographical context of human remains from the Joe Louis site indicate that the individual is Native American. The Chiwere-Winnebago tribes are represented by five present-day Indian tribes: the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

Determinations Made by the Illinois State Museum, Springfield, IL

Officials of the Illinois State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a plausible relationship of shared group identity that can be reasonably traced between the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3500, telephone (217) 524–7903, before February 11, 2013. Repatriation of the human remains to the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska that this notice has been published.

Dated: December 7, 2012.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–00446 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–11885; 2200–1100–665]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Ozark-St. Francis National Forests, Russellville, AR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, Ozark-St. Francis National Forests has corrected two Notices of Inventory

Completion published in the **Federal Register** on November 16, 2012. This notice corrects the association of the individuals identified in those notices.

ADDRESSES: Judith L. Henry, Forest Supervisor, USDA Forest Service, Ozark-St. Francis National Forests, Russellville, AR 72801, telephone (479) 964–7202.

SUPPLEMENTARY INFORMATION: This notice corrects the association of the individuals identified in two Notices of Inventory Completion published in the **Federal Register** (77 FR 68819–68820, November 16, 2012; 77 FR 68822–68824, November 16, 2012). The use of the abbreviation AAS to identify individuals in these notices was incorrectly attributed to the Arkansas Archeological Survey, an independent unit of the University of Arkansas staffed by professional archeologists, rather than the Arkansas Archeological Society, an educational and cultural interest group.

Correction

In the **Federal Register** (77 FR 68819–68820, November 16, 2012), paragraph seven, sentence one is corrected by replacing the words ''of the AAS'' with the words ''who were members of the Arkansas Archeological Society.''

In the **Federal Register** (77 FR 68822–68824, November 16, 2012), paragraph seven, sentence two is corrected by replacing the name ''Monroe Hutton'' with ''Monroe Hutton, an interested citizen,''.

In the **Federal Register** (77 FR 68822–68824, November 16, 2012), paragraphs 8, 9, and 11–24, are corrected by replacing the words ''of the AAS'' with the words ''who were members of the Arkansas Archeological Society.''

Dated: December 7, 2012.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2013–00445 Filed 1–10–13; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2927]

Corrected: Certain Cases For Portable Electronic Devices; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cases For Portable Electronic Devices,* DN 2927; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Speculative Product Design, LLC on December 26, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cases for portable electronic devices. The complaint names as respondents Global Digital Star Industry, Ltd. of China; JWIN Electronics Corp., (d/b/a iLuv) of NY; Project Horizon, Inc. (d/b/a InMotion Entertainment) of FL; Superior Communications, Inc. (d/b/a PureGear) of CA; and Jie Sheng Technology of Taiwan.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2927'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the

Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 27, 2012.

Lisa R. Barton,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00438 Filed 1–10–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0035]

Agency Information Collection Activities; Existing Collection, Comments Requested: The National Instant Criminal Background Check System (NICS) Point-of-Contact (POC) State Final Determination Electronic Submission

ACTION: 30-Day notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's NICS Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 215, Pages 66636–66637, on November 6, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 11, 2013. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), Section 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to the OMB via facsimile at (202) 395–7285.

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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the 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 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

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Forms:* The National Instant Criminal Background Check System (NICS) Point-of-Contact (POC) State Final Determination Electronic Submission.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0035.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Full Point-of-Contact (POC) States; Partial POC States; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States.

Brief Abstract: This collection is requested of Full POC States; Partial POC States; and the ATF-qualified Alternate Permit States. Per Title 28, Code of Federal Regulations, Section 25.6(h), POC States are required to transmit electronic determination messages to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division's National Instant Criminal Background Check System (NICS) Section of the status of a firearm background check in those instances in which a transaction is ''open'' (transactions unresolved before the end of the operational day on which the transaction was initiated); ''denied'' transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The POC States must send this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a ''proceed.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 21 POC States who are required to submit electronic notifications to the FBI CJIS Division's NICS Section and 18 ATF-qualified Alternate Permit States voluntarily submit electronic notifications to the FBI CJIS Division's NICS Section. Both POC States and ATF-qualified Permit States conduct an average of 5,859,797 transactions per year. It is estimated that 26 percent would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,523,547 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It is estimated it will require one minute (60 seconds) for each POC State and ATF-qualified Alternate Permit State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 25,392 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States and ATF-qualified Alternate Permit States, then 651 hours would be the estimated time for each of the 39 states to respond. Record-keeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The average yearly hour burden for submitting final determinations combined is: (5,859,797 total checks × 26 percent)/60 seconds = 25,392 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 1407B, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–00395 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities; Proposed New Collection; Comments Requested: COPS/''Not In Our Town'' Public Surveys

ACTION: 60-Day notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until March 12, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Proposed new collection; comments requested.

(2) *Title of the Form/Collection:* COPS/''Not In Our Town'' Public Surveys.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other public and private entities that view the ''Not In Our Town'' documentaries, webinars, and other media from the COPS' grantee, The Working Group, will be asked to voluntarily complete certain response surveys. These brief surveys are designed to elicit audience opinions and responses regarding topics discussed in the different media such as: hate crimes, community relations for diversity, school collaborations with law enforcement, and community collaborations with law enforcement. These are one-time surveys that will be utilized by The Working Group to further improve the ''Not In Our Town'' documentaries and media for future production and to engage the audiences of law enforcement and the community to what topics are important to them.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that, at maximum, 1,690 respondents annually will complete the form within .167 hours (10 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 282 total annual burden hours associated with this collection.

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 3W–1407B, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00435 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0081]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Appeals of Background Checks

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 215, page 66634 on November 6, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 11, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure that your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Appeals of Background Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individuals or households.

Need for Collection

The purpose of this collection is to allow applicants, employees, or other affected personnel the opportunity to appeal in writing the results of a background check conducted to satisfy their eligibility to possess explosive materials. The appeal request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will spend 2 hours completing the required documentation for the appeal.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00394 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Application To Register as an Importer of U.S. Munitions Import List Article

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 215, page 66634 on November 6, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 11, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: form number:* ATF F 4587 (5330.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None.

Need for Collection

The purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and the implements of war, and to facilitate the collection of registration fees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 300 respondents will complete the form within 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 150 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00391 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0077]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Report of Lost or Stolen ATF F 5400.30, Intrastate Purchase of Explosives Coupon

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 217, page 67026, on November 8, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 11, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure that your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Stolen or Lost ATF F 5400.30, Intrastate Purchase of Explosives Coupon.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Need for Collection

When any Intrastate Purchase of Explosives Coupon is stolen, lost or destroyed, the person losing possession will, upon discovery of the theft, loss or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director, Alcohol, Tobacco, Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 10 respondents will complete a 20 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3.5 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00393 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0018]

Agency Information Collection Activities: Proposed Collection; Comments Requested, Application for Federal Firearms License

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 215, page 66633 on November 6, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 11, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the eight digit OMB number or the title of the collection.

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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic,

mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Federal Firearms License.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 7 (5310.12). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

In accordance with 18 U.S.C. 923(a)(1) each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application and pay the required fee with ATF and obtain a license before engaging in business. The information requested on the form will be used to determine eligibility for the license as required by 18 U.S.C. Section 923.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 13,000 respondents will complete the form within 1 hour and 15 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 16,250 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 8, 2012.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–00392 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0038]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Reporting and Recordkeeping for Digital Certificates

ACTION: 60-Day notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 12, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 Cathy Gallagher, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0038:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reporting and recordkeeping for digital certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number:

DEA Form 251: CSOS DEA Registrant Certificate Application.

DEA Form 252: CSOS Principal Coordinator/Alternate Coordinator Certificate Application.

DEA Form 253: CSOS Power of Attorney Certificate Application.

DEA Form 254: CSOS Certificate Application Registrant List Addendum.

CSOS Certificate Revocation.

Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Non-profit, State and local government.

Abstract: Persons use these forms to apply for DEA-issued digital certificates to order Schedule I and II controlled substances. Certificates must be renewed upon renewal of the DEA registration to which the certificate is linked. Certificates may be revoked and/or replaced when information on which the certificate is based changes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Total number of respondents: 45,450 per year and 136,351 for the three-year period.

Average time to respond: 0.58 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 26,361 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 3W–1407, Washington, DC 20530.

Dated: January 8, 2013.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2013–00436 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1612]

Criminal Justice Interview Room Recording System (IRRS) Standard, Supplier's Declaration of Conformity Requirements, and Selection and Application Guide

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and request for Comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public three draft documents related to Interview Room Recording Systems (IRRS) used by criminal justice agencies:

1. Draft *Criminal Justice IRRS Standard*

2. Draft *Criminal Justice IRRS Supplier's Declaration of Conformity Requirements*

3. Draft *Criminal Justice IRRS Selection and Application Guide*

The opportunity to provide comments on these documents is open to industry technical representatives; criminal justice agencies and organizations; research, development, and scientific communities; and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: Comments must be received by 5 p.m. Eastern Time on February 25, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Greene, by telephone at (202) 307–3384 [**Note:** this is not a toll-free telephone number], or by email at *mark.greene2@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2013–00464 Filed 1–10–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Registered Apprenticeship-College Consortium, New Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments on the current data collection for the Registered Apprenticeship-College Consortium (RACC). The RACC exists to facilitate applying the Registered Apprenticeship completion certificate towards college credit. RACC post-secondary members agree to accept apprentice graduates from member Registered Apprenticeship sponsors who have the approximate amount of credit toward college that has been designated by a third party evaluator. The Department has modeled the RACC after the Servicemembers Opportunities Colleges Consortium supported by the Department of Defense.

The RACC data collection includes three application forms to join the consortium, differentiated by membership type:

(1) The application for Registered Apprenticeship sponsors requests contact

information for the national, regional or single guideline standards or program; all participating training centers, if applicable; and the value of the apprenticeship program toward college credit, recommended by a third party evaluator;

(2) the application for two- and four-year post-secondary institutions requests contact, degree and credit transfer information; and

(3) the application for national, regional or State organizations that represent sponsors and/or two- and four-year post-secondary colleges and will facilitate membership in the consortium requests contact information and the nature of the relationship with sponsors or colleges.

Subsection II of the Supplementary Information paragraphs below provides greater detail on the types of comments that would be most helpful.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 12, 2013.

ADDRESSES: Submit written comments to Laura Ginsburg, Office of Apprenticeship, Room N–5306, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2796. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3799. Email: *OA.Administrator@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor's Advisory Committee on Apprenticeship (ACA), which includes members from the employer, labor, and public sectors, has identified the need to apply the Registered Apprenticeship completion certificate for college credit as an important opportunity for apprentices to continue on a career pathway, enhance skill acquisition, and earn an Associates or Bachelor's degree. Increased articulation agreements between Registered Apprenticeship program sponsors and colleges will create a new pipeline of degree-seekers and enhance the competitiveness of American industry by enlarging the pool of highly-trained workers that possess in-demand skills and competencies.

Registered Apprenticeship pairs paid on-the-job learning with related technical/theoretical classes in a career field. The earn-while-you-learn model offers job seekers immediate employment opportunities that pay good wages and offer career growth, highly-esteemed and useful life/skill sets, portable credentials that are nationally (and often globally) recognized, and the opportunity for participants to apply their apprenticeship training to two- and four-year college programs. DOL's Assistant Secretary for Employment and

Training, Jane Oates, and the Department of Education's (DOE) Assistant Secretary for Vocational and Adult Education (OVAE), Brenda Dann-Messier, is undertaking a joint effort, at the recommendation of the ACA, to increase articulation agreements between post-secondary education institutions and Registered Apprenticeship program sponsors. An ad-hoc workgroup of the ACA, composed of ACA members, community college leaders, Registered Apprenticeship sponsors, American Association of Community Colleges (AACC) representatives, and leadership from DOL's Office of Apprenticeship (OA) and DOE/OVAE has developed the framework for the articulation consortium, including goals, principles and membership criteria which was adopted unanimously by the full ACA at its May 9–10, 2012 meeting. The SOC is a consortium of colleges supported by the Department of Defense that provides college articulation for soldiers and veterans who accumulate credits at a number of colleges.

DOL has shared this framework for feedback and refinement with a variety of stakeholder groups, including a wide range of community college partners as well as sponsors of Registered Apprenticeship programs who overwhelmingly support the establishment of the consortium. The data collection is the application form to seek membership in the consortium, which DOL also has based on the SOC model.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New collection.

Title: Registered Apprenticeship-College Consortium Membership Applications.

OMB Number: 1205–0NEW.

Affected Public: Registered Apprenticeship sponsors and graduates of the programs (journey workers), two- and four-year post-secondary institutions, national, regional and state organizations that represent sponsors and/or post-secondary institutions.

Form(s): Separate application forms for each group: (1) 2- and 4-year post-secondary institutions, (2) sponsors, (3) national, regional and state organizations that represent sponsors and 2- and 4-year institutions.

Total Annual Respondents

First Year = 602

- 2- and 4-year post-secondary institutions = 500
- Program Sponsors = 100
- National, Regional, or State Associations or Other Organizations = 2

Annual Respondents (after the first year) = 77

- 2- and 4-year post-secondary institutions = 50
- Program Sponsors = 25
- National, Regional, or State Associations or Other Organizations = 2

Annual Frequency: once per respondent, with annual updates as needed when contact information changes.

Total Annual Responses:

First Year = 1,237 articulation agreements

Number of institutions	Average number of articulation agreements per institution	Total number of articulation agreements
380	1	380
48	3	144
30	8	240
17	15	255
Total number of articulation agreements estimated to be entered by two- and four-year colleges during the first year		1,019

Number of sponsors	Average number of articulation agreements per sponsor	Total number of articulation agreements
80	1	80
10	3	30
6	8	48
4	15	60
Total number of articulation agreements estimated to be entered by program sponsors during the first year		218

Annual Responses (after the first year) = 166 articulation agreements

Number of institutions	Average number of articulation agreements per institution	Total number of articulation agreements
40	1	40

Number of institutions	Average number of articulation agreements per institution	Total number of articulation agreements
5	3	15
3	8	24
2	15	30
Total number of articulation agreements estimated to be entered by two- and four-year colleges on an annual basis		109

Number of sponsors	Average number of articulation agreements per sponsor	Total number of articulation agreements
20	1	20
2	3	6
2	8	16
1	15	15
Total number of articulation agreements estimated to be entered by program sponsors on an annual basis		57

Average Time per Response: 10 minutes per articulation agreement.

Estimated Total Annual Burden Hours

First Year = 235 hours

Application	Burden hours
Two- and Four-Year Post-Secondary Institutions	179
Registered Apprenticeship Sponsor	53.5
Associations and Other Organizations	2

Annual Burden Hours (after the first year) = 30 hours

Application	Burden hours
Two- and Four-Year Post-Secondary Institutions	18
Registered Apprenticeship Sponsor	9.5
Associations and Other Organizations	2

Total Annual Burden Cost for Respondents: $14,232.

Application	Respondent cost
Two- and Four-Year Post-Secondary Institutions	$11,280
Registered Apprenticeship Sponsor	$2,760
Associations and Other Organizations	$192

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 2nd day of January, 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–00419 Filed 1–10–13; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Intent To Renew the Advisory Committee on Apprenticeship (ACA) Charter

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of Intent to Renew Charter.

SUMMARY: The Secretary of Labor has determined that the renewal of a national advisory committee on apprenticeship is necessary and in the public interest. The Department of Labor intends to renew the ACA Charter with revisions. The revisions are not intended to change the purpose or the Committee's original intent. The revisions are a routine updating of the Charter to ensure closer alignment with the Department's strategic goals and priorities. The charter for the ACA will expire on January 31, 2013.

SUPPLEMENTARY INFORMATION: Registered Apprenticeship is a unique public private partnership that is highly dependent on the engagement and involvement of its stakeholders and partners for its ongoing operational effectiveness. Apart from the ACA, there is no single organization or group with the broad representation of labor, employers, and the public available to consider the complexities and relationship of apprenticeship activities to other training efforts or to provide advice on such matters to the Secretary and DOL officials. It is particularly important to have such considerations at this time in view of the current widespread and national interest in the role apprenticeship can play in providing career pathways for all populations in a range of high growth industries, including healthcare and manufacturing. For these reasons, the Secretary of Labor has determined that the renewal of a national advisory committee on apprenticeship is necessary and in the public interest. The ACA is being renewed to provide advice and recommendations to the Secretary on the following: (1) The development and implementation of policies, legislation and regulations affecting the national Registered Apprenticeship system; (2) strategies that can expand the use of the Registered Apprenticeship model in non-traditional industries such as, but not limited to manufacturing, energy, and healthcare; (3) ways to more effectively partner with the public workforce system and educational institutions and communities to leverage Registered Apprenticeship as a valued post secondary credential; (4) the development of career pathways that can lead to good jobs for everyone and sustained employment for new and incumbent workers, youth, veterans, women, minorities and other under-utilized and disadvantaged populations; and (5) efforts to improve performance, quality and oversight, and utilization of the national Registered Apprenticeship system.

The current ACA Charter will expire on January 31, 2013. The ACA's Charter is required to be renewed every two

years. Since the Charter was last renewed in January 2011, it has been revised in five sections to ensure alignment with departmental priorities. The following five sections have been updated: (1) The Objectives and Scope of Activities section was streamlined to be more concise and in line with current priorities; (2) the Description of Duties section was reviewed and edited to more closely reflect the needs of the Department and the advice and recommendations sought from the ACA at this time; (3) the Estimated Annual Operating Costs and Staff Years section was modified to reflect the ongoing efforts by the Department to reduce overall operating costs associated with the ACA; (4) the Estimated Number and Frequency of Meetings section has been updated to reflect the increasing trend to utilize multiple meeting formats, including the use of the virtual meeting format, as well as to reduce the number of anticipated annual face-to-face meetings; and (5) the Membership and Designation section was changed to include a range rather than a number to provide the Secretary with additional flexibility to maintain committee balance and accommodate changes in membership due to retirements, member withdrawals, or resignations.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Signed at Washington, DC, this 2nd day of January, 2013.

Jane Oates,

Assistant Secretary for the Employment and Training Administration.

[FR Doc. 2013–00372 Filed 1–10–13; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Well-being Supplement to the American Time Use Survey.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before March 12, 2013.

ADDRESSES: Send comments to Amelia Vogel, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amelia Vogel, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The American Time Use Survey (ATUS) is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities.

The ATUS is used to develop nationally representative estimates of how people spend their time. This is done by collecting a time diary about the activities survey respondents did over a 24-hour period ''yesterday,'' from 4 a.m. on the day before the interview until 4 a.m. on the day of the interview. In the one-time interview, respondents also report who was with them during the activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

The Well-being Module, a supplement to the ATUS, provides an additional dimension to data on time use by providing information about how Americans experience their time. Specifically, the Module collects information about how happy, tired, sad, and stressed individuals were yesterday, and the degree to which they felt pain, for three activities randomly selected from the time diary. The Well-being Module also collects data on whether people were interacting with anyone while doing the selected activities and how meaningful the activities were to them. Some general health questions, a question about overall life satisfaction, and a question about respondents' overall affective experience yesterday also are asked.

Information collected in the Well-being Module will be published as a public data set to facilitate research on numerous topics, such as: How people experience time spent in different activities, times of social interaction, and pain; the relationship between health and time use; and the relationship between evaluative and experienced well-being. The Well-being Module supports the mission of the Bureau of Labor Statistics to provide relevant information on economic and social issues by providing a richer understanding of Americans' use of time and workers' affective experiences. For example, the data facilitate research on how workers experience pain on and off the job and whether this experience varies by occupation.

The data also closely support the mission of the Module's sponsor, the National Institute on Aging (NIA) of the National Institutes of Health, to improve the health and well-being of older Americans. For example, data from the Well-being Module facilitate research on the relationship between well-being and health for persons at different stages in life and with varying individual characteristics. The data also can be used to examine the experience of pain and aging.

II. Current Action

Office of Management and Budget clearance is being sought to extend the collection of the ATUS Well-being Module—a supplement to the ATUS—for an additional six months, through

December 2013. The proposed extension of the Well-being Module will facilitate more robust and in-depth analysis on key topics of interest to the supplement's sponsor: The relationship between evaluative and experienced well-being and the health and well-being of eldercare providers. These topics only can be studied with the 2012 and later data because questions on eldercare and life evaluation were not a part of the ATUS and Well-being Module when the first wave was collected in 2010.

A question on life satisfaction and another that measures respondents' overall emotional experience yesterday were added to the second wave of the Well-being Module which began in January 2012. Additionally, questions to identify eldercare and eldercare activities in the time diary were added to the main ATUS in 2011. The well-being of eldercare providers is of interest to the NIA and policy makers because the elderly population is growing, along with a reliance on informal care providers to assist them. An extension of the collection period for the Well-being Module would provide researchers with two full years of supplementary data for the full Well-being questionnaire and corresponding data on eldercare from the ATUS. Additional data also would facilitate analysis of the well-being of other subpopulations, beyond eldercare providers.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Well-being Supplement to the American Time Use Survey.

OMB Number: 1220–0185.

Affected Public: Individuals or Households.

Total Respondents: 6,400.

Frequency: One time.

Total Responses: 6,400.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 533 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Signed at Washington, DC, this 7th day of January 2013.

Eric Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–00390 Filed 1–10–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Information Collection Request (ICR) for the Worker Classification Survey; Comment Request

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that required data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department is soliciting comments concerning its proposal to collect information about employment experiences and workers' knowledge of basic employment laws and rules so as to better understand employees' experience with worker misclassification. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 12, 2013.

ADDRESSES: You may submit comments by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number (or other identifier) identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Karen Livingston, Director, Division of Strategic Planning and Performance, Wage and Hour Division, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S–3510, Washington, DC, 20210, telephone number (202) 693–0023 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background: The purpose of this study is to design and administer a new survey to collect information about employment experiences and workers' knowledge of basic employment laws and rules so as to better understand employees' experience with worker misclassification. This is the first time DOL will field a survey to examine worker classification. The survey instrument utilizes and adapts existing survey questions, as well as incorporates new questions specific to this study. The data collection effort with this group will gather information about workers' employment and pay arrangements and will measure workers' knowledge about their current job classification, and their knowledge about the rights and benefits associated with their job status. Worker misclassification can be understood as

the practice, intended or unintended, of improperly treating a worker who is an employee under the applicable law as in a work status other than an employee (i.e., an independent contractor). As a result, employees are deprived of their legal wage entitlements, including minimum wage and/or overtime, as well as programs like unemployment insurance and workers' compensation, because such programs generally apply only to ''employees'' rather than workers in general. Federal labor laws do not require employers to inform workers of their employment status (whether the worker is an employee or not), the basis for their status determinations, or pay (including hours worked, pay rates, and wages paid). As a result, workers may not be prepared for the consequences of misclassification.

Employers who misclassify workers may achieve significant administrative and labor cost reductions, giving them a profound advantage over employers that properly classify their workers as employees. According to one estimate, if only one percent of all employees were misclassified nationally, the loss in overall unemployment insurance revenue due to underreporting would be nearly $200 million dollars annually.[1] This may be an underestimate; some states report losing between 5 and 20 million dollars annually on unemployment insurance payments alone.[2] The GAO estimates that unpaid taxes total more than $2.7 billion dollars per year in unpaid Social Security, unemployment insurance, and income tax due to misclassification.[3] A 2000 DOL commissioned study found that 10 to 30 percent of firms audited for state unemployment insurance had one or more of its employees misclassified as independent contractors.[4] Since 2009, Wage and Hour investigators have collected over $29 million in back wages for over 29,000 employees who were not paid in compliance with federal law because they were misclassified as independent contractors.

This survey will provide critical information to Department policymakers on whether workers have knowledge of their employment classification and whether they understand the implications of their classification status. The primary tasks of the survey include: (1) design and cognitively test survey questions to be used for worker classification survey, (2) develop sampling methodology that will generate nationally representative samples of workers (or as close to nationally representative as possible), (3) conduct in-depth interviews of employers and employer groups to explore employer knowledge, attitudes, and practices around classifying workers, and (4) execute the survey, analyze the data and report the results. The period of performance of this evaluation is 30 months ending in March 2014. The overall budget for the evaluation is $1,852,029. The evaluation contractor is Abt Associates.

2. Desired Focus of Comments: Currently, the Department of Labor is soliciting comments concerning the above data collection. Comments are requested that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

3. Current Actions: Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request discussed above in the Background section of this notice. Interested parties are encouraged to provide comments as described in the **ADDRESSES** section above.

Agency: Wage and Hour Division.

Type of Review: New Collection.

Title of Collection: Worker Classification Survey.

OMB Control Number: [Insert OMB Control Number].

Affected Public: Individuals or households.

For Worker Survey:

Annual hour burden:	
Screeners—17,906 households × 5 minutes each	1,492
Extended interview—10,060* × 15 minutes	2,515
Total Burden (10,060 respondents)	4,007
Main Survey Annualized cost to respondents: (4,007 hours at $23.28** per hour)	$93,282
200 Non-response interviews × 5 minutes each	16.66
Annualized cost to respondents (16 hours at $23.28 per hour)	$388
TOTAL ANNUALIZED Cost to Respondents:	$93,670

* Includes sixty (60) pre-test cases.

** U.S. Department of Labor, Bureau of Labor Statistics, Table B–3. Average hourly and weekly earnings of all employees on private non-farm payrolls by industry sector, seasonally adjusted (accessed from the following website as of January 2012: *http://www.bls.gov/webapps/legacy/cesbtab3.htm*).

In-depth Interviews:

Annual hour burden:	
Recruitment (includes calls and review of materials) 100 executives × 15 minutes each	25
In-depth interviews—20 @ 60 minutes each	20

[1] GAO–09–717 and Planmatics, Inc. Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. February 2000.

[2] Statement of Seth D. Harris, Deputy Secretary, U.S. DOL, before the Committee on Health, Education, Labor, and Pensions of the U.S. Senate. June 17, 2010.

[3] GAO–07–859T and Upper Midwest Employment Law Institute, 2010.

[4] GAO–09–717 and Planmatics, Inc. Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. February 2000.

Total Burden (20 respondents)	45
Annualized cost to respondents: (45 hours at $84.88* per hour)	$3,820

* U.S. Department of Labor, Bureau of Labor Statistics, Table B–3. Average hourly and weekly earnings of all employees on private non-farm payrolls by industry sector, seasonally adjusted (accessed from the following website as of January 2012 (*http://www.bls.gov/news.release/ocwage.t01.htm*).

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

Signed: at Washington, DC this 8th day of January, 2012.

Mary Ziegler,

Director, Division of Regulations, Legislation, and Interpretations, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 2013–00389 Filed 1–10–13; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL CREDIT UNION ADMINISTRATION

Office of Small Credit Unions (OSCUI) Grant Program Access for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Funding Opportunity.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a Notice of Funding Opportunity (NOFO) to invite eligible credit unions to submit applications for participation in the OSCUI Grant Program (a.k.a. Community Development Revolving Loan Fund (CDRLF)), subject to funding availability. The OSCUI Grant Program serves as a source of financial support, in the form of technical assistance grants, for credit unions serving predominantly low-income members. It also serves as a source of funding to help low-income designated credit unions (LICUs) respond to emergencies arising in their communities.

DATES: There will be various application open periods from January 1, 2013 thru December 31, 2013 for different grant initiatives offered thoughout the year. For each initiative funds may be exhausted prior to the deadlines, at which time the programs/funds will no longer be available.

ADDRESSES: Applications must be submitted online at *www.cybergrants.com/ncua/applications*.

FOR FURTHER INFORMATION CONTACT: Further information can be found at: *www.ncua.gov/OSCUI/grantsandloans*. For questions email: National Credit Union Administration, Office of Small Credit Union Initiatives at *OSCUIAPPS@ncua.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of Funding Opportunity

The purpose of the OSCUI Grant Program is to assist specially designated credit unions in providing basic financial services to their low-income members to stimulate economic activities in their communities. Through the OSCUI Grant Program, NCUA provides financial support in the form of technical assistance grants to LICUs. These funds help improve and expand the availability of financial services to these members. The OSCUI Grant Program also serves as a source of funding to help LICUs respond to emergencies. The Grant Program consists of Congressional appropriations that are administered by OSCUI, an office of the NCUA.

From February 15, 2013 to March, 15, 2013 OSCUI will accept applications from credit unions under the Collaboration Initiative. This initiative will provide up to $50,000 of funding to a credit union for the most innovative, scalable, replicable and cost-saving collaboration. Under this initiative a single LICU must collaborate with another entity, such as a league, another LICU, a CUSO, and/or a vendor. At least two credit unions must participate in this collaboration.

OSCUI intends to offer additional funding under additional initiatives throughout the year under this NOFO. Additional information about the OSCUI Grant Program, including more details regarding the collaboration initiative, other funding initiatives, amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines and other pertinent details, are periodically published in NCUA Letters to Credit Unions, in the OSCUI e-newsletter and on the NCUA Web site at *www.ncua.gov/OSCUI/GrantsandLoans*.

A. *Program Regulation:* Part 705 of NCUA's regulations implements the OSCUI Grant and Loan Program. 12 CFR 705. A revised Part 705 was published on November 2, 2011. 76 FR 67583. Additional requirements are found at 12 CFR Parts 701 and 741. Applicants should review these regulations in addition to this NOFO. Each capitalized term in this NOFO is more fully defined in the regulations and grant guidelines. For the purposes of this NOFO, an Applicant is a Qualifying Credit Union that submits a complete Application to NCUA under the OSCUI Grant Program.

B. *Funds Availability:* Congress has not made an appropriation to the OSCUI Grant Program for Fiscal Years 2013–2014. NCUA expects to award the entire amount appropriated under this NOFO. NCUA reserves the right to: (i) Award more or less than the amount appropriated; (ii) fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFO; and (iii) reallocate funds from the amount that is anticipated to be available under this NOFO to other programs, particularly if NCUA determines that the number of awards made under this NOFO is fewer than projected.

II. Description of Grant Program

OSCUI grants are made to LICUs that meet the requirements in the program regulation and this NOFO, subject to funds availability.

A. *Eligibility Requirements:* The regulations specify the requirements a credit union must meet in order to be eligible to apply for assistance under this NOFO. See 12 CFR 705. A credit union must be a LICU, or equivalent in the case of a Qualifying State-chartered Credit Union, in order to participate in the OSCUI Grant Program. Requirements for obtaining the designation are found at 12 CFR 701.34.

B. *Permissible Uses of Funds:* NCUA will consider requests for funds consistent with the purpose of the OSCUI Grant Program. 12 CFR 705.1. Per § 705.10 of the regulation permissible uses for the grant fund include: (i) Development of new products or services for members including new or expanded share draft or credit card programs; (ii) Partnership arrangements with community based service organizations or government agencies; (iii) Enhancement and support credit union internal capacity to serve its members and better enable it to provide financial services to the community in which the credit union is located.

NCUA will consider other proposed uses of funds that in its sole discretion it determines are consistent with the purpose of the OSCUI Grant Program, the requirements of the regulations, and this NOFO.

C. *Terms:* The specific terms and conditions governing a grant will be

established in the grant guidelines for each initiative.

III. Application Requirements

A. *Application Form:* The application and related documents can be found on NCUA's Web site at *www.ncua.gov/OSCUI/GrantsandLoans*.

B. *Minimum Application Content:* Each Applicant must complete and submit information regarding the applicant and requested funding. In addition, applicants will be required to certify applications prior to submission.

1. *DUNS Number:* Based on an Office of Management and Budget (OMB) policy directive effective October 31, 2003, credit unions must have a Data Universal Numbering System (DUNS) number issued by Dun and Bradstreet (D&B) in order to be eligible to receive funding from the OSCUI Grant Program. NCUA will not consider an Application that does not include a valid DUNS number. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a DUNS number may be found on D&B's Web site at *http://fedgov.dnb.com/webform* or by calling D&B, toll-free, at 1–866–705–5711.

2. *Employer Identification Number:* Each Application must include a valid and current Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (IRS). NCUA will not consider an application that does not include a valid and current EIN. Such an Application will be deemed incomplete and will be declined. Information on how to obtain a EIN may be found on the IRS's Web site at *www.irs.gov.*

3. *Application:* An Applicant requesting a grant must complete an online grant application form which includes required responses. The required responses will address the proposed use of funds and how the credit union will assess the impact of the funding.

C. *Submission of Application:* Under this NOFO, Applications must be submitted online at *www.cybergrants.com/ncua/applications*.

IV. Application Review

A. Review Process

1. *Eligibility and Completeness Review:* NCUA will review each Application to determine whether it is complete and that the Applicant meets the eligibility requirements described in the Regulations, Section II of this NOFO, and the grant guidelines. An incomplete Application or one that does not meet the eligibility requirements will be declined without further consideration.

2. *Substantive Review:* After an Applicant is determined eligible and its Application is determined complete, NCUA will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFO, and the grant guidelines. NCUA reserves the right to contact the Applicant during its review for the purpose of clarifying or confirming information contained in the Application. If so contacted, the Applicant must respond within the time specified by NCUA or NCUA, in its sole discretion, may decline the application without further consideration.

3. *Evaluation and Scoring:* The evaluation criteria for each initiative will be more fully described in the grant guidelines.

4. *Input from Examiners:* NCUA will not approve an award to a credit union for which its NCUA regional examining office or State Supervisory Agency (SSA), if applicable, indicates it has safety and soundness concerns. If the NCUA regional office or SSA identifies a safety and soundness concern, OSCUI, in conjunction with the regional office or SSA, will assess whether the condition of the Applicant is adequate to undertake the activities for which funding is requested, and the obligations of the loan and its conditions. NCUA, in its sole discretion, may defer decision on funding an Application until the credit union's safety and soundness conditions improve.

V. Award Process

A. *Award Selection:* In general, NCUA will make its award selections based on a consistent scoring system where each applicant will receive an individual score. NCUA will consider the impact of the funding. When grant demand is high applications may be ranked based on the aforementioned in addition to factors listed in the grant guidelines.

B. *Notice of Award:* NCUA will notify each Applicant of its funding decision. Notification will generally be by email. Applicants that are approved for funding will also receive instructions on how to proceed with the reimbursement request for disbursement of funds.

VI. Post-Award Requirements

A. *Reporting Requirements:* Each awarded credit union must submit a reimbursement request in order to receive the awarded funds. The reimbursement requirements are specific to each initiative. In general, the reimbursement request will require an explanation of the impact of funding and any success or failure to meet objectives for use of proceeds, outcome, or impact. NCUA, in its sole discretion, may modify these requirements.

VII. Agency Contacts

A. *Methods of Contact:* For further information, contact NCUA by email at *OSCUIAPPS@ncua.gov*.

B. *Information Technology Support:* People who have visual or mobility impairments that prevent them from using NCUA's Web site should call (703) 518–6610 for guidance (this is not a toll free number).

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786; 12 CFR 705.

By the National Credit Union Administration Board on January 7, 2013.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2013–00470 Filed 1–10–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Astronomy and Astrophysics Advisory Committee (#13883).

DATE AND TIME: February 12, 2013, 8:30 a.m.–5:00 p.m.; February 13, 2013, 8:30 a.m.–3:00 p.m.

PLACE: National Science Foundation, Room 555, Stafford II Building, 4221 Wilson Blvd., Arlington, VA 22230.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Jim Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

PURPOSE OF MEETING: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

AGENDA: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate

recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: January 8, 2013.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2013–00421 Filed 1–10–13; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board's Task Force on Administrative Burdens, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Thursday, January 17, 2013, 6:00–7:00 p.m. EST.

SUBJECT MATTER: (1) Chairman's opening remarks; and (2) Discussion of background materials and a timeline of Task Force activities.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: John Veysey, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–00540 Filed 1–9–13; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–009; NRC–2013–0003]

Grand Gulf ESP Site; Consideration of Approval of Application Regarding Proposed Creation of a Holding Company and Transfer of Early Site Permit and Conforming Amendment and Opportunity for a Hearing

ACTION: Request for Early Site Permit transfer; opportunity to comment; opportunity to request a hearing and petition for leave to intervene.

DATES: Comments must be filed by February 11, 2013. A request for a hearing must be filed by January 31, 2013.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0003. You may submit comments by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0003. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alan Wang, Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–1445; fax number: 301–415–2102; email: *Alan.Wang@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0003 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0003.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library 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 application dated September 27, 2012, is available electronically under ADAMS Accession No. ML12275A013.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0003 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 52.28 approving the direct transfer of Early Site Permit (ESP) ESP–002, for the

Grand Gulf ESP Site, currently held by System Energy Resources, Inc. (SERI). The direct transfer of the Grand Gulf ESP would be to a new limited liability company, System Energy Resource, LLC (SERL). According to an application for approval filed by Entergy Operations, Inc., on behalf of SERI, SERL would become the holder of the ESP previously held by SERI following approval of the proposed ESP transfer. The Commission is also considering amending the ESP for administrative purposes to reflect the proposed direct transfer. The proposed amendment would replace references to SERI in the ESP with references to System Energy Resource, LLC, to reflect the proposed transfer.

In addition, the Commission is also considering approving the associated indirect ESP transfer to the extent such would be effected by a formation of a new intermediary holding company. According to an application for approval filed by Entergy Operations, Inc., on behalf of SERI, Entergy Corporation will remain as the ultimate parent company, but a new, intermediate company, Entergy Utilities Holdings, LLC, a Delaware limited liability company, would be created, which would be the direct parent company of SERL. SERL will hold the ESP.

Pursuant to 10 CFR 50.80 and 10 CFR 52.28, no ESP, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the ESP, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of an ESP, if the Commission determines that the proposed transferee is qualified to hold the ESP, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. The Commission will approve an application for the indirect transfer of an ESP, if the Commission determines that the proposed establishment of a new holding company will not affect the qualifications of the licensee to hold the ESP, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming ESP amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the ESP of a utilization facility which does no more than conform the ESP to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific ESP amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

III. Opportunity To Request a Hearing; Petition for Leave To Intervene

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC's E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309, which is available at the NRC's PDR, located at O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 31, 2013. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

IV. Electronic Submissions (E-Filing)

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the

hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this application, see the application dated September 27, 2012.

Dated at Rockville, Maryland, this 2nd day of January 2013.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–00479 Filed 1–10–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30342; 812–14015]

Credit Suisse Opportunity Funds, et al.; Notice of Application

January 7, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY: *Summary of Application:* The order would permit certain registered closed-end management investment

companies to acquire shares of registered open-end management investment companies that are within the same group of investment companies.

Applicants: Credit Suisse Opportunity Funds (''Opportunity Funds''), Credit Suisse Commodity Strategy Funds (''Commodity Strategy Funds''), Credit Suisse High Yield Bond Fund (''High Yield Bond Fund''), Credit Suisse Asset Management Income Fund, Inc. (''Income Fund''); Credit Suisse Asset Management, LLC (''Adviser''), and Credit Suisse Securities (USA) LLC (''CSSU'').[1]

DATES: *Filing Dates:* The application was filed on March 15, 2012, and amended on August 23, 2012, December 14, 2012, January 3, 2013, and January 4, 2013.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 1, 2013 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington DC 20549–1090; Applicants, c/o Joanne Doldo, Esq., Credit Suisse Asset Management, LLC, One Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Opportunity Funds and Commodity Strategy Funds are organized as Delaware statutory trusts. Each is an open-end management investment company registered under the Act and is comprised of separate series that pursue distinct investment objectives and strategies.

2. The High Yield Bond Fund is organized as a Delaware statutory trust. The Income Fund (together with the High Yield Bond Fund, the ''Applicant Investing Funds'') is organized as a Maryland corporation. Each Applicant Investing Fund is registered under the Act as a closed-end management investment company. The Applicant Investing Funds invest or will invest in a variety of debt and/or equity securities or other financial instruments in accordance with their respective investment objectives and policies.

3. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to each of the existing Funds (as defined below). The Adviser is a wholly owned subsidiary of CSAM Americas Holding Corp., a holding company that is ultimately wholly owned by Credit Suisse Group. CSSU, a Delaware limited liability company, is a broker-dealer registered under the Securities Exchange Act of 1934. CSSU serves as principal underwriter and distributor for the shares of the Underlying Funds. CSSU is a wholly owned subsidiary of Credit Suisse (USA), Inc., a holding company that is ultimately wholly owned by Credit Suisse Group.

4. Applicants state that each of the Investing Funds (as defined below) would like the flexibility to invest, subject to and consistent with its investment objectives, policies, and restrictions, in the Underlying Funds in excess of the limits set out in sections 12(d)(1)(A) and (B) of the Act. Accordingly, Applicants seek an order of the Commission pursuant to Section 12(d)(1)(J) of the Act, granting an exemption from Sections 12(d)(1)(A) and (B) of the Act, and under Sections 6(c) and 17(b) of the Act, granting an exemption from Section 17(a) of the Act, to the extent necessary to permit (a) each of the Applicant Investing Funds to purchase shares of Opportunity Funds or Commodity Strategies Funds or their series (the ''Underlying Funds'') and (b) the Underlying Funds to sell their shares to, and redeem their shares from, the Applicant Investing Funds.

5. Applicants request that the relief also apply to any future registered closed-end management investment company advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (together with the Applicant Investing Funds, the ''Investing Funds'') that wishes to invest in a registered open-end management investment company, or series thereof, that (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser, and (b) is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) as the Investing Funds (included in the term ''Underlying Funds''). The Investing Funds and the Underlying Funds are referred to herein as the ''Funds.''

6. The Adviser believes that it may, from time to time, be more efficient for the Investing Funds to gain exposure to particular investment styles and/or asset classes by investing in one or more Underlying Funds. In particular, applicants note that if the total amount of an Investing Fund's desired exposure to a particular investment style or asset class is small, an investment in an Underlying Fund may enable an Investing Fund to obtain such exposure on a significantly more diversified basis than would be possible through a direct investment in such securities.

7. An Underlying Fund may invest up to 25% of its assets in a wholly-owned and controlled subsidiary of the Underlying Fund, organized under the laws of the Cayman Islands or another non-U.S. jurisdiction (a ''Cayman Subsidiary'') in order to invest in commodity-related instruments and certain other instruments. The Adviser will serve as the investment adviser to both such Underlying Fund and Cayman Subsidiary. The Cayman Subsidiary is created for the purpose of assuring that the Underlying Fund continues to qualify as a regulated investment company for U.S. federal income tax purposes.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section

[1] Each Fund (as defined below) that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the order in the future will do so only in accordance with the terms and conditions contained in the application, as amended.

12(d)(1)(B) provides that no registered open-end investment company, its principal underwriter or any broker or dealer may sell the company's securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides, in relevant part, that section 12(d)(1) will not apply to the securities of a registered open-end investment company purchased by another registered open-end investment company, if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act. Section 12(d)(1)(G)(ii) defines a ''group of investment companies'' as ''any 2 or more registered investment companies that hold themselves out to investors as related for purposes of investment and investor services.'' Applicants state that they may not rely on section 12(d)(1)(G) because the Investing Funds are closed-end management investment companies.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1), if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Investing Funds to acquire shares of Underlying Funds, and Underlying Funds to sell their shares to the Investing Funds, beyond the limits in sections 12(d)(1)(A) and (B).

4. Applicants state that the proposed arrangement will not raise the policy concerns underlying sections 12(d)(1)(A) and (B), including undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants contend that the proposed arrangement will not result in undue influence by an Investing Fund over an Underlying Fund because the Investing Fund and the Underlying Fund will be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and will be part of the same group of investment companies. Applicants state that the Commission, and Congress in the enactment of section 12(d)(1)(G), have recognized that fund of funds arrangements that involve funds in the same group of investment companies may not present the same concerns regarding control of one fund by another.[2]

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, before approving any investment advisory contract under section 15 of the Act, the board of trustees or directors of each Investing Fund, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the Investing Fund, will find that advisory fees, if any, charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract.

7. In addition, applicants state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[3] Applicants state that, although investors may incur brokerage commissions in connection with market purchases of the Investing Funds' shares, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable securities.

8. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants state that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits of section 12(d)(1)(A), except to the extent that such Underlying Fund receives securities of another investment company as a dividend or as a result of a plan or reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act), acquires, or is deemed to have acquired, the securities pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one or more affiliated investment companies or companies relying on section 3(c)(1) or 3(c)(7) for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions, or invests in a Cayman Subsidiary that is a wholly-owned and controlled subsidiary of the Underlying Fund. Further, no Cayman Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management purposes.

9. Applicants state that investments by an Underlying Fund in a Cayman Subsidiary also do not raise concerns about undue influence, layering of fees, and complex structures. Applicants represent that: (a) The Underlying Fund will be the sole and legal beneficial owner of its Cayman Subsidiary, which addresses concerns regarding pyramiding of voting control as a means of undue influence; (b) the Adviser will manage the investments of both the Underlying Fund and its Cayman Subsidiary, which addresses concerns over undue influence by the Adviser; and (c) there will be no inappropriate layering of fees and expenses as a result of an Underlying Fund investing in a Cayman Subsidiary. Applicants further represent that the financial statements of the Cayman Subsidiary will be consolidated with those of the Underlying Fund, if permitted by the applicable accounting standards. In addition, in assessing compliance with the asset coverage requirements under section 18(f) of the Act, an Underlying Fund will deem the assets, liabilities, and indebtedness of a Cayman Subsidiary in which the Underlying Fund invests as its own. Finally, the expenses of the Cayman Subsidiary will be included in the total annual fund operating expenses in the prospectus of the Underlying Fund.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits purchases and sales of securities, on a principal basis, between

[2] Applicants assert that the omission of closed-end funds from section 12(d)(1)(G) does not represent a determination by Congress that similar relief should not be provided to closed-end funds.

[3] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA Rule to NASD Conduct Rule 2830.

a registered investment company and any affiliated person of the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and any investment adviser to an investment company. Applicants state that an Underlying Fund might be deemed to be an affiliated person of an Investing Fund if the Investing Fund acquires 5% or more of the Underlying Fund's outstanding voting securities. Applicants also state that, because the Investing Funds and Underlying Funds will be advised by the Adviser, or a control affiliate of the Adviser, and may have the same officers and/or board of trustees, they may be deemed to be under common control and, therefore, affiliated persons of each other. Accordingly, section 17(a) could prevent an Underlying Fund from selling shares to, and redeeming shares from, an Investing Fund.

2. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, (b) the proposed transaction is consistent with the policies of each registered investment company involved, and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Specifically, applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that sales and redemptions of shares of the Underlying Funds will be at the net asset values of such Underlying Funds. In addition, applicants represent that the proposed transactions will be consistent with the policies of each Fund involved and the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

2. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of an Investing Fund, including a majority of the trustees who are not interested persons, as defined in section 2(a)(19) of the Act, of the Investing Fund, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding, and the basis upon which it was made, will be recorded fully in the minute books of the Investing Fund.

3. Each Investing Fund and each Underlying Fund will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

4. No Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions; or (c) invests in a Cayman Subsidiary that is a wholly-owned and controlled subsidiary of the Underlying Fund as described in the application. Further, no Cayman Subsidiary will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than money market funds that comply with rule 2a–7 for short-term cash management.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00434 Filed 1–10–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30341; File No. 812–13984]

Fidelity Commonwealth Trust, et al.; Notice of Application

January 7, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) Certain open-end management investment companies or series thereof to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to perform creations and redemptions of Shares in-kind in a master-feeder structure.

Applicants: Fidelity Commonwealth Trust (the ''Trust''), Fidelity Management & Research Company (the ''Adviser''), and Fidelity Distributors Corporation (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on December 1, 2011, and

amended on April 25, 2012, October 18, 2012, December 7, 2012, and January 4, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 31, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and is organized as a Massachusetts business trust. The Trust initially will offer one Fund (defined below) identified in the application (''Current Fund''), whose performance will correspond to the price and yield performance, before fees and expenses, of a specified securities index (''Underlying Index'').

2. Applicants request that the order apply to the Current Fund and any additional series of the Trust and any other open-end management investment company or series thereof that may be created in the future (''Future Funds'') and that tracks an Underlying Index.[1] Any Future Fund will be (a) advised by the Adviser, or an entity controlling, controlled by, or common control with the Adviser (included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. The Current Fund and any Future Funds together are the ''Funds.''

3. Certain of the Funds will be based on Underlying Indexes which will be comprised of equity and/or fixed income securities issued by domestic issuers or non-domestic issuers meeting the requirements for trading in U.S. markets (''Domestic Indexes''). Other Funds will be based on Underlying Indexes which will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Indexes''). Funds which track Domestic Indexes are referred to as ''Domestic Funds'' and Funds which track Foreign Indexes are referred to as ''Foreign Funds.'' Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.'' Funds based on Long/Short Indexes are ''Long/Short Funds.'' Underlying Indexes that use a 130/30 investment strategy are referred to as ''130/30 Indexes.'' Funds based on 130/30 Indexes are ''130/30 Funds.''

4. An Adviser registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') will serve as investment adviser to the Funds. The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as a sub-adviser to a Fund (each, a ''Sub-Adviser''). Each Sub-Adviser will be registered or not subject to registration under the Advisers Act. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as the principal underwriter and distributor for the Funds.[2]

5. A Fund may operate as a feeder fund in a master-feeder structure (''Feeder Fund''). Applicants request that the order permit the Feeder Funds to acquire securities of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitation in section 12(d)(1)(A) and permit the Master Funds, and any principal underwriter for the Master Fund, to sell shares of the Master Funds to the Feeder Funds beyond the limitations in section 12(d)(1)(B) (''Master-Feeder Relief''). Applicants may structure certain Feeder Funds to generate economies of scale and incur lower overhead costs.[3] There would be no ability by Fund shareholders to exchange Shares of Feeder Funds for shares of another feeder series of the Master Fund.

6. Each Fund will hold certain securities and other instruments (''Portfolio Securities'') selected to correspond to the performance of its Underlying Index.[4] Except with respect to Affiliated Index Funds (defined below), no entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Sub-adviser, or promoter of a Fund, or of the Distributor.

7. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index. A Fund using a representative sampling strategy will hold some, but may not hold all, of the Component Securities of its Underlying Index. Applicants state that use of the representative sampling strategy may prevent a Fund from tracking the performance of its Underlying Index with the same degree of accuracy as would a Fund that invests in every Component Security of the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5 percent.

8. Each Fund will issue, on a continuous basis, Creation Units, which

[1] All entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] Applicants request that the order also apply to future distributors that comply with the terms and conditions of the application.

[3] Operating in a master-feeder structure could also impose costs on a Feeder Fund and reduce its tax efficiency. The Feeder Fund's Board will weigh the potential disadvantages against the benefits of economies of scale and other benefits of operating within a master-feeder structure. In a master-feeder structure, the Master Fund—rather than the Feeder Fund—would generally invest the portfolio in compliance with the Order.

[4] Applicants represent that each Fund will invest at least 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') or, as applicable, depositary receipts or TBA Transactions (as defined below) representing Component Securities. Each Fund also may invest up to 20% of its total assets (the ''20% Asset Basket'') in a broad variety of other instruments, including securities not included in its Underlying Index, which the Adviser believes will help the Fund track its Underlying Index.

will typically consist of at least 25,000 Shares and have an initial price per Share of $25 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares. An Authorized Participant must be either (a) a ''Participating Party,'' (*i.e.,* a broker-dealer or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing house registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''), which, in either case, has signed a ''Participant Agreement'' with the Distributor.

9. The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[5] On any given Business Day the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in a Fund's portfolio (including cash positions),[6] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[7] (c) ''to be announced'' transactions (''TBA Transactions''),[8] short positions, derivatives and other positions that cannot be transferred in kind[9] will be excluded from the Deposit Instruments and the Redemption Instruments;[10] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[11] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

10. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[12] (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

11. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Exchange'') on which Shares are listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Balancing Amount (if any), for that day. The list of Deposit Instruments and the list of Redemption Instruments will apply until new lists are announced on the following Business Day, and there will be no intra-

[5] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[6] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[7] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[8] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[9] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[10] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Balancing Amount (defined below).

[11] A Fund may only use sampling for this purpose if the sample: (a) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (b) consists entirely of instruments that are already included in the Fund's portfolio; and (c) is the same for all Authorized Participants on a given Business Day.

[12] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's or Sub-adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax considerations may warrant in-kind redemptions.

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

day changes to the lists except to correct errors in the published lists.

12. For the Long/Short Funds and 130/30 Funds, the Adviser will provide full portfolio holdings disclosure on a daily basis on the Funds' publicly available Web site (''Web site'') and will develop an ''IIV File,'' which it will use to disclose the Funds' full portfolio holdings, including short positions. Before the opening of business on each Business Day, the Trust, Adviser or other third party, will make the IIV File available by email upon request. Applicants state that given either the IIV File or the Web site disclosure,[14] anyone will be able to know in real time the intraday value of the Long/Short Funds and 130/30 Funds.[15] With respect to the Long/Short Funds and 130/30 Funds, the investment characteristics of any financial instruments and short positions used to achieve short and long exposures will be described in sufficient detail for market participants to understand the principal investment strategies of the Funds and to permit informed trading of their Shares.

13. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (''Market Maker'') and maintain a market in Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/ask market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

14. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers also may purchase Creation Units for use in market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[16] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

15. Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

16. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[17] With respect to Feeder Funds, the Transaction Fee would be paid indirectly to the Master Fund.[18]

17. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''exchange traded fund (''ETF''). All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Units. The same approach will be followed in the shareholder reports issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to shareholders.

18. Applicants also request that the order allow them to offer Funds for which an affiliated person of the Adviser will serve as the Index Provider (''Affiliated Index Fund''). The Index Provider to an Affiliated Index Fund (''Affiliated Index Provider'') will create a proprietary, rules based methodology (''Rules-Based Process'') to create Underlying Indexes for use by the Affiliated Index Funds and other investors (an ''Affiliated Index'').[19] The Affiliated Index Provider, as owner of the Underlying Indexes and all related intellectual property related thereto, will license the use of the Affiliated Indexes, their names and other related intellectual property to the Adviser for use in connection with the Affiliated Index Funds, or their respective Master Funds. The licenses for the Affiliated Index Funds, or their respective Master Funds will state that the Adviser must provide the use of the Affiliated Indexes and related intellectual property at no cost to the Trust and the Affiliated Index Funds, or their respective Master Funds.

19. Applicants contend that the potential conflicts of interest arising from the fact that the Affiliated Index Provider will be an ''affiliated person'' of the Adviser will not have any impact on the operation of the Affiliated Index Funds because the Affiliated Indexes will maintain transparency, the Affiliated Index Funds' portfolios will be transparent, and the Affiliated Index Provider, the Adviser, any Sub-Adviser and the Affiliated Index Funds each will adopt policies and procedures to address any potential conflicts of interest (''Policies and Procedures''). The Affiliated Index Provider will publish in the public domain, including on its Web site and/or the Affiliated Index Funds' Web site, all of the rules that govern the construction and maintenance of each of its Affiliated Indexes. Applicants believe that this public disclosure will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Affiliated Index Provider, the owner of the Affiliated Indexes. Applicants note that the identity and weightings of the securities of any Affiliated Index will be

[14] The information on the Web site will be the same as that disclosed to Authorized Participants in the IIV File, except that (a) the information provided on the Web site will be formatted to be reader-friendly and (b) the portfolio holdings data on the Web site will be calculated and displayed on a per Fund basis, while the information in the IIV File will be calculated and displayed on a per Creation Unit basis.

[15] Each Listing Exchange or other major market data provider will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund representing the sum of (a) the estimated Balancing Amount and (b) the current value of the Deposit Instruments and any short positions, on a per individual Share basis.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[17] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the Transaction Fee imposed on a purchaser or redeemer may be higher.

[18] Applicants are not requesting relief from section 18 of the Act. Accordingly, a Master Fund may require a Transaction Fee payment to cover expenses related to purchases or redemptions of the Master Fund's shares by a Feeder Fund only if it requires the same payment for equivalent purchases or redemptions by any other feeder fund. Thus, for example, a Master Fund may require payment of a Transaction Fee by a Feeder Fund for transactions for 20,000 or more shares so long as it requires payment of the same Transaction Fee by all feeder funds for transactions involving 20,000 or more shares.

[19] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act and other pooled investment vehicles for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts, privately offered funds and other pooled investment vehicles for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts (collectively, ''Accounts''), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

readily ascertainable by any third party because the Rules-Based Process will be publicly available.

20. Like other index providers, the Affiliated Index Provider may modify the Rules-Based Process in the future. The Rules-Based Process could be modified, for example, to reflect changes in the underlying market tracked by an Affiliated Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the Index Personnel (defined below) has given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Affiliated Indexes may have reconstitution dates and rebalance dates that occur on a periodic basis more frequently than once yearly, but no more frequently than monthly.

21. As owner of the Affiliated Indexes, the Affiliated Index Provider will hire a calculation agent (''Calculation Agent''). The Calculation Agent will determine the number, type, and weight of securities that will comprise each Affiliated Index, will perform all other calculations necessary to determine the proper make-up of the Affiliated Index, including the reconstitutions for such Affiliated Index, and will be solely responsible for all such Affiliated Index maintenance, calculation, dissemination and reconstitution activities. The Calculation Agent will not be an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Funds, or their respective Master Funds, the Adviser, any Sub-Adviser, any promoter of a Fund or the Distributor.

22. The Adviser and the Affiliated Index Provider will adopt and implement Policies and Procedures to address any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication between employees of the Affiliated Index Provider and its affiliates who have responsibility for the Affiliated Indexes and the Rules Based Process, as well as those employees of the Affiliated Index Provider and its affiliates appointed to assist such employees in the performance of his/her duties (''Index Personnel'') and other employees of the Affiliated Index Provider. The Index Personnel (a) will not have any responsibility for the management of the Affiliated Index Funds, or their respective Master Funds, or the Affiliated Accounts, (b) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, that have responsibility for the management of the Affiliated Index Funds, or their respective Master Funds, or any Affiliated Account until such information is publicly announced, and (c) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser will adopt and implement, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. Also, the Adviser has adopted a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act (''Code of Ethics''). Any Sub-Adviser will be required to adopt a Code of Ethics and provide the Trust with the certification required by rule 17j–1 under the Act. In conclusion, Applicants submit that the Affiliated Index Funds will operate in a manner very similar to the other index-based ETFs which are currently traded.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only.[20] Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to buy and sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally

[20] The Master Funds will not require relief from sections 2(a)(32) and 5(a)(1) because the Master Funds will operate as traditional mutual funds and issue individually redeemable securities.

satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution system of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve Trust assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions for the Foreign Funds will be contingent not only on the settlement cycle of the U.S. securities markets, but also on the delivery cycles in local markets for the underlying foreign securities held by the Foreign Funds. Applicants believe that under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 15 calendar days.[21] Applicants therefore request relief from section 22(e) in order to provide for payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund customarily clear and settle, but in all cases no later than 15 calendar days following the tender of a Creation Unit.[22] With respect to Future Funds that are Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Foreign Fund to be made within a maximum of 15 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will identify those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays and the maximum number of days, but in no case more than 15 calendar days. Applicants are only seeking relief from section 22(e) to the extent that the Foreign Funds effect creations and redemptions of Creation Units in-kind.[23]

9. With respect to Feeder Funds, only in-kind redemptions may proceed on a delayed basis pursuant to the relief requested from section 22(e). In the event of such an in-kind redemption, the Feeder Fund would make a corresponding redemption from the Master Fund. Applicants do not believe the master-feeder structure would have any impact on the delivery cycle.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter or any other broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit management investment companies (''Investing Management Companies'') and unit investment trusts (''Investing Trusts'') registered under the Act that are not sponsored or advised by the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Fund of Funds'') to acquire Shares beyond the limits of section 12(d)(1)(A). In addition, applicants seek relief to permit the Funds, the Distributor, and any broker-dealer that is registered under the Exchange Act to sell Shares to Fund of Funds in excess of the limits of section 12(d)(1)(B).

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any Fund of Funds Adviser or Fund of Funds Sub-Adviser will be registered or not subject to registration under the Advisers Act. Each Investing Trust will have a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither the Fund of Funds nor any Fund of Funds Affiliate would be able to exert undue influence over the Funds or any Fund Affiliates.[24] To limit the control that a

[21] In the past, settlement in certain countries, including Russia, has extended to 15 calendar days.

[22] Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations applicants may have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[23] The requested exemption from Section 22(e) would only apply to in-kind redemptions by the Feeder Funds and would not apply to in-kind redemptions by other feeder funds.

[24] A ''Fund of Funds Affiliate'' is the Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal

Continued

Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or a Sponsor, any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Fund of Funds Adviser or Sponsor (''Fund of Funds' Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Fund Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement involves excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund (or its respective Master Fund) in which the Acquiring Management Company may invest. In addition, under condition B.5, a Fund of Funds Adviser or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges or service fees on shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[25]

16. Applicants submit that the requested 12(d)(1) Relief addresses concerns over overly complex structures. Applicants note that a Fund (or its respective Master Fund) will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to purchase shares of other investment companies for short-term cash management purposes or pursuant to the Master-Feeder Relief.

17. To ensure that a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Fund must enter into an agreement with the respective Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgment from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the FOF Participation Agreement prior to any investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A).

19. Applicants also are seeking the Master-Feeder Relief to permit the Feeder Funds to perform creations and redemptions of Shares in-kind in a master-feeder structure. Applicants assert that this structure is substantially identical to traditional master-feeder structures permitted pursuant to the exception provided in section 12(d)(1)(E) of the Act. Section 12(d)(1)(E) provides that the percentage limitations of sections 12(d)(1)(A) and (B) will not apply to a security issued by an investment company (in this case, the shares of the applicable Master Fund) if, among other things, that security is the only investment security held in the investing fund's portfolio (in this case, the Feeder Fund's portfolio). Applicants believe the proposed master-feeder structure complies with section 12(d)(1)(E) because each Feeder Fund will hold only investment securities issued by its corresponding Master Fund; however, the Feeder Funds may receive securities other than securities of its corresponding Master Fund if a Feeder Fund accepts an in-kind creation. To the extent that a Feeder Fund may be deemed to be holding both shares of the Master Fund and other securities, applicants request relief from sections 12(d)(1)(A) and (B). The Feeder Funds would operate in compliance with all other provisions of section 12(d)(1)(E).

Sections 17(a)(1) and (2) of the Act

20. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), from selling any security or other property to or acquiring any security or other property from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines control as the power to exercise a controlling influence over the management of policies of a company. It also provides that a control relationship will be

underwriter of a Fund and any person controlling, controlled by or under common control with any of those entities.

[25] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser (an ''Affiliated Fund'').

21. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons or second-tier affiliates of the Fund solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

22. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Units through in-kind transactions. Except as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments will be the same for all purchasers and redeemers regardless of the their identity. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Units will be the same for all purchases and redemptions, regardless of size or number. Deposit Instruments and Redemption Instruments will be valued in the same manner as Portfolio Securities are valued for purposes of calculating NAV. Applicants submit that, by using the same standards for valuing Portfolio Securities as are used for calculating in-kind redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such transactions. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

23. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person or second-tier affiliate of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[26] Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[27] Further, as described in Section II.K.2 of the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively and will correspond pro rata to the Fund's Portfolio Securities, except as described above. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

24. To the extent that a Fund operates in a master-feeder structure, applicants also request relief permitting the Feeder Funds to engage in in-kind creations and redemptions with the applicable Master Fund. Applicants state that the customary section 17(a)(1) and 17(a)(2) relief would not be sufficient to permit such transactions because the Feeder Funds and the applicable Master Fund could also be affiliated by virtue of having the same investment adviser. However, applicants believe that in-kind creations and redemptions between a Feeder Fund and a Master Fund advised by the same investment adviser do not involve ''overreaching'' by an affiliated person. Such transactions will occur only at the Feeder Fund's proportionate share of the Master Fund's net assets, and the distributed securities will be valued in the same manner as they are valued for the purposes of calculating the applicable Master Fund's NAV. Further, all such transactions will be effected with respect to pre-determined securities and on the same terms with respect to all investors. Finally, such transactions would only occur as a result of, and to effectuate, a creation or redemption transaction between the Feeder Fund and a third-party investor. Applicants believe that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned and that the transactions are consistent with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested ETF Relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief, other than the Section 12(d)(1) relief and the Section 17 relief related to a master-feeder structure, will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the Order, the Shares of such Fund will be listed on an Exchange.

3. No Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

B. Section 12(d)(1) Relief

Applicants agree that any order of the Commission granting the requested 12(d)(1) Relief will be subject to the following conditions:

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of Section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund (or its respective Master Fund) within the meaning of Section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory

[26] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. The requested relief also is intended to cover the in-kind transactions that may accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or second-tier affiliate of a Fund of Funds because the Adviser provides investment advisory services to the Fund of Funds.

[27] Applicants acknowledge that receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund (or its respective Master Fund) for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of Section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund (or its respective Master Fund) or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the non-interested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund (or its respective Master Fund) or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limit in Section 12(d)(1)(A)(i) of the Act, the board of directors (''Board'') of the Fund (or its respective Master Fund), including a majority of the non-interested directors or trustees, will determine that any consideration paid by the Fund (or its respective Master Fund) to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund (or its respective Master Fund); (ii) is within the range of consideration that the Fund (or its respective Master Fund) would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund (or its respective Master Fund) and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund (or its respective Master Fund) under Rule 12b–l under the Act) received from a Fund (or its respective Master Fund) by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, Trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund (or its respective Master Fund) by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund (or its respective Master Fund), in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund (or its respective Master Fund)) will cause a Fund (or its respective Master Fund) to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund (or its respective Master Fund), including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund (or its respective Master Fund) in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund (or its respective Master Fund); (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund (or its respective Master Fund) in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund (or its respective Master Fund) will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in Section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in Section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The

Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under Section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the non-interested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund (or its respective Master Fund) in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund (or its respective Master Fund) will acquire securities of an investment company or company relying on Section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in Section 12(d)(1)(A) of the Act, except to the extent (i) the Fund (or its respective Master Fund) acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund (or its respective Master Fund) to acquire securities of one or more investment companies for short-term cash management purposes or (ii) the Fund acquires securities of the Master Fund pursuant to the Master—Feeder Relief.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00380 Filed 1–10–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68589; File No. SR–NYSEMKT–2012–89]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule With Respect to Regulatory Fees Related to the Central Registration Depository, Which Are Collected by the Financial Industry Regulatory Authority, Inc.

January 4, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 21, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend the NYSE Amex Options Fee Schedule (the ''Fee Schedule'') with respect to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee changes on January 2, 2013. 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 Exchange proposes to amend the Fee Schedule with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

Certain of the regulatory fees provided in the Fee Schedule are collected and retained by FINRA via the CRD system for the registration of associated persons of ATP Holders that are not FINRA members (''Non-FINRA ATP Holders''). The Exchange originally adopted fees for use of the CRD system in 2003.[5] FINRA recently amended certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ATP Holder. Accordingly, the Exchange is proposing to amend the fees in the Fee Schedule to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows: [8]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR–Amex–2003–49).

[6] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ATP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Amex Options-only ATP Holders.

[8] The Exchange is proposing to delete the current fees and descriptions in their entirety and replace them with the updated fees and descriptions in a separate table that will include all the fees applicable to Non-FINRA ATP Holders, as discussed further below (corresponding footnotes in the Fee Schedule would also be designated as ''reserved''). In this regard, the Exchange is proposing a new subheading in the ''Regulatory Fees'' section of the Fee Schedule to differentiate between those fees that are applicable to all ATP Holders and those fees that are applicable only to Non-FINRA ATP Holders. The Exchange notes that

Continued

• Increasing the disclosure processing fee from $95 to $110; [9] and

• Increasing the manual fingerprint processing fee from $13 to $30.[10]

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.[11] Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act.[12] FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA ATP Holders.[13]

The Exchange also proposes to include in its Fee Schedule certain other fees that are charged by FINRA to FINRA members as well as Non-FINRA ATP Holders. These fees are as follows: [14]

• $100 for each initial Form U4 filed for the registration of a representative or principal; [15]

• $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints; [16]

• $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints; [17] and

• $45 annually for system processing for each registered representative and principal.[18]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that ATP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) Incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA ATP Holder uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Securities and Exchange Commission (''Commission''), FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ATP Holders. All similarly situated ATP Holders are subject to the same fee structure, and every ATP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all ATP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ATP Holders are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all ATP Holders required to report information to the CRD system and for services performed by FINRA, regardless of

ATP Holders that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.'' As noted below, this would incorporate the applicability of the fee to Form BD processing.

[10] *See* Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted to FINRA.'' The Exchange also proposes to permanently remove the current $35 fee in the Fee Schedule for fingerprint processing. The fee for fingerprint processing by FINRA is addressed via the other fingerprint processing fees described herein and in the proposed changes to the Fee Schedule.

[11] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013.

[12] 15 U.S.C. 78c(a)(39).

[13] *See supra* note 9.

[14] Non-FINRA ATP Holders have been charged CRD system fees since 2003. *See supra* note 5.

[15] *See* Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA ATP Holder submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

[16] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[17] *See* Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[18] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

whether or not such ATP Holders are FINRA members.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–89. 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 NYSE's principal office or on the Web site at *www.nyse.com.* 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–2012–89, and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00353 Filed 1–10–13; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68587; File No. SR–NYSE–2012–77]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price With Respect to Regulatory Fees Related to the Central Registration Depository, Which Are Collected by the Financial Industry Regulatory Authority, Inc.

January 4, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 21, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend its Price List (the ''Price List'') with respect to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee changes on January 2, 2013. 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 Exchange proposes to amend the Price List with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

FINRA collects and retains certain regulatory fees via the CRD system for the registration of employees of member organizations of the Exchange that are not FINRA members (''Non-FINRA

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

Member Organizations'').[5] FINRA recently amended certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Member Organization. Accordingly, the Exchange is proposing to amend the Price List to mirror the fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows: [8]

- $100 for each initial Form U4 filed for the registration of a representative or principal; [9]
- $110 for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings; [10]
- $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints; [11]
- $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints; [12]
- $30 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted to FINRA; [13] and
- $45 annually for system processing for each registered representative and principal.[14]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) Incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA Member Organization uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA Member Organizations. All similarly situated member organizations are subject to the same fee structure, and every member organization must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all member organizations required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such member organizations are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all member organizations required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such

[5] The Exchange originally adopted fees for use of the CRD system in 2001. *See* Securities Exchange Act Release No. 45112 (November 28, 2001), 66 FR 63086 (December 4, 2001) (SR–NYSE–2001–47).

[6] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Member Organizations when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE-only member organizations.

[8] Non-FINRA Member Organizations have been charged CRD system fees since 2001. *See supra* note 5. The Exchange is proposing a new subheading in the ''Registration & Regulatory Fees'' section of the Price List to differentiate between those fees that are applicable to all member organizations and those fees that are applicable only to Non-FINRA Member Organizations. The Exchange notes that member organizations that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

[9] *See* Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA Member Organization submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

[10] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $95 related to Form U4 and Form U5. The fee related to Form BD is a new fee charged by FINRA. Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39). FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA Member Organizations.

[11] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[12] *See* Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[13] *See* Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[14] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

member organizations are FINRA members.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–77. 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 NYSE's principal office or on the Web site at *www.nyse.com.* 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–2012–77, and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00351 Filed 1–10–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68594; File No. SR–DTC–2012–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Fee Schedule With Respect to Settlement and Asset Services

January 7, 2013.

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 December 27, 2012, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(2) [4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to modify DTC's fee schedule with respect to Settlement and Asset Services, as described in detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Proposal Overview

DTC proposes to modify its fee schedule with respect to Settlement Services. In order to better align fees with the costs of delivery services, DTC proposes to (i) raise the fee for night deliver orders (excluding Money Market Instruments (''MMIs'')) from $0.12 to $0.20 per transaction, and (ii) decrease the fee for receipt of deliveries (excluding MMIs) from $0.12 to $0.11. In addition, in an effort to simplify participant fee billing, DTC will eliminate two low revenue fees, ''Release of Pending Delivery Account'' and ''Banker's Acceptance Movement,'' and will consolidate and/or rename the following 12 fee descriptions, with no change to fees:

1. Deliver, opening in day cycle to cutoff, excluding stock loans (excluding MMIs);
2. Reintroduced drop or incomplete delivery DO, via IMS authorization, day cycle (excluding MMIs);
3. ACATS Deliver, via IMS authorization, day cycle (excluding MMIs);
4. Balance Order Deliver, via IMS authorization, day cycle (excluding MMIs);

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission has modified the text of the summaries prepared by DTC.

5. Late affirmed Institutional delivery, via IMS authorization, day cycle (excluding MMIs);

6. Municipal Bearer Deliver Order (excluding MMIs);

7. Deliver, opening in day cycle to cutoff, stock loans and returns (excluding MMIs);

8. Municipal Bearer Bond Service Deliver Order between participants in a collateral group (excluding MMIs);

9. MMI Turnaround Deliver Order;

10. Municipal Bearer hold/release of pending Deliver Order recycling for insufficient position (excluding MMIs);

11. Security pledged, released, or substituted; and

12. Option security pledged, released, or substituted via PTS or PBS.

DTC also proposes to revise its fee schedule with respect to Asset Services. DTC is proposing to eliminate of the following 13 current fees within Asset Services (these fees relate either to discontinued or low volume services), including two from Global Tax Services and 11 from Securities Processing:

1. DTC Tax Info via PTS;

2. DTC Tax Info via PBS;

3. Positions in issues denominated in units of $1,000 (surcharge);

4. BDS TA Deposit Rejects for CODs;

5. Custody-Withdrawal—Direct Mail Fee;

6. Messenger service;

7. Research of Name Change of Issue;

8. State of Israel (surcharge);

9. Municipal Bearer Bond Service—Unclaimed COD;

10. Direct Registration Statement—Muni Bond;

11. FOSS reclaim receive;

12. FOSS reclaim delivery; and

13. FOSS delivery.

The above changes will take effect on January 2, 2013.

Statutory Basis

DTC believes the proposed rule changes are consistent with the requirements of the Act, specifically Section 17A(b)(3)(F),[6] and the rules and regulations thereunder applicable to DTC because it updates DTC's fee schedule to align fees with the costs of delivering services. As such, it provides for the equitable allocation of fees among DTC's Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–DTC–2012–11 on the subject line.

Paper Comments

- Send in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–DTC–2012–11. 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 filings will also be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2012/dtc/SR-DTC-2012-11.pdf*.

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–DTC–2012–11 and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00379 Filed 1–10–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68590; File No. SR–NYSEARCA–2012–145]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List With Respect to Regulatory Fees Related to the Central Registration Depository, Which Are Collected by the Financial Industry Regulatory Authority, Inc.

January 4, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 21, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend the NYSE Arca Options Fee Schedule (the ''Fee Schedule'') with respect to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). 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 Exchange proposes to amend the Fee Schedule with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

Certain of the regulatory fees provided in the Fee Schedule are collected and retained by FINRA via the CRD system for the registration of associated persons of OTP Holders and OTP Firms that are not FINRA members (''Non-FINRA OTP Holders'' and ''Non-FINRA OTP Firms,'' respectively). The Exchange originally adopted fees for use of the CRD system in 2005.[5] FINRA recently amended certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA OTP Holder or Non-FINRA OTP Firm. Accordingly, the Exchange is proposing to amend the fees in the Fee Schedule to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows:[8]

- Increasing the disclosure processing fee from $95 to $110;[9] and
- Increasing the manual fingerprint processing fee from $13 to $30.[10]

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.[11] Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act.[12] FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA OTP Holders and Non-FINRA OTP Firms.[13]

The Exchange also proposes to include in its Fee Schedule certain other fees that are charged by FINRA to FINRA members as well as Non-FINRA OTP Holders and Non-FINRA OTP Firms. These fees are as follows:[14]

- $100 for each initial Form U4 filed for the registration of a representative or principal;[15]
- $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[16]
- $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[17] and
- $45 annually for system processing for each registered representative and principal.[18]

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* Securities Exchange Act Release No. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR–PCX–2005–49).

[6] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA OTP Holders or Non-FINRA OTP Firms when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Arca-only OTP Holders and OTP Firms.

[8] The Exchange is proposing to delete the current fees and descriptions in their entirety and replace them with the updated fees and descriptions in a separate table that will include all the fees applicable to Non-FINRA OTP Holders and Non-FINRA OTP Firms, as discussed further below. In this regard, the Exchange is proposing a new subheading in the ''Regulatory Fees'' section of the Fee Schedule to differentiate between those fees that are applicable to all OTP Holders and OTP Firms and those fees that are applicable only to Non-FINRA OTP Holders and Non-FINRA OTP Firms. The Exchange notes that OTP Holders and OTP Firms that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.'' As noted below, this would incorporate the applicability of the fee to Form BD processing.

[10] *See* Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted to FINRA.''

[11] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013.

[12] 15 U.S.C. 78c(a)(39).

[13] *See supra* note 9.

[14] Non-FINRA OTP Holders and Non-FINRA OTP Firms have been charged CRD system fees since 2005. *See supra* note 5.

[15] *See* Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA OTP Holder or Non-FINRA OTP Firm submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

[16] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[17] *See* Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[18] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The

Continued

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA OTP Holder or Non-FINRA OTP Firm uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA OTP Holders and Non-FINRA OTP Firms. All similarly situated OTP Holders and OTP Firms are subject to the same fee structure, and every OTP Holder and OTP Firm must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all OTP Holders and OTP Firms required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such OTP Holders and OTP Firms are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all OTP Holders and OTP Firms required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such OTP Holders and OTP Firms are FINRA members.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[21] of the Act and subparagraph (f)(2) of Rule 19b–4[22] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–145 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–145. 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 NYSE's principal office or on the Web site at *www.nyse.com.* 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–2012–145, and should be submitted on or before February 1, 2013.

current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00354 Filed 1–10–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68588; File No. SR–NYSEARCA–2012–143]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services With Respect to Regulatory Fees Related to the Central Registration Depository, Which Are Collected by the Financial Industry Regulatory Authority, Inc.

January 4, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 21, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') with respect to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee changes on January 2, 2013. 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 Exchange proposes to amend the Fee Schedule with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

Certain of the regulatory fees provided in the Fee Schedule are collected and retained by FINRA via the CRD system for the registration of associated persons of ETP Holders that are not FINRA members (''Non-FINRA ETP Holders''). The Exchange originally adopted fees for use of the CRD system in 2005.[5] FINRA recently amended certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ETP Holder. Accordingly, the Exchange is proposing to amend the fees in the Fee Schedule to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows:[8]

- Increasing the disclosure processing fee from $95 to $110;[9] and
- Increasing the manual fingerprint processing fee from $13 to $30.[10]

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.[11] Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act.[12]

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* Securities Exchange Act Release No. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR–PCX–2005–49).

[6] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ETP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Arca-only ETP Holders.

[8] The Exchange is proposing to delete the current fees and descriptions in their entirety and replace them with the updated fees and descriptions in a separate table that will include all the fees applicable to Non-FINRA ETP Holders, as discussed further below. In this regard, the Exchange is proposing a new subheading in the ''Regulatory Fees'' section of the Fee Schedule to differentiate between those fees that are applicable to all ETP Holders and those fees that are applicable only to Non-FINRA ETP Holders. The Exchange notes that ETP Holders that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.'' As noted below, this would incorporate the applicability of the fee to Form BD processing.

[10] *See* Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be ''processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted to FINRA.''

[11] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013.

[12] 15 U.S.C. 78c(a)(39).

FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA ETP Holders.[13]

The Exchange also proposes to include in its Fee Schedule certain other fees that are charged by FINRA to FINRA members as well as Non-FINRA ETP Holders. These fees are as follows:[14]

- $100 for each initial Form U4 filed for the registration of a representative or principal;[15]
- $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[16]
- $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[17] and
- $45 annually for system processing for each registered representative and principal.[18]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA ETP Holder uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ETP Holders. All similarly situated ETP Holders are subject to the same fee structure, and every ETP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all ETP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ETP Holders are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all ETP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ETP Holders are FINRA members.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[21] of the Act and subparagraph (f)(2) of Rule 19b–4[22] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–143 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–143.

[13] *See supra* note 9.

[14] Non-FINRA ETP Holders have been charged CRD system fees since 2005. *See supra* note 5.

[15] *See* Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA ETP Holder submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

[16] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[17] *See* Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[18] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

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 NYSE's principal office or on the Web site at *www.nyse.com.* 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–2012–143, and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00352 Filed 1–10–13; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68595; File No. SR–EDGA–2012–47]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.5(c) (NBBO Offset Peg Order)

January 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.5(c), the NBBO Offset Peg Order. As described in the Exchange's filing to create the NBBO Offset Peg Order,[3] the NBBO Offset Peg Order enables Users[4] to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the ''NBB'') and National Best Offer (the ''NBO'', and together with the NBB, the ''NBBO''), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, enables Market Makers to comply independently with the requirements of Regulation SHO[5] under the Securities Exchange Act of 1934 (the ''Act'') and Rule 15c3–5[6] under the Act (the ''Market Access Rule'').

[3] *See* Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44).

[4] As defined in Rule 1.5(ee).

[5] 17 CFR 242.200 through 242.204.

As described in the Exchange's filing to create the NBBO Offset Peg Order: upon entry and at any time the price of the order reached the 'Defined Limit', or moved a specified number of percentage points away from the 'Designated Percentage' toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances.[7]

The Exchange proposes to amend the text of Rule 11.5(c)(15) to not allow the User to cancel or reject the order under the circumstances outlined above. Therefore, the Exchange proposes to delete the following text in Rule 11.5(c)(15): ''unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor.'' The text of the rule will now read that:

[u]pon reaching the Defined Limit (as defined in Rule 11.21(d)(2)(F)), the price of an NBBO Offset Peg Order bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there is no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If an NBBO Offset Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage toward the then current NBB or NBO, the price of such bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB and NBO. If there is no NBB or NBO at such time, the order will be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor.

Thus, when processing NBBO Offset Peg Orders, the System will not condition adjustment of the price upon the User's instructions.

The Exchange originally stated in SR–EDGA–2012–44 that it ''intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market

[6] 17 CFR 242.15c3–5.

[7] *See* Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44).

participants in an information circular to be posted on the Exchange's Web site.'' [8] The Exchange proposes to revise this implementation date to on or about April 15, 2013. This additional time will enable the Exchange to assess the usefulness of the NBBO Offset Peg Order in light of the upcoming implementation of the National Market System Plan to Address Extraordinary Market Volatility (as amended, the ''Plan'') as approved by the Commission [9] and proposed changes to market making quoting requirements through uniform industry-wide amendments to Designated Percentages [10] and Defined Limits [11] to realign the percentages based on the Plan's Appendix A Percentage Parameters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [12] and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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 the proposed rule filing meets these requirements because it eliminates certain rule text to conform with NASDAQ's Market Maker Peg Order, which is a similar order type to the NBBO Offset Peg Order,[14] and updates the implementation date in light of the Plan and proposed changes to market making quoting requirements. Thus, the Exchange believes that the proposed rule change promotes the efficient execution of investor transactions, and thus investor confidence, over the long term.

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, as amended. The proposed rule change will increase competition among the exchanges because the NBBO Offset Peg Order will directly compete with substantially similar existing order types offered by other exchanges.[15]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

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 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–EDGA–2012–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–47. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–EDGA–2012–47 and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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[8] *See* Securities Exchange Act Release No. 67960 (October 2, 2012), 77 FR 61463 (October 9, 2012) (SR–EDGA–2012–44).

[9] *See* Securities Exchange Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Plan on a pilot basis).

[10] As defined in Rule 11.21(d)(2)(D).

[11] As defined in Rule 11.21(d)(2)(F).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066).

[15] *See* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066) (order approving NASDAQ's Market Maker Peg Order available for exchange market makers). *See* Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR–BATS–2012–026) (order approving BATS's Market Maker Peg Order available for exchange market makers). *See also* Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR–BYX–2012–012) (order approving BATS Y-Exchange Inc.'s Market Maker Peg Order available for exchange market makers).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68596; File No. SR–EDGX–2012–49]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.5(c) (NBBO Offset Peg Order)

January 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 2012, the EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 amend Rule 11.5(c), which describes the manner in which the NBBO Offset Peg Order operates. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.5(c), the NBBO Offset Peg Order. As described in the Exchange's filing to create the NBBO Offset Peg Order,[3] the NBBO Offset Peg Order enables Users [4] to submit buy and sell orders to the Exchange that are pegged to a designated percentage away from the National Best Bid (the ''NBB'') and National Best Offer (the ''NBO'', and together with the NBB, the ''NBBO''), respectively, while providing them full control over order origination and order marking. This retention of control, in turn, enables Market Makers to comply independently with the requirements of Regulation SHO [5] under the Securities Exchange Act of 1934 (the ''Act'') and Rule 15c3–5 [6] under the Act (the ''Market Access Rule'').

As described in the Exchange's filing to create the NBBO Offset Peg Order: Upon entry and at any time the price of the order reached the 'Defined Limit', or moved a specified number of percentage points away from the 'Designated Percentage' toward the then current NBB (for NBBO Offset Peg Orders to buy) or NBO (for NBBO Offset Peg Orders to sell), the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, as the case may be. In the event that there was no NBB or NBO, the price of the NBBO Offset Peg Order would be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor, unless the User instructed the Exchange upon entry to cancel or reject the order under such circumstances.[7]

The Exchange proposes to amend the text of Rule 11.5(c)(15) to not allow the User to cancel or reject the order under the circumstances outlined above. Therefore, the Exchange proposes to delete the following text in Rule 11.5(c)(15): ''unless instructed by the User upon order entry to cancel or reject rather than adjust based on the last reported sale from the single plan processor.'' The text of the rule will now read that:

[u]pon reaching the Defined Limit (as defined in Rule 11.21(d)(2)(F)), the price of an NBBO Offset Peg Order bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB or NBO, respectively, or if there is no NBB or NBO at such time, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If an NBBO Offset Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage toward the then current NBB or NBO, the price of such bid or offer will be automatically adjusted by the System to the Designated Percentage away from the then current NBB and NBO. If there is no NBB or NBO at such time, the order will be automatically adjusted by the System to the Designated Percentage away from the last reported sale from the responsible single plan processor.

Thus, when processing NBBO Offset Peg Orders, the System will not condition adjustment of the price upon the User's instructions.

The Exchange originally stated in SR–EDGX–2012–44 that it ''intends to implement the proposed rule change on or about November 19, 2012, and will notify its Members and other market participants in an information circular to be posted on the Exchange's Web site.'' [8] The Exchange proposes to revise this implementation date to on or about April 15, 2013. This additional time will enable the Exchange to assess the usefulness of the NBBO Offset Peg Order in light of the upcoming implementation of the National Market System Plan to Address Extraordinary Market Volatility (as amended, the ''Plan'') as approved by the Commission [9] and proposed changes to market making quoting requirements through uniform industry-wide amendments to Designated Percentages [10] and Defined Limits [11] to realign the percentages based on the Plan's Appendix A Percentage Parameters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [12] and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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 the proposed rule filing meets these requirements because it eliminates certain rule text to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR–EDGX–2012–44).

[4] As defined in Rule 1.5(ee).

[5] 17 CFR 242.200 through 242.204.

[6] 17 CFR 242.15c3–5.

[7] *See* Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR–EDGX–2012–44).

[8] *See* Securities Exchange Act Release No. 67959 (October 2, 2012), 77 FR 61449 (October 9, 2012) (SR–EDGX–2012–44).

[9] *See* Securities Exchange Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving the Plan on a pilot basis).

[10] As defined in Rule 11.21(d)(2)(D).

[11] As defined in Rule 11.21(d)(2)(F).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

conform with NASDAQ's Market Maker Peg Order, which is a similar order type to the NBBO Offset Peg Order,[14] and updates the implementation date in light of the Plan and proposed changes to market making quoting requirements. Thus, the Exchange believes that the proposed rule change promotes the efficient execution of investor transactions, and thus investor confidence, over the long term.

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, as amended. The proposed rule change will increase competition among the exchanges because the NBBO Offset Peg Order will directly compete with substantially similar existing order types offered by other exchanges.[15]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder.

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 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–EDGX–2012–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–49. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–EDGX–2012–49 and should be submitted on or before February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00433 Filed 1–10–13; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066).

[15] *See* Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066) (order approving NASDAQ's Market Maker Peg Order available for exchange market makers). *See* Securities Exchange Act Release No. 67756 (August 29, 2012), 77 FR 54633 (September 5, 2012) (SR–BATS–2012–026) (order approving BATS's Market Maker Peg Order available for exchange market makers). *See also* Securities Exchange Act Release No. 67755 (August 29, 2012), 77 FR 54630 (September 5, 2012) (SR–BYX–2012–012) (order approving BATS Y-Exchange Inc.'s Market Maker Peg Order available for exchange market makers).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8150]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ming Masterpieces From the Shanghai Museum''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ming Masterpieces from the Shanghai Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about March 3, 2013, until on or about June 2, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The

mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 7, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–00450 Filed 1–10–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8151]

Culturally Significant Objects Imported for Exhibition Determinations: ''Georges Braque and the Cubist Still Life: 1928–1945''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Georges Braque and the Cubist Still Life: 1928–1945,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects first at the Kemper Art Museum in St. Louis, Missouri from on or about January 25, 2013 until on or about April 21, 2013, and then at The Phillips Collection in Washington, DC from on or about June 8, 2013 until on or about September 1, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 4, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–00447 Filed 1–10–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8148]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on Wednesday February 27, 2013, in Room 5–1224 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the twenty-first session of the International Maritime Organization's (IMO) Flag State Implementation Sub-Committee to be held at the IMO Headquarters, London, England, United Kingdom, March 4–8, 2013.

The matters to be considered include:

Adoption of the agenda
Decisions of other IMO bodies
Responsibilities of Governments and measures to encourage flag State compliance;
Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
Casualty statistics and investigations;
Harmonization of port State control activities;
Port State Control (PSC) Guidelines on seafarers' hours of rest and PSC guidelines in relation to the Maritime Labour Convention, 2006;
Development of guidelines on port State control under the 2004 Ballast Water Management (BWM) Convention;
Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC) and the annexes to the Code for the Implementation of Mandatory IMO Instruments;
Consideration of International Association of Classification Societies (IACS) unified interpretations;
Measures to protect the safety of persons rescued at sea
Illegal unregulated and unreported (IUU) fishing and related matters
Review of general cargo ship safety
Election of Chairman and Vice-Chairman for 2014
Any other business

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. E.J. Terminella, by email at *Emanuel.J.TerminellaJr@uscg.mil*; by phone at (202) 372–1239; or in writing at Commandant (CG–CVC), U.S. Coast Guard Headquarters, 2100 2nd Street SW., STOP 7581, Washington, DC 20593–7581. Requests should be made no later than February 19, 2013. Requests made after this date might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available), however, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: January 4, 2013.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2013–00441 Filed 1–10–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8149]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, February 21, 2013, in Room 2501 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the fifty-seventh Session of the International Maritime Organization's (IMO) Sub-Committee on Ship Design and Equipment to be held at the IMO Headquarters, United Kingdom, March 18–22, 2013.

The agenda items to be considered include:

—Consideration of IACS unified interpretations;
—Revision of the Standard specification for shipboard incinerators (resolution MEPC.76(40));
—Development of amendments to SOLAS regulation II–1/40.2

concerning general requirements on electrical installations;
—Making the provisions of MSC.1/Circ.1206/Rev.1 mandatory;
—Development of new framework of requirements for life-saving appliances;
—Development of safety objectives and functional requirements of the Guidelines on alternative design and arrangements for SOLAS chapters II–1 and III;
—Development of amendments to the LSA Code for thermal performance of immersion suits;
—Development of amendments to the LSA Code for free-fall lifeboats with float free Capabilities;
—Development of a mandatory Code for ships operating in polar waters;
—Classification of offshore industry vessels and consideration of the need for a Code for offshore construction support vessels;
—Revision of testing requirements for RTDs in resolution MSC.81(70);
—Development of guidelines for wing-in-ground craft;
—Revision of the Recommendation on conditions for the approval of servicing stations for inflatable liferafts (resolution A.761(18));
—Amendments to SOLAS regulation II–1/11 and development of associated guidelines to ensure the adequacy of testing arrangements for watertight compartments;
—Provisions for the reduction of noise from commercial shipping and its adverse impacts on marine life;
—Development of the requirements for onboard lifting appliances and winches;
—Review of general cargo ship safety;
—Development of amendments to SOLAS regulations II–1/29.3.2 and 29.4.2, clarifying the requirements for steering gear trials;
—Work programme
—Any other business

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Wayne Lundy, by email at *wayne.m.lundy@uscg.mil*, by phone at (202) 372–1379, by fax at (202) 372–1925, or in writing at Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 not later than February 14, 2013, 7 days prior to the meeting. Requests made after February 14, 2013 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: January 4, 2013.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2013–00444 Filed 1–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2013–0002]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 12, 2013.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''

• *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mike Joyce, Marketing Specialist, Office of Communications and Consumer Information (NPO–520), National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., W52–238, Washington, DC, 20590. Mike Joyce's phone number is 202–366–5600 and his email address is *Mike.Joyce@dot.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB:

Title: Advanced Crash Avoidance Technologies Consumer Research.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct a limited number of focus group sessions and in-depth interviews with members of the general public to help inform future revisions to the Monroney label and guide the development of a consumer education program. In addition, this consumer research will help to ensure that various advanced crash avoidance technologies the agency promotes are important and usable to consumers, and the information provided leads to consumer understanding of the benefits of these technologies.

Summary of the Collection of Information: In this collection of information, NHTSA is seeking approval to conduct qualitative consumer research and in-depth interviews to test consumer familiarity and understanding of advanced crash avoidance technology systems so that labeling and consumer materials will help consumers make informed vehicle purchase decisions. Specifically, this research will be guided by the following objectives:

(i) Explore consumer familiarity with and understanding of advanced crash avoidance technologies;

(ii) Explore potential nomenclature, icons and rating systems that can be used to communicate information about advanced crash avoidance technologies;

(iii) Guide considerations for design modifications of current New Car Assessment Program Government 5-Star Safety Ratings label to include information about advanced crash avoidance technologies;

(iv) Guide the development of a consumer information program to improve awareness and understanding of advanced crash avoidance technologies.

Description of the Need for the Information and the Proposed Use of the Information: NHTSA will obtain critical information that will fulfill a congressional mandate to improve highway traffic safety. Specifically, the data from this collection will be used to enhance consumer understanding of advanced crash avoidance technologies and guide the development of communication materials that will help consumers as they factor these technologies into their vehicle purchase decisions. This research, along with previously conducted qualitative research, will also help to inform a quantitative survey that will explore potential redesigns for the New Car Assessment Program's Government 5-Star Safety Ratings section of the Monroney Label.

Affected Public: For the focus group phase of this collection, NHTSA plans to conduct a total of 9 focus groups, each lasting approximately two hours. In each group, 8 participants will be seated. Therefore, a total of 72 people will participate in the group sessions. For recruiting of these participants, however, a total of 108 potential participants (12 per group) will be recruited via telephone screening calls, which are estimated to take 10 minutes per call. Based on experience, it is prudent to recruit up to 12 people per group in order to ensure at least 8 will appear at the focus group facility at the appointed time.

Thus, the total burden per person actually participating in this focus group phase of research is estimated to be 130 minutes (10 minutes for the screening/recruiting telephone call plus 120 minutes in the focus group discussion session). Additionally, the total burden per person recruited (but not participating in the discussions) is 10 minutes. Therefore, the total annual estimated burden imposed by this portion of the collection is approximately 162 hours. NHTSA also plans to conduct eight 30-minute dealer interviews. Accounting for recruiting and interviewing time, the total annual estimated burden imposed by this portion of the collection is approximately 8 hours.

In total, the annual estimated burden imposed by this collection of information is approximately 170 hours.

Estimated Total Annual Burden: 170 hours.

Number of Respondents: 80.

The results of this research will be used to inform a quantitative survey that will explore potential redesigns for the New Car Assessment Program's Government 5-Star Safety Ratings section of the Monroney Label that NHTSA will conduct, which this notice does not address.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 7, 2013.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2013–00462 Filed 1–10–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35699]

Watco Holdings, Inc., Watco Railroad Company Holdings, Inc., & Watco Acquisition Sub, Inc.—Acquisition of Control Exemption—Ann Arbor Railroad, Inc.

Watco Holdings, Inc. (Watco Holdings), Watco Railroad Company Holdings, Inc. (Watco Railroad), and Watco Acquisition Sub, Inc. (Merger Sub), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for Watco Holdings to indirectly control, and for Watco Railroad to directly control, Ann Arbor Railroad, Inc. (AA), a Class III railroad, and for Merger Sub to merge with AA, with Merger Sub as the surviving entity.[1] Watco Holdings intends to place the stock of Merger Sub in an irrevocable voting trust prior to the consummation of this transaction.

Watco Holdings states that it currently controls, indirectly, 27 Class III railroads and one Class II railroad. For a complete list of these rail carriers, and

[1] Applicants filed a redacted version of the merger agreement with the notice of exemption. Applicants simultaneously filed an unredacted version under seal with a motion for protective order. The motion will be addressed in a separate decision.

the states in which they operate, see the notice of exemption filed on December 27, 2012, in this proceeding. Watco Holdings also states that it controls Watco Railroad, which directly controls Merger Sub.

The transaction may be consummated on or after January 26, 2013 (30 days after the notice of exemption was filed).

Applicants represent that: (1) The lines to be acquired by Merger Sub do not connect with any railroads in the corporate family; (2) the transaction is not a part of a series of anticipated transactions that would connect the lines with other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II rail carrier and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad,* 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than January 18, 2013 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35699, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik, LLP, 655 15th Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: January 7, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00442 Filed 1–10–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35708]

Koch Industries, Inc.—Acquisition of Control Exemption—Texas South-Eastern Railroad Company

Koch Industries, Inc. (Koch), a noncarrier, has filed a verified notice of exemption to acquire indirect control of Texas South-Eastern Railroad Co. (TSE), a Class III rail carrier.

Koch states that the transaction is part of an agreement in which Georgia-Pacific Building Products, an indirect wholly owned subsidiary of Koch, is purchasing from International Paper Company certain assets used in connection with, and certain equity interest relating to, Temple-Inland, Inc.'s building products business. Koch intends to consummate the transaction on or shortly after February 1, 2013 (the effective date of the exemption is January 26, 2013, 30 days after the verified notice was filed).

Koch currently controls directly or indirectly four other Class III rail carriers in the states of Mississippi, Kansas, and Texas: Blue Rapids Railway Company, LLC; KM Railways, LLC.; Old Augusta Railroad, LLC.; and Moscow Camden and San Augustine Railroad, LLC.

Koch states that: (1) The rail line does not connect with any railroads owned or controlled by Koch; (2) this transaction is not part of a series of anticipated transactions that would connect any of the railroads controlled by Koch with TSE; and (3) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than January 18, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35708, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy must be served on David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 8, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00443 Filed 1–10–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35704]

Carload Express, Inc.—Continuance in Control Exemption—Ohio Terminal Railway Company

Carload Express, Inc. (CEI) has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Ohio Terminal Railway Company (OTRC), upon OTRC's becoming a Class III rail carrier. OTRC is a wholly owned, corporate subsidiary of CEI.

This transaction is related to a concurrently filed verified notice of exemption in *Ohio Terminal Railway Company—Operation Exemption—Hannibal Real Estate, LLC,* Docket No. FD 35703, wherein OTRC seeks Board approval to operate a 12.2-mile line, known as the Omal Secondary Track, from milepost 60.5 at or near Powhatan Point, to milepost 72.7 at or near Hannibal, in Monroe County, Ohio.

CEI intends to consummate the transaction on January 27, 2013 (the effective date of this notice).

CEI currently controls three Class III rail carriers: Allegheny Valley Railroad Company, Southwest Pennsylvania Railroad Company, and Camp Chase Railroad Company. The three Class III rail carriers operate rail lines in Pennsylvania and Ohio.

CEI certifies that: (1) The rail lines to be operated by OTRC do not connect with any other railroads in the CEI corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines to be operated by

CEI with any other railroad in the CEI corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than January 18, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35704, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, 518 N. Center Street, Ste. 100, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: January 8, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00457 Filed 1–10–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35703]

Ohio Terminal Railway Company—Operation Exemption—Hannibal Real Estate, LLC

Ohio Terminal Railway Company (OTRC),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a 12.2-mile line, known as the Omal Secondary Track, from milepost 60.5 at or near Powhatan Point, to milepost 72.7 at or near Hannibal, in Monroe County, Ohio (the Line), pursuant to an operating agreement with Hannibal Real Estate, LLC (Hannibal).

According to OTRC, in 1996, Ormet Railroad Corporation (ORC) acquired the Line from Conrail[2] and, subsequently, ORC was exempted from the requirements of 49 U.S.C. Subtitle IV pertaining to its ownership of the 12.2-mile line of railroad.[3] OTRC states that, following the exemption, Hannibal was granted an easement over the Line by ORC in 2007 for the provision of rail service in connection with the development of an industrial park served by the Line.

This transaction is related to a concurrently filed verified notice of exemption in *Carload Express, Inc.—Continuance in Control Exemption—Ohio Terminal Railway Co.,* Docket No. FD 35704, wherein CEI seeks Board approval to continue in control of OTRC, upon OTRC's becoming a Class III rail carrier.

OTRC states that the operating agreement between OTRC and Hannibal does not contain any interchange commitments. OTRC also states that it will interchange with Norfolk Southern Railway at or near Powhatan Point, Ohio.

The transaction may be consummated on or after January 27, 2013 (30 days after the notice of exemption was filed).

OTRC certifies that its projected annual revenues as a result of the transaction will not result in OTRC's becoming a Class II or Class I rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 18, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35703, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard R. Wilson, 518 N. Center Street, Ste. 100, Ebensburg, PA 15931.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 8, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00458 Filed 1–10–13; 8:45 am]

BILLING CODE 4915–01–P

[1] OTRC is a wholly owned, corporate subsidiary of Carload Express, Inc. (CEI), a non-operating rail holding company.

[2] *See Ormet R.R.—Acquisition and Operation Exemption—Consol. Rail Corp.,* FD 32907 (STB served May 17, 1996).

[3] *See Ormet R.R.—Acquisition Exemption From 49 U.S.C. Subtitle IV,* FD 32908 (STB served Oct. 16, 1996).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 7, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 11, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request may be found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1442.

Type of Review: Extension without change of a currently approved collection.

Title: T.D. 8633—Grantor Trust Reporting Requirements.

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust as owned by the grantor or another person are properly reported.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 920,000.

OMB Number: 1545–1826.

Type of Review: Extension without change of a currently approved collection.

Title: Excise Tax on Structured Settlement Factoring Transactions.

Form: 8876.

Abstract: Form 8876 is used to report and pay the 40 percent excise tax imposed under § 5891 on the factoring discount of a structured settlement factoring transaction.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 500.

OMB Number: 1545–2010.

Type of Review: Extension without change of a currently approved collection.

Title: Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).

Form: 944–SS; 944–PR.

Abstract: Form 944–SS and Form 944–PR are designed so the smallest employers (those whose annual liability for social security and Medicare taxes is $1,000 or less) will have to file and pay these taxes only once a year instead of every quarter.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 191,200.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–00365 Filed 1–10–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14417, Reimbursable Agreement—Non-Federal Entities.

DATES: Written comments should be received on or before March 12, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reimbursable Agreement—Non-Federal Entities.

OMB Number: 1545–2235.

Form Number: 14417.

Abstract: Form 14417, Reimbursable Agreement—Non-Federal Entities, was developed for funds in reimbursable agreements with non-federal entities such as state, local, foreign governments and non-federal public entities.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 4, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–00376 Filed 1–10–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Friday,

No. 8 January 11, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Gunnison Sage-Grouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0108; 4500030113]

RIN 1018–AZ20

Endangered and Threatened Wildlife and Plants; Endangered Status for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the Gunnison sage-grouse *(Centrocercus minimus)* as endangered under the Endangered Species Act of 1973, as amended (Act). The effect of this regulation would be to add the Gunnison sage-grouse to the Lists of Endangered and Threatened Wildlife under the Act.

DATES: We will accept comments received or postmarked on or before March 12, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by February 25, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R6–ES–2012–0108, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0108; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. 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

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within one year. Listing a species as an endangered or threatened species can only be completed by issuing a rule. In this case, we are required by a judicially approved settlement agreement to make a final determination on this proposal regarding the Gunnison sage-grouse by no later than September 30, 2013.

This rule proposes the listing of the Gunnison sage-grouse as endangered.

- We are proposing to list the Gunnison sage-grouse as endangered under the Endangered Species Act.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on one or more 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 the best available scientific and commercial data, we have determined that the principal threat to Gunnison sage-grouse is habitat loss, degradation, and fragmentation due to residential, exurban, and commercial development and associated infrastructure such as roads and power lines. The human population is increasing throughout much of the range of Gunnison sage-grouse, and data indicate this trend will continue. With this growth, we expect an increase in human development, further contributing to loss and fragmentation of Gunnison sage-grouse habitats. Other threats to the species include improper grazing management; predation (often facilitated by human development or disturbance); genetic risks in the declining, smaller populations; and inadequate local, State, and Federal regulatory mechanisms (e.g., laws, regulations, zoning) to conserve the species. Other factors that may not individually threaten the continued existence of Gunnison sage-grouse but, collectively, have the potential to threaten the species, include invasive plants, fire, and climate change, and the interaction of these three factors; fences; renewable and non-renewable energy development; piñon-juniper encroachment; water development; disease;, drought; and recreation.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available,''.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On January 18, 2000, we designated the Gunnison sage-grouse as a candidate species under the Act, with a listing priority number of 5. However, a **Federal Register** notice regarding this decision was not published until December 28, 2000 (65 FR 82310). Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. A listing priority of 5 is assigned to species with high-magnitude threats that are nonimminent.

On January 26, 2000, American Lands Alliance, Biodiversity Legal Foundation, and others petitioned the Service to list the Gunnison sage-grouse (Webb 2000, pp. 94–95). In 2003, the U.S. District Court for the District of Columbia ruled that the species was designated as a candidate by the Service prior to receipt of the petition, and that the determination that a species should be on the candidate list is equivalent to a 12-month finding *(American Lands Alliance* v. *Gale A. Norton,* C.A. No. 00–2339, D. DC). Therefore, we did not need to respond to the petition.

In annual documents that we call Candidate Notices of Review (CNOR), we summarize the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number (LPN) to each species or to determine that species should be removed from candidate status. In the 2003 Candidate Notice of Review (CNOR), we elevated the listing priority number for Gunnison sage-grouse from 5 to 2 (69 FR 24876; May 4, 2004), as the imminence of the threats had increased. In the subsequent CNOR (70 FR 24870; May 11, 2005), we maintained the LPN for Gunnison sage-grouse as a 2. A LPN of 2 is assigned to species with high-magnitude threats that are imminent.

Plaintiffs amended their complaint in the DC district court in May 2004, to allege that the Service's warranted-but-precluded finding and decision not to emergency list the Gunnison sage-grouse were in violation of the Act. The parties filed a stipulated settlement agreement with the court on November 14, 2005, which included a provision that the Service would make a proposed listing determination by March 31, 2006. On March 28, 2006, the plaintiffs agreed to a one-week extension (April 7, 2006) for this determination.

In April 2005, the Colorado Division of Wildlife (CDOW) (hereafter, Colorado Parks and Wildlife (CPW), pursuant to the agency's reorganization on July 1, 2011) applied to the Service for an Enhancement of Survival Permit for the Gunnison sage-grouse pursuant to section 10(a)(1)(A) of the Act. The permit application included a proposed Candidate Conservation Agreement with Assurances (CCAA) between CPW and the Service. The standard that a CCAA must meet is that the ''benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the species'' (64 FR 32726, June 17, 1999). The CCAA, the permit application, and the environmental assessment were made available for public comment on July 6, 2005 (70 FR 38977). The CCAA and environmental assessment were finalized in October 2006, and the associated permit was issued on October 23, 2006. Landowners with eligible property in southwestern Colorado who wish to participate can voluntarily sign up under the CCAA and associated permit through a Certificate of Inclusion by providing habitat protection or enhancement measures on their lands. If the Gunnison sage-grouse is listed under the Act, the CCAA remains in place and the permit authorizes incidental take of Gunnison sage-grouse due to otherwise lawful activities specified in the CCAA, when performed in accordance with the terms of the CCAA (e.g., crop cultivation, crop harvesting, livestock grazing, farm equipment operation, commercial/residential development, etc.), as long as the participating landowner is performing conservation measures voluntarily agreed to in the Certificate of Inclusion. Fourteen Certificates of Inclusion have been issued by the CPW and Service to private landowners to date (CPW 2012b, p. 11).

On April 11, 2006, the Service determined that listing the Gunnison sage-grouse as an endangered or threatened species was not warranted and published the final listing determination in the **Federal Register** on April 18, 2006 (71 FR 19954). As a result of this determination, we also removed Gunnison sage-grouse from the candidate species list.

On November 14, 2006, the County of San Miguel, Colorado; Center for Biological Diversity; WildEarth Guardians; Public Employees for Environmental Responsibility; National Audubon Society; The Larch Company; Center for Native Ecosystems; Sinapu; Sagebrush Sea Campaign; Black Canyon Audubon Society; and Sheep Mountain

Alliance filed a complaint for declaratory and injunctive relief, pursuant to the Act, and on October 24, 2007, filed an amended complaint for declaratory and injunctive relief, alleging that our determination on the Gunnison sage-grouse violated the Act. On August 18, 2009, a stipulated settlement agreement and Order was filed with the court, with a June 30, 2010, date by which the Service was to submit to the **Federal Register** a 12-month finding, pursuant to 16 U.S.C. 1533(b)(3)(B), that listing the Gunnison sage-grouse under the Act is (a) Warranted; (b) not warranted; or (c) warranted but precluded by higher priority listing actions. We then published a notice of intent to conduct a status review of Gunnison sage-grouse on November 23, 2009 (74 FR 61100). Later, the Court approved an extension of the June 30, 2010, deadline for the 12-month finding to September 15, 2010.

On September 15, 2010, we determined that listing the Gunnison sage-grouse as an endangered or threatened species was warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. This finding was published in the **Federal Register** on September 28, 2010 (75 FR 59804). The finding also reported that the species was added to the candidate species list and assigned a listing priority of 2 based on the Service's determination that threats to the species were of high magnitude and immediacy, as well as the taxonomic classification of Gunnison sage-grouse as a full species.

On September 9, 2011, the U.S. District Court for the District of Columbia approved a settlement agreement laying out a multi-year listing work plan for addressing candidate species, including the Gunnison sage-grouse. As part of this agreement, the Service agreed to publish a proposed rule in the **Federal Register** on whether to list Gunnison sage-grouse and designate critical habitat by September 30, 2012. On August 13, 2012, in response to a motion from the Service, the U.S. District Court for the District of Columbia modified the settlement agreement to extend this original deadline by 3 months, to December 30, 2012. The deadline for the final rule did not change and remains September 30, 2013. The request for an extension was made to allow more time to complete the proposed rule and more opportunity to engage with State and local governments, landowner groups, and other entities to discuss the conservation needs of the species.

Background

Gunnison sage-grouse and greater sage-grouse (a similar, closely related species) have similar life histories and habitat requirements (Young 1994, p. 44). In this proposed rule, we use information specific to the Gunnison sage-grouse where available but still apply scientific management principles for greater sage-grouse (*C. urophasianus*) that are relevant to Gunnison sage-grouse management needs and strategies, a practice followed by the wildlife and land management agencies that have responsibility for management of both species and their habitat.

Species Information

A detailed discussion of Gunnison sage-grouse taxonomy, the species description, historical distribution, habitat, and life-history characteristics can be found in the 12-month finding published September 28, 2010 (75 FR 59804).

Current Distribution and Population Estimates

Gunnison sage-grouse currently occur in seven widely scattered and isolated populations in Colorado and Utah, occupying 3,795 square kilometers (km^2) (1,511 square miles [mi^2]) (Gunnison Sage-grouse Rangewide Steering Committee) [GSRSC] 2005, pp. 36–37; CDOW 2009a, p. 1). The seven populations are Gunnison Basin, San Miguel Basin, Monticello–Dove Creek, Piñon Mesa, Crawford, Cerro Summit–Cimarron–Sims Mesa, and Poncha Pass (Figure 1). A comparative summary of the land ownership and recent population estimates among these seven populations is presented in Table 1, and Figures 2 and 3, respectively. Population trends over the last 12 years indicate that six of the populations are in decline. The largest population, the Gunnison Basin population, while showing variation over the years, has been relatively stable through the period (CDOW 2010a, p. 2; CPW 2012a, pp.1–4). Six of the populations are very small and fragmented (all with less than 40,500 hectares (ha) (100,000 acres [ac]) of habitat likely used by grouse and, with the exception of the San Miguel population, less than 50 males counted on leks (communal breeding areas)) (CDOW 2009b, p. 5; CPW 2012a, p. 3). The San Miguel population, the second largest, comprises six fragmented subpopulations.

BILLING CODE 4310–55–P

Figure 1. Locations of Current Gunnison Sage-grouse Populations.

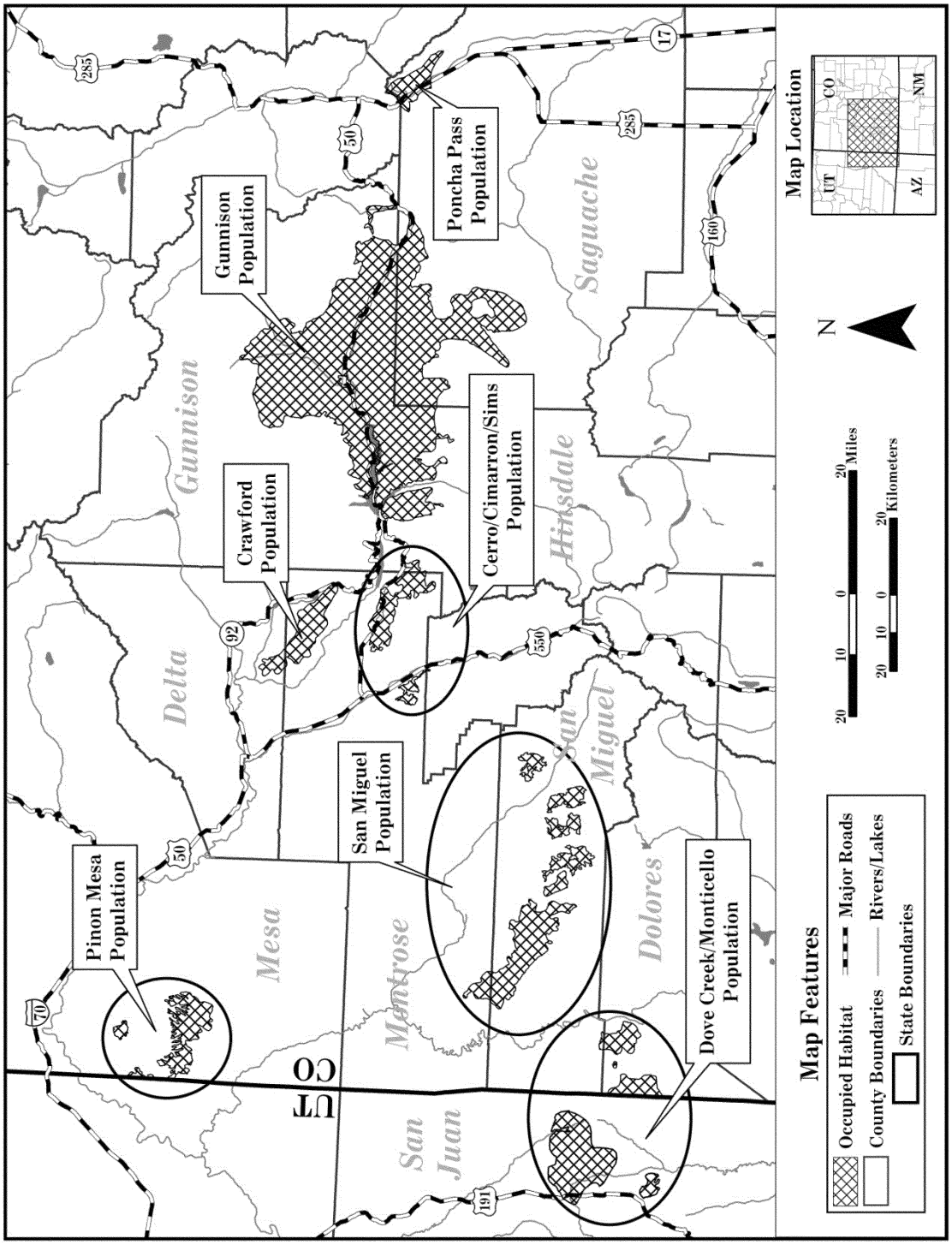


TABLE 1—PERCENT SURFACE OWNERSHIP OF GUNNISON SAGE-GROUSE OCCUPIED [a] HABITAT

[GSRSC [b] 2005, pp. D–3–D–6; CDOW [c] 2009a, p. 1]

Population	Hectares	Acres	Gunnison sage-grouse occupied habitat management and ownership						
			BLM [d]	NPS [e]	USFS [f]	CPW	CO state land board	State of UT	Private
			%	%	%	%	%	%	%
Gunnison Basin	239,953	592,936	51	2	14	3	<1	0	29
San Miguel Basin	41,022	101,368	[g] 36	0	1	11	[g] 3	0	[g] 49
Monticello-Dove Creek (Combined)	45,275	111,877	7	0	0	3	0	<1	90
Dove Creek	16,706	41,282	11	0	0	8	0	0	81
Monticello	28,569	70,595	4	0	0	0	0	1	95
Piñon Mesa	15,744	38,904	28	0	2	19	0	0	51
Cerro Summit-Cimarron-Sims Mesa	15,039	37,161	13	<1	0	11	0	0	76
Crawford	14,170	35,015	63	12	0	2	0	0	23
Poncha Pass	8,262	20,415	48	0	26	0	2	0	23
Rangewide	379,464	937,676	42	2	10	5	<1	<1	41

[a] Occupied Gunnison sage-grouse habitat is defined as areas of suitable habitat known to be used by Gunnison sage-grouse within the last 10 years from the date of mapping, and areas of suitable habitat contiguous with areas of known use, which have no barriers to grouse movement from known use areas (GSRSC 2005, p. 54).

[b] Gunnison Sage-grouse Rangewide Steering Committee.

[c] Colorado Parks and Wildlife.

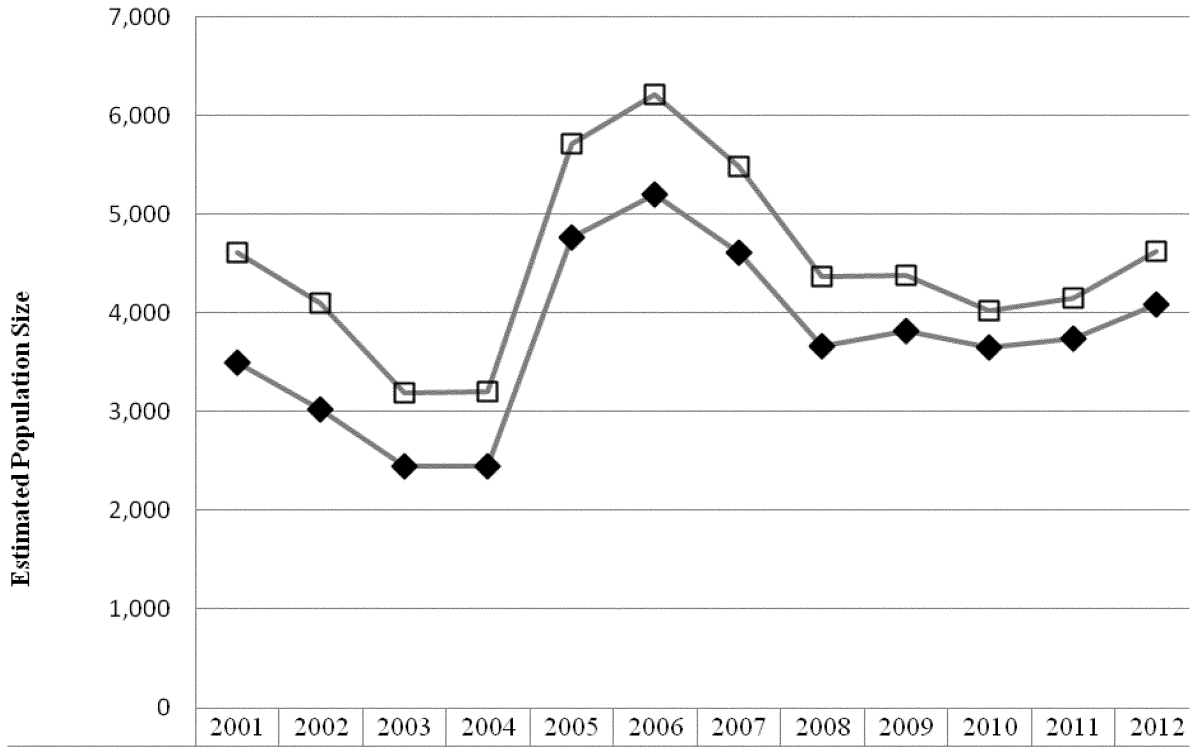
[d] Bureau of Land Management.

[e] National Park Service.

[f] United States Forest Service.

[g] Estimates reported in San Miguel Basin Gunnison Sage-grouse Conservation Plan (San Miguel Basin Gunnison Sage-grouse Working Group (SMBGSWG) 2009, p. 28) vary by 2 percent in these categories from those reported here. We consider these differences insignificant.

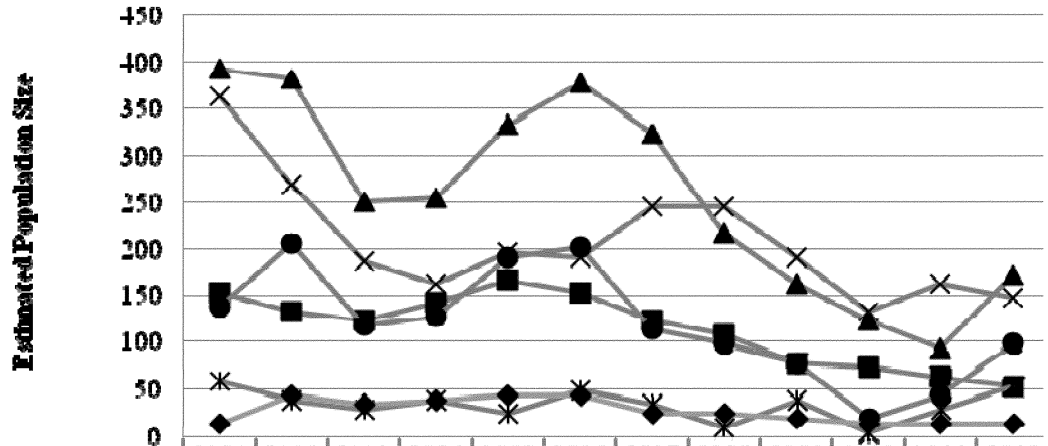
Figure 2. Population estimates by year for the Gunnison Basin population and the rangewide total Gunnison sage-grouse population derived from the formula presented in the Gunnison sage-grouse Rangewide Conservation Plan (GSRSC[a] 2005, pp. 44–45) applied to high male counts on leks (CDOW[b] 2012a, pp. 1-3).



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Gunnison Basin	3,493	3,027	2,453	2,443	4,763	5,205	4,616	3,669	3,817	3,655	3,743	4,082
Totals	4,611	4,101	3,194	3,208	5,720	6,220	5,480	4,371	4,386	4,023	4,150	4,621

[a]Gunnison Sage-grouse Rangewide Steering Committee
[b]Colorado Parks and Wildlife

Figure 3. Population estimates by year for the six smaller Gunnison sage-grouse populations derived from the formula presented in the Gunnison sage-grouse Rangewide Conservation Plan (GSRSC[a] 2005, pp. 44–45) applied to high male counts on leks (CPW[b] 2012a, pp. 1-3).



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
San Miguel Basin	392	383	250	255	334	378	324	216	162	123	93	172
Monticello–Dove Creek (Combined)	363	270	186	162	196	191	245	245	191	132	162	147
Pinon Mesa	152	132	123	142	167	152	123	108	78	74	64	54
Cerro Summit–Cimarron–Sims Mesa	59	39	29	39	25	49	34	10	39	5	29	54
Crawford	137	206	118	128	191	201	113	98	78	20	44	98
Poncha Pass	15	44	34	39	44	44	25	25	20	15	15	15

[a]Gunnison Sage-grouse Rangewide Steering Committee
[b]Colorado Parks and Wildlife

Gunnison Basin Population—The Gunnison Basin is an intermontane (located between mountain ranges) basin that includes parts of Gunnison and Saguache Counties, Colorado. The current Gunnison Basin population is distributed across approximately 240,000 ha (593,000 ac), roughly centered on the town of Gunnison. Elevations in the area occupied by Gunnison sage-grouse range from 2,300 to 2,900 meters (m) (7,500 to 9,500 feet [ft]). Approximately 70 percent of the land area occupied by Gunnison sage-grouse in this population is managed by Federal agencies (67 percent) and CPW (3 percent), and the remaining 30 percent is primarily private lands. Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) and mountain big sagebrush (*A. t.* ssp. *vaseyana*) dominate the upland vegetation and have highly variable growth form depending on local site conditions.

In 1961, Gunnison County was one of five counties containing the majority of all sage-grouse in Colorado (Rogers 1964, p. 20). The vast majority (87 percent) of Gunnison sage-grouse are now found only in the Gunnison Basin population. The 2012 population estimate for the Gunnison Basin was 4,082 (CPW 2012a, pp. 1–2). In 2011, 42 of 83 leks surveyed in the area were active (at least two males in attendance during at least two of four 10-day count periods), 6 were inactive (inactive for at least 5 consecutive years), 11 were deemed historic (inactive for at least 10 consecutive years), and 24 were of unknown status (variability in counts resulted in lek not meeting requirements for active, inactive, or historic) (CPW 2011b, pp. 27–29). Approximately 45 percent of leks in the Gunnison Basin occur on private land and 55 percent on public land, primarily land administered by the BLM (GSRSC 2005, p. 75).

San Miguel Basin Population—The San Miguel Basin population is in Montrose and San Miguel Counties in Colorado, and is composed of six small subpopulations (Dry Creek Basin, Hamilton Mesa, Miramonte Reservoir, Gurley Reservoir, Beaver Mesa, and Iron Springs) occupying approximately 41,000 ha (101,000 ac). Gunnison sage-grouse use some of these areas year-round, while others are used seasonally. Gunnison sage-grouse in the San Miguel Basin move widely between the six subpopulation areas (Apa 2004, p. 29; Stiver and Gibson 2005, p. 12). The area encompassed by this population is believed to have once served as critical migration corridors between populations to the north (Cerro Summit-Cimarron-Sims Mesa) and to the south (Monticello-Dove Creek) (Oyler-McCance *et al.* 2005, p. 636; SMBGSWG 2009, p. 9), but gene flow among these populations is currently very low (Oyler-McCance *et al.* 2005, p. 635). Historically, Gunnison sage-grouse used all available big sagebrush plant communities in San Miguel and Montrose Counties (Rogers 1964, p. 9).

Habitat conditions vary among the six subpopulation areas of the San Miguel Basin population areas. The following discussion addresses conditions among the subpopulations beginning in the west and moving east. The majority of occupied acres in the San Miguel Basin population (approximately 25,130 ha (62,100 ac) or 62 percent of the total population area) occur in the Dry Creek Basin subpopulation (SMBGSWG) 2009, p. 28). However, the Dry Creek Basin contains some of the poorest habitat and the smallest individual grouse numbers in the San Miguel population (SMBGSWG) 2009, pp. 28, 36). Sagebrush habitat in the Dry Creek Basin area is patchily distributed. Where irrigation is possible, private lands in the southeastern portion of Dry Creek Basin are cultivated. Sagebrush habitat on private land has been heavily thinned or removed entirely (GSRSC 2005, p. 96). Elevations in the Hamilton Mesa subpopulation are approximately 610 m (2,000 ft.) higher than in the Dry Creek Basin, resulting in more mesic conditions. Agriculture is very limited on Hamilton Mesa and the majority of the vegetation consists of oakbrush and sagebrush. Gunnison sage-grouse use the Hamilton Mesa area (1,940 ha (4,800 ac)) in the summer, but use of Hamilton Mesa during other seasons is unknown.

Gunnison sage-grouse occupy approximately 4,700 ha (11,600 ac) around Miramonte Reservoir (GSRSC 2005, p. 96). Sagebrush stands there are generally contiguous with a mixed-grass and forb understory. Occupied habitat at the Gurley Reservoir area (3,305 ha (7,500 ac)) is heavily fragmented by human development, and the understory is a mixed-grass and forb community. Farming attempts in the Gurley Reservoir area in the early 20th century led to the removal of much of the sagebrush, although agricultural activities are now restricted primarily to the seasonally irrigated crops (hay meadows), and sagebrush has reestablished in most of the failed pastures. However, grazing pressure and competition from introduced grasses have kept the overall sagebrush representation low (GSRSC 2005, pp. 96–97). Sagebrush stands in the Iron Springs and Beaver Mesa areas (2,590 ha and 3,560 ha (6,400 ac and 8,800 ac respectively)) are contiguous with a mixed-grass understory. The Beaver Mesa area has numerous scattered patches of oakbrush *(Quercus gambelii).*

In 2012, the entire San Miguel Basin population contained an estimated 172 individuals on nine leks (CPW 2012a, p. 3). CPW translocated Gunnison sage-grouse from the Gunnison Basin to Dry Creek Basin in 2006, 2007, and 2009. In the spring of 2006, six individuals were released and an additional two individuals were released in the fall of that year. Nine individuals were translocated in the spring of 2007. Another 30 individuals were translocated in the fall of 2009. A 40 to 50 percent mortality rate was observed within the first year after release, compared to an average annual mortality rate of approximately 20 percent for radiomarked adult sage-grouse (CDOW 2009b, p. 9; CPW 2012b, p. 4). For a more detailed discussion of translocation efforts, please refer to the *Scientific Research* section below.

Monticello-Dove Creek Population—This population is divided into two disjunct subpopulations of Gunnison sage-grouse, the Monticello and Dove Creek subpopulations. Currently, the larger subpopulation is near the town of Monticello, in San Juan County, Utah. Gunnison sage-grouse in this subpopulation inhabit a broad plateau on the northeastern side of the Abajo Mountains, with fragmented patches of sagebrush interspersed with large grass pastures and agricultural fields. In 1972, the population was estimated at between 583 and 1,050 individuals; by 2002, the estimate decreased to between 178 and 308 individuals (UDWR 2011, p. 1). The 2012 population estimate for this subpopulation was 103 individuals with two active leks (CPW 2012a, p. 3). Gunnison sage-grouse currently occupy an estimated 28,570 ha (70,600 ac) in the Monticello area (GSRSC 2005, p. 81).

The Dove Creek subpopulation is located primarily in western Dolores County, Colorado, north and west of Dove Creek, although a small portion of occupied habitat extends north into San Miguel County. All sagebrush plant communities in Dolores and Montezuma Counties within Gunnison sage-grouse range in Colorado were historically used by Gunnison sage-grouse (Rogers 1964, p. 9). Habitat north of Dove Creek is characterized as mountain shrub habitat, dominated by oakbrush interspersed with sagebrush. The area west of Dove Creek is dominated by sagebrush, but the habitat is highly fragmented by agricultural fields. Lek counts in the Dove Creek area were more than 50 males in 1999,

suggesting a population of about 245 birds, but declined to 2 males in 2009 (CDOW 2009b, p. 71), suggesting a population of 10 birds. A new lek was found in 2010, and the 2011 population estimate was 59 individuals on 2 leks (CPW 2011a, p. 1). The 2012 population estimate was 44 individuals on the same two leks (CPW 2012a, p. 1). Low sagebrush canopy cover, as well as low grass height, exacerbated by drought, may have led to nest failure and subsequent population declines (Connelly *et al.* 2000a, p. 974; Apa 2004, p. 30).

In the fall of 2010, 13 Gunnison sage-grouse were transplanted from the Gunnison Basin to the Dove Creek population area. Another 29 individuals were transplanted in 2011 (CPW 2012b, p. 4). For a more detailed discussion of translocation efforts, please refer to the *Scientific Research* section below.

Piñon Mesa Population—The Piñon Mesa population occurs on the northwestern end of the Uncompahgre Plateau in Mesa County, about 35 km (22 mi) southwest of Grand Junction, Colorado. Gunnison sage-grouse likely occurred historically in all suitable sagebrush habitat in the Piñon Mesa area, including the Dominguez Canyon area of the Uncompaghre Plateau, southeast of Piñon Mesa proper (Rogers 1964, p. 114). Their current distribution is approximately 15,744 ha (38,904 ac) (GSRSC 2005, p. 87) which, based on a comparison of potential presettlement distribution, is approximately 6 percent of presettlement habitat on the northern portion of the Uncompahgre Plateau in Mesa County, Colorado, and Grand County, Utah. The 2012 population estimate for Piñon Mesa was 54 birds. Of the 10 known leks, only 3 were active in 2011. Two new possible leks were found in 2012 (CPW 2012a, pp. 2–3). The Piñon Mesa area may have additional leks, but the high percentage of private land, a lack of roads, and heavy snow cover during spring make locating additional leks difficult (CDOW 2009b, p. 109).

Between 2010 and 2012, 44 Gunnison sage-grouse were transplanted from the Gunnison Basin to the Piñon Mesa population. Over 50 percent of birds transplanted to date have not survived (CPW 2012b, p.5). For a more detailed discussion of translocation efforts, please refer to the *Scientific Research* section below.

Crawford Population—The Crawford population of Gunnison sage-grouse is in Montrose County, Colorado, about 13 km (8 mi) southwest of the town of Crawford and north of the Gunnison River. Basin big sagebrush *(A. t.* ssp. *tridentata)* and black sagebrush *(A. nova)* dominate the mid-elevation uplands (GSRSC 2005, p. 62). The 2012 population estimate for Crawford was 98 individuals in 14,170 ha (35,015 ac) of occupied habitat. Three leks are currently active in the Crawford population (CPW 2012a, p. 1). All active leks are on BLM lands in sagebrush habitat near an 11 km (7 mi) stretch of road. This area represents the largest contiguous sagebrush plant community within the occupied area of the Crawford population (GSRSC 2005, p. 64).

In the spring of 2011, seven Gunnison sage-grouse were transplanted from the Gunnison Basin to the Crawford area population. Another 20 individuals were transplanted in 2011 (CPW 2012b, p. 4). For a more detailed discussion of translocation efforts, please refer to the *Scientific Research* section below.

Cerro Summit-Cimarron-Sims Mesa Population—This population is divided into two geographically separated subpopulations, both in Montrose County, Colorado: the Cerro Summit-Cimarron and Sims Mesa subpopulations. We do not know if sage-grouse currently move between the Cerro Summit-Cimarron and Sims Mesa subpopulations.

The Cerro Summit-Cimarron subpopulation is centered about 24 km (15 mi) east of Montrose. Rogers (1964, p. 115) noted a small population of sage-grouse in the Cimarron River drainage, but did not report population numbers. He noted that lek counts at Cerro Summit in 1959 listed four individuals. The habitat consists of 15,039 ha (37,161 ac) of patches of sagebrush habitat fragmented by oakbrush and irrigated pastures. Five leks are currently known in the Cerro Summit-Cimarron group. Eleven individuals were observed on one lek in 2012, resulting in a population estimate of 54 individuals (CPW 2012a, p. 1).

The Sims Mesa area, about 11 km (7 mi) south of Montrose, consists of small patches of sagebrush that are heavily fragmented by piñon-juniper, residential and recreational development, and agriculture (CDOW 2009b, p. 43). Rogers (1964, p. 95) recorded eight males in a lek count at Sims Mesa in 1960. In 2000, the CPW translocated six Gunnison sage-grouse from the Gunnison Basin to Sims Mesa (Nehring and Apa 2000, p. 12). There is only one currently known lek in Sims Mesa and, since 2003, it has lacked Gunnison sage-grouse attendance. However, lek counts did not occur in 2011. A lek is designated historic when it is inactive for at least 10 consecutive years, according to CPW standards. Therefore, the current status of the Sims Mesa lek is unknown (CDOW 2009b, p. 7; CPW 2012a, p. 1).

Poncha Pass Population—The Poncha Pass Gunnison sage-grouse population is located in Saguache County, approximately 16 km (10 mi) northwest of Villa Grove, Colorado. The known population distribution is in 8,262 ha (20,415 ac) of sagebrush habitat from the summit of Poncha Pass extending south for about 13 km (8 mi) on either side of U.S. Highway 285. Sagebrush in this area is continuous with little fragmentation; sagebrush habitat quality throughout the area is adequate to support a population of the species (Nehring and Apa 2000, p. 25). San Luis Creek runs through the area, providing a year-round water source and wet meadow riparian habitat for brood-rearing.

This population lies within potential presettlement habitat, but was extirpated prior to 1964 (Rogers 1964, p. 116). The reestablishment of this population is a result of 30 birds transplanted from the Gunnison Basin in 1971 and 1972, during efforts to reintroduce the species to the San Luis Valley (GSRSC 2005, p. 94). In 1992, a CPW effort to simplify hunting restrictions inadvertently opened the Poncha Pass area to sage-grouse hunting, and at least 30 grouse were harvested from this population. Due to declining population numbers since the 1992 hunt, in the spring of 2000, CPW translocated 24 additional birds from the Gunnison Basin (Nehring and Apa 2000, p. 11). In 2001 and 2002, an additional 20 and 7 birds, respectively, were moved to Poncha Pass by the CPW (GSRSC 2005, p. 94). Translocated females have bred successfully (Apa 2004, pers. comm.), and male display activity resumed on the historic lek in the spring of 2001. A high male count of 3 males occurred in 2012, resulting in an estimated population size of 15 for the Poncha Pass population. The only known lek is located on BLM-administered land (CPW 2011a, p. 1; CPW 2012a, p. 3).

Additional Special Status Considerations

The Gunnison sage-grouse has an International Union for Conservation of Nature (IUCN) Red List Category of ''endangered'' (Birdlife International 2009). NatureServe currently ranks the Gunnison sage-grouse as G1-Critically Imperiled (Nature Serve 2010, entire). The Gunnison sage-grouse is on the National Audubon Society's WatchList 2007 Red Category which is ''for species that are declining rapidly or have very small populations or limited ranges, and face major conservation threats.''

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species 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. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors as applied to the Gunnison sage-grouse is discussed below. We rely on the status review and analysis reported in the September 28, 2010, 12-month finding (75 FR 59804), but have updated it as appropriate to incorporate new information.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The historic and current distribution of the Gunnison sage-grouse closely matches the distribution of sagebrush. Potential Gunnison sage-grouse range is estimated to have been 5,536,358 ha (13,680,640 ac) historically (GSRSC 2005, p. 32). Gunnison sage-grouse currently occupy approximately 379,464 ha (937,676 ac) in southwestern Colorado and southeastern Utah (CDOW 2009a, p. 1; GSRSC 2005, p. 81); an area that represents approximately 7 percent of the species' potential historic range. The following describes the factors affecting Gunnison sage-grouse and Gunnison sage-grouse habitat within the current range of the species.

The onset of EuroAmerican settlement in the late 1800s resulted in significant alterations to sagebrush ecosystems throughout North America (West and Young 2000, pp. 263–265; Miller *et al.* 2011, p. 147) primarily as a result of urbanization, agricultural conversion, and irrigation projects. Areas that supported basin big sagebrush were among the first sagebrush community types converted to agriculture because their typical soils and topography are well suited for agriculture (Rogers 1964, p. 13).

In southwestern Colorado, between 1958 and 1993, 20 percent (155,673 ha (384,676 ac)) of sagebrush was lost, and 37 percent of sagebrush plots examined were fragmented (Oyler-McCance *et al.* 2001, p. 326). In another analysis, it was estimated that approximately 342,000 ha (845,000 ac) of sagebrush, or 13 percent of the pre-EuroAmerican settlement sagebrush extent, were lost in Colorado, which includes both greater sage-grouse and Gunnison sage-grouse habitat (Boyle and Reeder 2005, p. 3–3). However, the authors noted that the estimate of historic sagebrush area used in their analyses was conservative, possibly resulting in a substantial underestimate of historic sagebrush losses (Boyle and Reeder 2005, p. 3–4). Within the range of Gunnison sage-grouse, the principal areas of sagebrush loss were in the Gunnison Basin, San Miguel Basin, and areas near Dove Creek, Colorado. The authors point out that the rate of loss in the Gunnison Basin was lower than other areas of sagebrush distribution in Colorado. The Gunnison Basin currently contains approximately 250,000 ha (617,000 ac) of sagebrush; this area partially comprises other habitat types such as riparian areas and patches of non-sagebrush vegetation types such as aspen forest, mixed-conifer forest, and oakbrush (Boyle and Reeder 2005, p. 3–3). Within the portion of the Gunnison Basin currently occupied by Gunnison sage-grouse, 170,000 ha (420,000 ac) is composed exclusively of sagebrush vegetation types, as derived from Southwest Regional Gap Analysis Project (SWReGAP) landcover data (multiseason satellite imagery acquired 1999–2001) (USGS 2004, entire).

Sagebrush habitats within the range of Gunnison sage-grouse are becoming increasingly fragmented as a result of various changes in land uses and the expansion in the density and distribution of invasive plant species (Oyler-McCance *et al.* 2001, pp. 329–330; Schroeder *et al.* 2004, p. 372). Habitat fragmentation is the separation or splitting apart of previously contiguous, functional habitat components of a species. Fragmentation can result from direct habitat losses that leave the remaining habitat in noncontiguous patches, or from alteration of habitat areas that render the altered patches unusable to a species (i.e., functional habitat loss). Functional habitat losses include disturbances that change a habitat's successional state or remove one or more habitat functions; physical barriers that preclude use of otherwise suitable areas; or activities that prevent animals from using suitable habitat patches due to behavioral avoidance.

A variety of human developments including roads, energy development, residential development, and other factors that cause habitat fragmentation have contributed to or been associated with Gunnison and greater sage-grouse extirpation (Wisdom *et al.* 2011, pp. 465–468). Because of the loss and fragmentation of habitat within its range, no expansive, contiguous areas that could be considered strongholds (areas of occupied range where the risk of extirpation appears low) are evident for Gunnison sage-grouse (Wisdom *et al.,* 2011, p. 469). However, landscapes containing large and contiguous sagebrush patches and sagebrush patches in close proximity have an increased likelihood of sage-grouse persistence (Wisdom *et al.* 2011, p. 462).

Habitat loss and fragmentation has adverse effects on Gunnison sage-grouse populations. Many of the factors that result in fragmentation may be exacerbated by the effects of climate change, which may influence long-term habitat and population trends. The following sections examine factors that can contribute to habitat loss and fragmentation to determine whether they threaten Gunnison sage-grouse and their habitat.

Residential Development

Human population growth in the rural Rocky Mountains is driven by the availability of natural amenities, recreational opportunities, aesthetically desirable settings, grandiose viewscapes, and perceived remoteness (Riebsame *et al.* 1996, p. 396, 402; Theobald *et al.* 1996, p. 408; Gosnell and Travis 2005, pp. 192–197; Mitchell *et al.* 2002, p. 6; Hansen *et al.* 2005, pp. 1899–1901). Human population growth is occurring throughout much of the range of Gunnison sage-grouse. The human population in all counties within the range of Gunnison sage-grouse averaged a 70 percent increase since 1980 (Colorado Department of Local Affairs (CDOLA) 2009a, pp. 2–3). The year 2050 projected human population for the Gunnison River basin (an area that encompasses the majority of the current range of Gunnison sage-grouse) is expected to be 2.3 times greater than the 2005 population (CWCB 2009, p. 15). The population of Gunnison County, an area that supports more than 80 percent of all Gunnison sage-grouse, is predicted to more than double to approximately 31,100 residents by 2050 (CWCB 2009, p. 53).

The increase in residential and commercial development associated with the expanding human population is different from historic land use patterns in these areas (Theobald 2001, p. 548). The allocation of land for resource-based activities such as agriculture and livestock production is

decreasing as the relative economic importance of these activities diminishes (Theobald *et al.* 1996, p. 413; Sammons 1998, p. 32; Gosnell and Travis 2005, pp. 191–192). Currently, agribusiness occupations constitute approximately 3 percent of the total job base in Gunnison County (CDOLAb 2009, p. 4). Recent conversion of farm and ranch lands to housing development has been significant in Colorado (Odell and Knight 2001, p. 1144). Many large private ranches in the Rocky Mountains, including the Gunnison Basin, are being subdivided into both high-density subdivisions and larger, scattered ranchettes with lots typically greater than 14 ha (35 ac), which encompass a large, isolated house (Riebsame *et al.* 1996, p. 399; Theobald *et al.* 1996, p. 408).

The resulting pattern of residential development is less associated with existing town sites or existing subdivisions, and is increasingly exurban in nature (Theobald *et al.* 1996, pp. 408, 415; Theobald 2001, p. 546). Exurban development is described as low-density growth outside of urban and suburban areas (Clark *et al.* 2009, p. 178; Theobald 2004, p. 140) with less than one housing unit per 1 ha (2.5 ac) (Theobald 2003, p. 1627; Theobald 2004, p. 139). The resulting pattern is one of increased residential lot size and the diffuse scattering of residential lots in previously rural areas with a premium placed on adjacency to federal lands and isolated open spaces (Riebsame *et al.* 1996, p. 396, 398; Theobald *et al.* 1996, pp. 413, 417; Theobald 2001, p. 546; Brown *et al.* 2005, p. 1858). The residential subdivision that results from exurban development causes landscape fragmentation (Gosnell and Travis 2005, p. 196) primarily through the accumulation of roads, buildings, (Theobald *et al.* 1996, p. 410; Mitchell *et al.* 2002, p. 3) and other associated infrastructure such as power lines, and pipelines. In the East River Valley of Gunnison County, for example, residential development in the early 1990s increased road density by 17 percent (Theobald *et al.* 1996, p. 410). The habitat fragmentation resulting from this development pattern is especially detrimental to Gunnison sage-grouse because of their dependence on large areas of contiguous sagebrush (Patterson 1952, p. 48; Connelly *et al.* 2004, p. 4–1; Connelly *et al.* 2011, p. 72; Wisdom *et al.* 2004, pp. 452–453).

Residential Development in the Gunnison Basin Population Area—Nearly three quarters (approximately 71 percent) of the Gunnison Basin population of Gunnison sage-grouse occurs within Gunnison County, with the remainder occurring in Saguache County. Within Gunnison County, approximately 30 percent of the occupied range of this species occurs on private lands. We performed a GIS analysis of parcel ownership data that was focused on the spatial and temporal pattern of human development within occupied Gunnison sage-grouse habitat. Some of our analyses were limited to the portion of occupied habitat in Gunnison County because parcel data was only available for Gunnison County and not for Saguache County. This analysis determined that the cumulative number of human developments has increased dramatically in Gunnison County, especially since the early 1970s (USFWS 2010a, p. 1). The number of new developments averaged approximately 70 per year from the late 1800s to 1969, increasing to approximately 450 per year from 1970 to 2008 (USFWS 2010a, pp. 2–5). Furthermore, there has been an increasing trend toward development away from major roadways (primary and secondary paved roads) into areas of occupied Gunnison sage-grouse habitat that had previously undergone very limited development (USFWS 2010b, p. 7). Between 1889 and 1968, approximately 51 human developments were located more than 1.6 km (1 mi) from a major road in currently occupied Gunnison sage-grouse habitat. Between 1969 and 2008, this number increased to approximately 476 developments (USFWS 2010b, p. 7).

A landscape-scale spatial model predicting Gunnison sage-grouse nesting probability was developed based on nesting data from the western portion of the Gunnison Basin (Aldridge *et al.* 2011, entire). The model was extrapolated to the entire Gunnison Basin to predict the likelihood of Gunnison sage-grouse nesting in the area (Aldridge *et al.* 2011, pp. 7–9). Results of the model indicate that Gunnison sage-grouse tend to select nest sites in larger landscapes (1.5 km [0.9 mi] radii) with a low density of residential development (<1 percent) (Aldridge *et al.* 2011, p. 10). The study indicates nest site selection by Gunnison sage-grouse decreases near residential developments, until approximately 2.5 km (1.6 mi) from any given residential development (Aldridge *et al.* 2011, p. 10).

Within occupied Gunnison sage-grouse habitat in Gunnison County, 49 percent of the land area within the range of Gunnison sage-grouse has at least one housing unit within a radius of 1.5 km (0.9 mi) (USFWS 2010b, p. 7). This level of residential development is strongly decreasing the likelihood of Gunnison sage-grouse using these areas as nesting habitat. Furthermore, since early brood-rearing habitat is often in close proximity to nest sites (Connelly *et al.* 2000a, p. 971), the loss of nesting habitat is closely linked with the loss of early brood-rearing habitat. Limitations in the quality and quantity of nesting and early brood-rearing habitat are particularly problematic because Gunnison sage-grouse population dynamics are most sensitive during these life history stages (GSRSC 2005, p. G–15).

We recognize that the potential percentages of habitat loss mentioned above, whether direct or functional, will not necessarily correspond to the same percentage loss in sage-grouse numbers. The recent efforts to conserve Gunnison sage-grouse and their habitat within the Basin provide protection into the future for several areas of high-quality habitat (see discussion below in Factors A and D). Nonetheless, given the large landscape-level needs of this species, we expect future habitat loss, degradation, and fragmentation from residential development, as described above, to substantially limit the probability of persistence of Gunnison sage-grouse in the Gunnison Basin.

The GSRSC (2005, pp. 160–161) hypothesize that residential density in excess of one housing unit per 1.3 km^2 (0.5 mi^2) could cause declines in Gunnison sage-grouse populations. However, because the analyses that formed the basis of this hypothesis were preliminary and did not take into account potential lags in Gunnison sage-grouse population response to development, the threshold at which impacts are expected could be higher or lower (GSRSC 2005, p. F–3). The resulting impacts are expected to occur in nearly all seasonal habitats, including moderate to severe winter use areas, nesting and brood-rearing areas, and leks (GSRSC 2005, p. 161). Within Gunnison County, approximately 18 percent of the land area within the range of Gunnison sage-grouse has a residential density greater than one housing unit per 1.3 km^2 (0.5 mi^2) (USFWS 2010b, p. 8). Therefore, according to the GSRSC estimate of potential residential impacts, human residential densities in the Gunnison Basin population area are such that we expect they are limiting the Gunnison sage-grouse population in at least 18 percent of the population area. However, based on results from the quantitative model for nesting probability described above (Aldridge *et al.* 2011), residential development currently may be impacting 49 percent

of the Gunnison Basin population area (USFWS 2010b, p. 7).

Based on population projections (CWCB 2009, p. 15) and the corresponding increased need for housing, we expect the density and distribution of human residences to expand in the future. Of the private land in Gunnison County not protected by conservation easements, approximately 20,236 ha (50,004 ac) on approximately 1,190 parcels currently lack human development in occupied Gunnison sage-grouse habitat (USFWS 2010b, p. 11). These lands are scattered throughout occupied Gunnison sage-grouse habitat in the Gunnison Basin. We used the 20,236 ha (50,004 ac) as an initial basis to assess the potential impacts of future development. A lack of parcel data availability from surrounding counties precluded expanding this analysis beyond Gunnison County; however, the analysis area constitutes 71 percent of the Gunnison Basin population area.

Approximately 93 percent of occupied Gunnison sage-grouse habitat in Gunnison County consists of parcels greater than 14.2 ha (35 ac), which are exempt from some county land development regulations. Applying a 1.7 percent average annual population increase under a ''middle'' growth scenario (CWCB 2009, p. 56) and an average 2.29 persons per household (CDOLA 2009b, p. 6) to the 2008 Gunnison County human population estimate results in the potential addition of nearly 7,000 housing units to the county by 2050. Currently, approximately two-thirds of the human population in Gunnison County occurs within the currently mapped occupied range of Gunnison sage-grouse. Assuming this pattern will continue, two-thirds of the population increase will occur within occupied Gunnison sage-grouse habitat. The above projection could potentially result in the addition of approximately 4,630 housing units and the potential for 25,829 ha (63,824 ac) of new habitat loss, whether direct or functional, on parcels that currently have no development. This potential for additional habitat loss constitutes 15 percent of the currently occupied Gunnison sage-grouse habitat in the Gunnison Basin population area (USFWS 2010b, p. 14). Combined with the 49 percent of occupied habitat potentially impacted by current residential development (USFWS 2010b, p.7), approximately 64 percent of Gunnison sage-grouse occupied habitat may be impacted by residential development in the foreseeable future. We also anticipate increased housing density in many areas of occupied Gunnison sage-grouse habitat because the anticipated number of new housing units will exceed the number of undeveloped parcels by nearly four times (USFWS 2010b, p. 16).

Some of this anticipated development and subsequent habitat loss will undoubtedly occur on parcels that currently have existing human development, which could lessen the effects to Gunnison sage-grouse. However, the above calculation of an increase in future housing units is likely an underestimate because it does not take into account the expected increase in second home development (CDOLA 2009b, p. 7), which would increase negative effects to Gunnison sage-grouse. The U.S. Census Bureau only tallies the inhabitants of primary residences in population totals. This methodology results in an underestimate of the population, particularly in amenity communities like Gunnison, because of the increased number of part-time residents inhabiting second homes and vacation homes in these areas (Riebsame *et al.* 1996, p. 397; Theobald 2001, p. 550, Theobald 2004, p. 143). In Gunnison County, approximately 90 percent of vacant housing units were composed of seasonal use units (CDOLA 2009c, p. 1), and the housing vacancy rate was 42.5 percent in Gunnison County over the last two decades (CDOLA 2009d, p. 2).

We expect some development to be moderated by the establishment of additional voluntary landowner conservation easements such as those currently facilitated by the CPW and land trust organizations. The CPW has spent more than $30 million to protect approximately 13,413 ha (33,145 ac) since 2003 (CPW 2012b, p. 6). Conservation easements, if properly managed, can minimize the overall impacts to Gunnison sage-grouse. Including CPW and nongovernmental organization held properties, approximately 17,466 ha (43,160 ac), or 25 percent, of private lands in occupied Gunnison sage-grouse habitat have been placed in conservation easements or are protected because the fee title was acquired to protect the land (CPW 2011c, pp. 9–10; CPW 2012b, p. 6). Due to the cost of acquisition we do not expect the amount of land potentially placed in future easements will adequately offset the overall effects of human development and subsequent habitat fragmentation.

Current and anticipated fragmentation is also ameliorated somewhat by the approximate 5,012 ha (12,385 ac), or 7 percent, of private lands in the Gunnison Basin currently enrolled under the Gunnison sage-grouse CCAA (CPW 2012b, p. 11). However, approximately one-third of this area is already covered under conservation easements as described above. Accounting for this overlap, conservation easements and fee title properties held by CPW and conservation organizations, and the CCAA as described above currently protect approximately 20,824 ha (51,458 ac), or 30 percent, of private lands in the Gunnison Basin population area.

Residential Development in All Other Population Areas—In 2004, within the Crawford population area, approximately 951 ha (2,350 ac), or 7 percent of the occupied Gunnison sage-grouse habitat was subdivided into 48 parcels (CDOW 2009b, p. 59). Local landowners and the National Park Service (NPS) have ongoing efforts to protect portions of the subdivided area through conservation easements. Residential subdivision continues to occur in the northern part of the Poncha Pass population area, and the CPW considers this to be the highest priority threat to this population (CDOW 2009b, p. 124). The rate of residential development in the San Miguel Basin population area increased between 2005 and 2008 but slowed in 2009 (CDOW 2009b, p. 135). However, a 429-ha (1,057-ac) parcel north of Miramonte Reservoir is currently being developed. The CPW reports that potential impacts to Gunnison sage-grouse resulting from this development may be reduced by possibly placing a portion of the property into a conservation easement and the relocation of a proposed major road to avoid occupied habitat (CDOW 2009b, p. 136). Scattered residential development has recently occurred along the periphery of occupied habitat in the Cerro Summit-Cimarron-Sims Mesa population (CDOW 2009b, p. 45). With the exception of the Monticello subpopulation and the Crawford population, the remaining limited amounts of habitat, the fragmented nature of this remaining habitat, and the anticipated increases in exurban development pose a threat to the remaining four smaller Gunnison sage-grouse populations.

Summary of Residential Development

Because Gunnison sage-grouse are dependent on expansive, contiguous areas of sagebrush habitat to meet their life history needs, the development patterns described above have resulted in the direct and functional loss of sagebrush habitat and have negatively affected the species by limiting already scarce habitat, especially within the six smaller populations. The collective

influences of fragmentation and disturbance from human activities around residences and associated roads reduce the effective habitat around these areas, making them inhospitable to Gunnison sage-grouse (Aldridge *et al.* 2011, p. 14; Knick *et al.* 2011, pp. 212–219 and references therein; Aldridge and Boyce 2007, p. 520). Human population growth that results in a dispersed exurban development pattern throughout sagebrush habitats will reduce the likelihood of sage-grouse persistence in these areas. Human populations are increasing throughout the range of Gunnison sage-grouse, and we expect this trend to continue. Given the demographic and economic trends of the past few decades described above, we believe residential development in Gunnison sage-grouse habitat will continue at least through 2050, and likely longer. The resulting habitat loss and fragmentation from residential development is a principal threat to Gunnison sage-grouse persistence.

Roads

Impacts to Gunnison sage-grouse from roads may include direct habitat loss, direct mortality, barriers to migration corridors or seasonal habitats, facilitation of predation and spread of invasive vegetative species, and other indirect influences such as noise (Forman and Alexander 1998, pp. 207–231). Greater sage-grouse mortality resulting from collisions with vehicles does occur, but mortalities are typically not monitored or recorded (Patterson 1952, p. 81). Therefore, we are unable to determine the importance of direct mortality from roads on sage-grouse populations.

Although we have no information on the number of direct mortalities of Gunnison sage-grouse resulting from vehicles or roads, because of similarities in their habitat and habitat use, we expect other effects to be similar to those observed in greater sage-grouse. Roads within Gunnison sage-grouse habitats have been shown to impede movement of local populations between the resultant patches, with road avoidance presumably being a behavioral means to limit exposure to predation (Oyler-McCance *et al.* 2001, p. 330).

The presence of roads increases human access and resulting disturbance effects in remote areas (Forman and Alexander 1998, p. 221; Forman 2000, p. 35; Connelly *et al.* 2004, pp. 7–6 to 7–25). In addition, roads can provide corridors for predators to move into previously unoccupied areas. Some mammalian species known to prey on sage-grouse, such as red fox *(Vulpes vulpes),* raccoons *(Procyon lotor),* and striped skunks *(Mephitis mephitis),* have greatly increased their distribution by dispersing along roads (Forman and Alexander 1998, p. 212; Forman 2000, p. 33; Frey and Conover 2006, pp. 1114–1115). Corvids (Family Corvidae: crows, ravens, magpies, etc.) also use linear features such as primary and secondary roads as travel routes (Bui 2009, p. 31), expanding their movements into previously unused regions (Knight and Kawashima 1993, p. 268; Connelly *et al.* 2004, p. 12–3). Corvids are significant sage-grouse nest predators and were responsible for more than 50 percent of nest predations in Nevada (Coates 2007, pp. 26–30). See Factor C below for further discussion of predation.

The expansion of road networks also contributes to exotic plant invasions via introduced road fill, vehicle transport, and road maintenance activities (Forman and Alexander 1998, p. 210; Forman 2000, p. 32; Gelbard and Belnap 2003, p. 426; Knick *et al.* 2003, p. 619; Connelly *et al.* 2004, p. 7–25). Invasive species are not limited to roadsides, but also encroach into surrounding habitats (Forman and Alexander 1998, p. 210; Forman 2000, p. 33; Gelbard and Belnap 2003, p. 427). Upgrading unpaved four-wheel-drive roads to paved roads resulted in increased cover of exotic plant species within the interior of adjacent plant communities (Gelbard and Belnap 2003, p. 426). This effect was associated with road construction and maintenance activities and vehicle traffic, and not with differences in site characteristics. The incursion of exotic plants into native sagebrush systems can negatively affect Gunnison sage-grouse through habitat losses and conversions (see further discussion below in the Invasive Plants section).

Gunnison sage-grouse may avoid road areas because of noise, visual disturbance, pollutants, and predators moving along a road, which further reduces the amount of habitat available to support them. The landscape-scale spatial model predicting Gunnison sage-grouse nest site selection showed strong avoidance of areas with high road densities of roads classed 1 through 4 (primary paved highways through primitive roads with 2-wheel drive sedan clearance) within 6.4 km (4 mi) of nest sites (Aldridge *et al.* 2011, p. 14). Nest sites also decreased with increased proximity to primary and secondary paved highways (roads classes 1 and 2) (Aldridge *et al.* 2011, p. 14). Male greater sage-grouse lek attendance was shown to decline within 3 km (1.9 mi) of a methane well or haul road with traffic volume exceeding one vehicle per day (Holloran 2005, p. 40). Male sage-grouse depend on acoustical signals to attract females to leks (Gibson and Bradbury 1985, p. 82; Gratson 1993, p. 692). If noise from roads interferes with mating displays, and thereby female attendance, younger males will not be drawn to the lek and eventually leks will become inactive (Amstrup and Phillips 1977, p. 26; Braun 1986, pp. 229–230).

In a study on the Pinedale Anticline in Wyoming, greater sage-grouse hens that bred on leks within 3 km (1.9 mi) of roads associated with oil and gas development traveled twice as far to nest as did hens that bred on leks greater than 3 km (1.9 mi) from roads. Nest initiation rates for hens bred on leks close to roads also were lower (65 versus 89 percent), affecting population recruitment (33 versus 44 percent) (Lyon 2000, p. 33; Lyon and Anderson 2003, pp. 489–490). Roads may be the primary impact of oil and gas development to sage-grouse, due to their persistence and continued use even after drilling and production have ceased (Lyon and Anderson 2003, p. 490). Lek abandonment patterns suggested that daily vehicular traffic along road networks for oil wells can impact greater sage-grouse breeding activities (Braun *et al.* 2002, p. 5). Because Gunnison sage-grouse and greater sage-grouse are similar, closely related species, we believe the effects of vehicular traffic on Gunnison sage-grouse, regardless of its purpose (e.g., in support of energy production or local commuting and recreation), are similar to those observed in greater sage-grouse.

Road density was not an important factor affecting greater sage-grouse persistence or rangewide patterns in sage-grouse extirpation (Aldridge *et al.* 2008, p. 992). However, the authors did not consider the intensity of human use of roads in their modeling efforts. They also indicated that their analyses may have been influenced by inaccuracies in spatial road data sets, particularly for secondary roads (Aldridge *et al.* 2008, p. 992). Historic range where greater and Gunnison sage-grouse have been extirpated has a 25 percent higher density of roads than occupied range (Wisdom *et al.* 2011, p. 467). Wisdom *et al.'s* (2011) greater and Gunnison sage-grouse rangewide analysis supports the findings of numerous local studies showing that roads can have both direct and indirect impacts on sage-grouse distribution and individual fitness (reproduction and survival) (e.g., Lyon and Anderson 2003 p. 490, Aldridge and Boyce 2007, p. 520).

Recreational activities including off-highway vehicles (OHV), all-terrain vehicles, motorcycles, mountain bikes,

and other mechanized methods of travel have also been recognized as a potential direct and indirect threat to Gunnison sage-grouse and their habitat (BLM 2009, p. 36). In Colorado, the number of annual off-highway vehicle (OHV) registrations has increased dramatically from 12,000 in 1991 to 131,000 in 2007 (BLM 2009, p. 37). Four wheel drive, OHV, motorcycle, specialty vehicle, and mountain bike use is expected to increase in the future based on increased human population in Colorado and within the range of Gunnison sage-grouse. Numerous off-road routes and access points to habitat used by Gunnison sage-grouse combined with increasing capabilities for mechanized travel and increased human population further contribute to habitat fragmentation.

Roads in the Gunnison Basin Population Area—On BLM lands in the Gunnison Basin currently 2,050 km (1,274 mi) of roads are within 6.4 km (4 mi) of Gunnison sage-grouse leks. Eighty-seven percent of all Gunnison sage-grouse nests were located less than 6.4 km (4 mi) from the lek of capture (Apa 2004, p. 21). However, the BLM proposes to reduce the roads on its Gunnison Basin lands to 1,157 km (719 mi) (BLM 2010, p. 147).

Currently, 1,349 km (838 mi) of roads accessible to 2-wheel-drive passenger cars exist in occupied Gunnison sage-grouse habitat in the Gunnison Basin. Four-wheel-drive vehicle roads, as well as motorcycle, mountain bike, horse, and hiking trails are heavily distributed throughout the range of Gunnison sage-grouse (BLM 2009, pp. 27, 55, 86), which further increases the overall density of roads and their direct and indirect effects on Gunnison sage-grouse. User-created roads and trails have increased since 2004 (BLM 2009, p. 33), although we do not know the scope of this increase.

Using a spatial dataset of roads in the Gunnison Basin, we performed GIS analyses on the potential effects of roads to Gunnison sage-grouse and their habitat. To account for secondary effects from invasive weed spread from roads (see discussion below in Invasive Plants), we applied a 0.7-km (0.4-mi) buffer (Bradley and Mustard 2006, p. 1146) to all roads in the Gunnison Basin. These analyses indicate that approximately 85 percent of occupied habitat in the Gunnison Basin has an increased likelihood of current or future road-related invasive weed invasion. When all roads in the Gunnison basin are buffered by 6.4 km (4 mi) or 9.6 km (6 mi) to account for decreased nesting probability (Aldridge *et al.* 2011, p. 14) and secondary effects from mammal and corvid foraging areas (Knick *et al* 2011, p. 216), respectively, all occupied habitat in the Gunnison Basin is indirectly affected by roads.

Roads in All Other Population Areas—Approximately 140 km (87 mi), 243 km (151 mi), and 217 km (135 mi) of roads (all road classes) occur on BLM lands within the Cerro Summit-Cimarron-Sims Mesa, Crawford, and San Miguel Basin population areas, respectively, all of which are managed by the BLM (BLM 2009, p. 71). We do not have information on the total length of roads within the Monticello-Dove Creek, Piñon Mesa, or Poncha Pass Gunnison sage-grouse populations. However, several maps provided by the BLM show that roads are widespread and common throughout these population areas (BLM 2009, pp. 27, 55, 86).

Summary of Roads

As described above in the 'Residential Development' section, the human population is increasing throughout the range of Gunnison sage-grouse (CDOLA 2009a, pp. 2–3; CWCB 2009, p. 15), and data indicates this trend will continue. Gunnison sage-grouse are dependent on large contiguous and unfragmented landscapes to meet their life history needs (GSRSC 2005, pp. 26–30), and the existing road density throughout much of the range of Gunnison sage-grouse has negatively affected the species. The collective influences of fragmentation and disturbance from roads reduce the effective habitat as they are avoided by sage-grouse (Aldridge *et al.* 2011, p. 14; Aldridge and Boyce 2007, p. 520; Knick *et al.* 2011, pp. 212–219 and references therein). Given the current human demographic and economic trends described above in the Residential Development section, we believe that increased road use and increased road construction associated with residential development will continue at least through 2050, and likely longer. The resulting habitat loss, degradation, and fragmentation from roads are a major threat to Gunnison sage-grouse persistence.

Powerlines

Powerlines can directly affect greater sage-grouse by posing a collision and electrocution hazard (Braun 1998, pp. 145–146; Connelly *et al.* 2000a, p. 974) and can have indirect effects by decreasing lek recruitment (Braun *et al.* 2002, p. 10), increasing predation (Connelly *et al.* 2004, p. 13–12), fragmenting habitat (Braun 1998, p. 146), and facilitating the invasion of exotic annual plants (Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 7–25). Proximity to powerlines is associated with Gunnison and greater sage-grouse extirpation (Wisdom *et al.* 2011, pp. 467–468). Due to the potential spread of invasive species and predators as a result of powerline construction and maintenance, the impact from a powerline is greater than its actual footprint. The effects of powerlines to Gunnison sage-grouse should be similar to those observed in greater sage-grouse.

In areas where the vegetation is low and the terrain relatively flat, power poles provide an attractive hunting, roosting, and nesting perch for many species of raptors and corvids (Steenhof *et al.* 1993, p. 27; Connelly *et al.* 2000a, p. 974; Manville 2002, p. 7; Vander Haegen *et al.* 2002, p. 503). Power poles increase a raptor's range of vision, allow for greater speed during attacks on prey, and serve as territorial markers (Steenhof *et al.* 1993, p. 275; Manville 2002, p. 7). Raptors may actively seek out power poles where natural perches are limited. For example, within 1 year of construction of a 596-km (370-mi) transmission line in southern Idaho and Oregon, raptors and common ravens began nesting on the supporting poles (Steenhof *et al.* 1993, p. 275). Within 10 years of construction, 133 pairs of raptors and ravens were nesting along this stretch (Steenhof *et al.* 1993, p. 275). Raven counts increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada within 5 years of construction (Atamian *et al.* 2007, p. 2). The increased abundance of corvids within occupied Gunnison sage-grouse habitats can result in increased predation.

As with corvids, eagles can also increase following power line installation. Golden eagle *(Aquila chryrsaetos)* predation on sage-grouse on leks increased from 26 to 73 percent of the total predation after completion of a transmission line within 200 meters (m) (220 yards (yd)) of an active sage-grouse lek in northeastern Utah (Ellis 1985, p. 10). The lek was eventually abandoned, and Ellis (1985, p. 10) concluded that the presence of the powerline resulted in changes in sage-grouse dispersal patterns and caused fragmentation of the habitat. Golden eagles are found throughout the range of Gunnison sage-grouse (USGS 2010, p. 1), and golden eagles were found to be the dominant species recorded perching on power poles in Utah in Gunnison sage-grouse habitat (Prather and Messmer 2009, p. 12). The increased abundance of eagles within occupied Gunnison sage-grouse habitats can result in increased predation.

Leks within 0.4 km (0.25 mi) of new powerlines constructed for coalbed methane development in the Powder River Basin of Wyoming had significantly lower growth rates, as measured by recruitment of new males onto the lek, compared to leks further from these lines, presumably resulting from increased raptor predation (Braun *et al.* 2002, p. 10). Connelly *et al.* (2004, p. 7–26) assumed a 5- to 6.9-km (3.1- to 4.3-mi) radius buffer around the perches, based on the average foraging distance of these corvids and raptors, and estimated that the area potentially influenced by additional perches provided by powerlines was 672,644 to 837,390 km^2 (259,641 to 323,317 mi^2), or 32 to 40 percent of their assessment area. The impact on an area would depend on corvid and raptor densities within the area (see discussion in Factor C, below).

Powerlines may fragment sage-grouse habitats even if raptors are not present. The use of otherwise suitable habitat by sage-grouse near powerlines increased as distance from the powerline increased for up to 600 m (660 yd) (Braun 1998, p. 8). Based on those unpublished data, Braun (1998, p. 8) reported that the presence of powerlines may limit Gunnison and greater sage-grouse use within 1 km (0.6 mi) in otherwise suitable habitat. Similar results were recorded for other grouse species. For example, lesser and greater prairie-chickens *(Tympanuchus pallidicinctus* and *T. cupido,* respectively) avoided otherwise suitable habitat near powerlines (Pruett *et al.* 2009, p. 6). Additionally, both species also crossed powerlines less often than nearby roads, which suggests that powerlines are a particularly strong barrier to movement (Pruett *et al.* 2009, p. 6).

Sage-grouse also may avoid powerlines as a result of the electromagnetic fields present (Wisdom *et al.* 2011, p. 467). Electromagnetic fields alter the behavior, physiology, endocrine systems and immune function in birds, with negative consequences on reproduction and development (Fernie and Reynolds 2005, p. 135). Birds are diverse in their sensitivities to electromagnetic field exposures, with domestic chickens being very sensitive. Many raptor species are less affected (Fernie and Reynolds 2005, p. 135). No studies have been conducted specifically on sage-grouse. Therefore, we do not know the impact to the Gunnison sage-grouse from electromagnetic fields.

Linear corridors through sagebrush habitats can facilitate the spread of invasive species, such as cheatgrass *(Bromus tectorum)* (Gelbard and Belnap 2003, pp. 424–426; Knick *et al.* 2003, p. 620; Connelly *et al.* 2004, p. 1–2). However, we were unable to find any information regarding the amount of invasive species incursion as a result of powerline construction.

Powerlines in the Gunnison Basin Population Area—On approximately 121,000 ha (300,000 ac) of BLM land in the Gunnison Basin, 36 rights-of-way for power facilities, power lines, and transmission lines have resulted in the direct loss of 350 ha (858 ac) of occupied habitat (Borthwick 2005a, pers. comm.). As discussed above, the impacts of these lines likely extend beyond their actual footprint. We performed a GIS analysis of transmission line location in relation to overall habitat area and Gunnison sage-grouse lek locations in the Gunnison Basin population area to obtain an estimate of the potential effects in the Basin. These analyses indicate that 68 percent of the Gunnison Basin population area is within 6.9 km (4.3 mi) of an electrical transmission line and is potentially influenced by avian predators using the additional perches provided by transmission lines. This area contains 65 of 109 active leks (60 percent) in the Gunnison Basin population. These results suggest that potential increased predation resulting from transmission lines has the potential to affect a substantial portion of the Gunnison Basin population.

Powerlines in All Other Population Areas—A transmission line runs through the Dry Creek Basin group in the San Miguel Basin population, and the Beaver Mesa group has two transmission lines. None of the transmission lines in the San Miguel Basin have raptor proofing, nor do most distribution lines (Ferguson 2005, pers. comm.), so their use by raptors and corvids as perch sites for hunting and use for nest sites is not discouraged. One major electric transmission line runs east-west in the northern portion of the current range of the Monticello group (San Juan County Gunnison Sage-grouse Working Group 2005, p. 17). Powerlines do not appear to be present in sufficient density to pose a threat to Gunnison sage-grouse in the Piñon Mesa population at this time. One transmission line parallels Highway 92 in the Crawford population and distribution lines run from there to homes on the periphery of the current range (Ferguson 2005, pers. comm.).

Summary of Powerlines

Human populations are projected to increase in and near most Gunnison sage-grouse populations (see discussion under Residential Development). As a result, we expect an associated increase in distribution powerlines to meet this increased demand. Powerlines are likely negatively affecting Gunnison sage-grouse as they contribute to habitat loss and fragmentation and facilitation of predators of Gunnison sage-grouse. Given the current demographic and economic trends described above, we believe that existing powerlines and anticipated distribution of powerlines associated with residential development will continue at least through 2050, and likely longer. The resulting habitat loss and fragmentation from powerlines is a major threat to Gunnison sage-grouse persistence.

Domestic Grazing and Wild Ungulate Herbivory

At least 87 percent of occupied Gunnison sage-grouse habitat on Federal lands is currently grazed by domestic livestock (USFWS 2010c, entire). We lack information on the proportion of Gunnison sage-grouse habitat on private lands that is currently grazed, but we expect the proportion of the area subject to grazing is similar to that on Federal lands. Excessive grazing by domestic livestock during the late 1800s and early 1900s, along with severe drought, significantly impacted sagebrush ecosystems (Knick *et al.* 2003, p. 616). Although current livestock stocking rates in the range of Gunnison sage-grouse are substantially lower than historical levels (Laycock *et al.* 1996, p. 3), long-term effects from historic overgrazing, including changes in plant communities and soils, persist today (Knick *et al.* 2003, p. 116).

Although livestock grazing and associated land treatments have likely altered plant composition, increased topsoil loss, and increased spread of exotic plants, the impacts on Gunnison sage-grouse populations are not clear. Few studies have directly addressed the effect of livestock grazing on sage-grouse (Beck and Mitchell 2000, pp. 998–1000; Wamboldt *et al.* 2002, p. 7; Crawford *et al.* 2004, p. 11), and little direct experimental evidence links grazing practices to Gunnison sage-grouse population levels (Braun 1987, pp. 136–137, Connelly and Braun 1997, p. 7–9). Rowland (2004, pp. 17–18) conducted a literature review and found no experimental research that demonstrates grazing alone is responsible for reduction in sage-grouse numbers.

Despite the obvious impacts of grazing on plant communities within the range of the species, the GSRSC (2005, p. 114) could not find a direct correlation between historic grazing and reduced Gunnison sage-grouse numbers.

While implications on population-level impacts from grazing can be made based on impacts of grazing on individuals and habitat conditions, no studies have documented the impacts (positively or negatively) of grazing at the population level.

Sage-grouse need significant grass and shrub cover for protection from predators, particularly during nesting season, and females will preferentially choose nesting sites based on these qualities (Hagen *et al.* 2007, p. 46). In particular, nest success in Gunnison sage-grouse habitat is related to greater grass and forb heights and shrub density (Young 1994, p. 38). The reduction of grass heights due to livestock grazing in sage-grouse nesting and brood-rearing areas has been shown to negatively affect nesting success when cover is reduced below the 18 cm (7 in.) needed for predator avoidance (Gregg *et al.* 1994, p. 165). Based on measurements of cattle foraging rates on bunchgrasses both between and under sagebrush canopies, the probability of foraging on under-canopy bunchgrasses depends on sagebrush size and shape. Consequently, the effects of grazing on nesting habitats might be site specific (France *et al.* 2008, pp. 392–393).

Grazing by livestock could reduce the suitability of breeding and brood-rearing habitat, negatively affecting sage-grouse populations (Braun 1987, p. 137; Dobkin 1995, p. 18; Connelly and Braun 1997, p. 231; Beck and Mitchell 2000, pp. 998–1000). Domestic livestock grazing reduces water infiltration rates and the cover of herbaceous plants and litter, compacts the soil, and increases soil erosion (Braun 1998, p. 147; Dobkin *et al.* 1998, p. 213). These impacts change the proportion of shrub, grass, and forb components in the affected area, and facilitate invasion of exotic plant species that do not provide suitable habitat for sage-grouse (Mack and Thompson 1982, p. 761; Miller and Eddleman 2000, p. 19; Knick *et al.* 2011, pp. 228–232).

Livestock may compete directly with sage-grouse for rangeland resources. Cattle are grazers, feeding mostly on grasses, but they will make seasonal use of forbs and shrub species like sagebrush (Vallentine 1990, p. 226), a primary source of nutrition for sage-grouse. A sage-grouse hen's nutritional condition affects nest initiation rate, clutch size, and subsequent reproductive success (Barnett and Crawford 1994, p. 117; Coggins 1998, p. 30). Other effects of direct competition between livestock and sage-grouse depend on condition of the habitat and the grazing practices. Thus, the effects vary across the range of Gunnison sage-grouse. For example, poor livestock management in mesic sites results in a reduction of forbs and grasses available to sage-grouse chicks, thereby affecting chick survival (Aldridge and Brigham 2003, p. 30). Chick survival is one of the most important factors in maintaining Gunnison sage-grouse population viability (GSRSC 2005, p. 173).

Livestock can trample sage-grouse nests and nesting habitat. Although the effect of trampling at a population level is unknown, outright nest destruction has been documented, and the presence of livestock can cause sage-grouse to abandon their nests (Rasmussen and Griner 1938, p. 863; Patterson 1952, p. 111; Call and Maser 1985, p. 17; Holloran and Anderson 2003, p. 309; Coates 2007, p. 28). Sage-grouse have been documented to abandon nests following partial nest depredation by cows (Coates 2007, p. 28). In general, all recorded encounters between livestock and grouse nests resulted in hens flushing from nests, which could expose the eggs to predation. Visual predators like ravens likely use hen movements to locate sage-grouse nests (Coates 2007, p. 33). Livestock also may trample sagebrush seedlings, thereby removing a source of future sage-grouse food and cover (Connelly *et al.* 2004, pp. 7–31). Trampling of soil by livestock can reduce or eliminate biological soil crusts making these areas susceptible to cheatgrass invasion (Mack 1981, pp. 148–149; Young and Allen 1997, p. 531).

Livestock grazing may have positive effects on sage-grouse under some habitat conditions. Sage-grouse use grazed meadows significantly more during late summer than ungrazed meadows because grazing had stimulated the regrowth of forbs (Evans 1986, p. 67). Greater sage-grouse sought out and used openings in meadows created by cattle grazing in northern Nevada (Klebenow 1981, p. 121). Also, both sheep and goats have been used to control invasive weeds (Mosley 1996 *in* Connelly *et al.* 2004, pp. 7–49; Merritt *et al.* 2001, p. 4; Olsen and Wallander 2001, p. 30) and woody plant encroachment (Riggs and Urness 1989, p. 358) in sage-grouse habitat.

Sagebrush plant communities are not adapted to domestic grazing disturbance. Grazing changed the functioning of systems into less resilient, and in some cases, altered communities (Knick *et al.* 2011, pp. 229–232). The ability to restore or rehabilitate areas depends on the condition of the area relative to the ability of a site to support a specific plant community (Knick *et al.* 2011, pp. 229–232). For example, if an area has a balanced mix of shrubs and native understory vegetation, a change in grazing management can restore the habitat to its potential historic species composition (Pyke 2011, pp. 536–538). Wambolt and Payne (1986, p. 318) found that rest from grazing had a better perennial grass response than other treatments. Active restoration is likely required where native understory vegetation is much reduced (Pyke 2011, pp. 536–540). But, if an area has soil loss or invasive species, returning the site to the native historical plant community may be impossible (Daubenmire 1970, p. 82; Knick *et al.* 2011, pp. 230–231; Pyke 2011, p. 539).

Aldridge *et al.* (2008, p. 990) did not find any relationship between sage-grouse persistence and livestock densities. However, the authors noted that livestock numbers do not necessarily correlate with range condition. They concluded that the intensity, duration, and distribution of livestock grazing are more influential on rangeland condition than the livestock density values (Aldridge *et al.* 2008, p. 990). Currently, little direct evidence links grazing practices to population levels of Gunnison or greater sage-grouse. Although grazing has not been examined at large spatial scales, as discussed above, we do know that grazing can have negative impacts to individuals, nests, breeding productivity, and sagebrush and, consequently, to sage-grouse at local scales. However, how these impacts operate at large spatial scales and thus on population levels is currently unknown. The potential for population-level impacts should be further studied. Although baseline vegetation monitoring has been conducted in the past, detailed baseline vegetation monitoring efforts were conducted in the Gunnison Basin in 2010. In comparison to the best available information on habitat guidelines for the maintenance of Gunnison sage-grouse habitat (GSRSC 2005, Appendix H–1), cover and height estimates were within the breeding and summer-to-fall habitat guidelines, especially in cover and sagebrush height for dry mountain loam and mountain loam ecological sites across the Basin. Comparisons of existing conditions to winter habitat guidelines were not made in this assessment.

Livestock Grazing and Habitat Monitoring Methods—Our analysis of grazing is focused on BLM lands because nearly all of the information available to us regarding current grazing management within the range of Gunnison sage-grouse was provided by this agency. Similar information was

provided by the USFS, but was more limited since the USFS has less occupied habitat in grazing allotments and has a different habitat monitoring approach than BLM (see discussion below). A summary of domestic livestock grazing management on BLM and USFS lands in occupied Gunnison sage-grouse habitat is provided in Table 2.

Much of the available information on domestic livestock grazing and its relationship to habitat conditions on Federal lands is in the form of BLM's Land Health Assessment (LHA) data. The purpose of LHAs are to determine the status of resource conditions within a specified geographic area at a specific time, and livestock grazing practices are coupled to these LHA determinations. The LHA process incorporates land health standards that define minimum resource conditions that must be achieved and maintained. Further discussion on the LHA process is provided in the following section.

The USFS does not apply the LHA process, but monitors allotment trends through a combination of procedures including seasonal inspections, permanent photo points, and inventory and mapping of plant community conditions and changes over time (USFS 2010). The majority of Gunnison sage-grouse occupied habitat in USFS grazing allotments is located in the Gunnison Basin population area (Tables 1 and 2), and grazing information as it relates to Gunnison sage-grouse is therefore limited to this area (USFWS 2010c, p2).

Although grazing also occurs on lands owned or managed by other entities, we have no information on the extent of grazing in these areas. Livestock grazing on private lands, where present, has a greater potential to impact Gunnison sage-grouse because these areas are not required to meet agency-mandated land health standards, but we lack sufficient data to make an informed assessment of these areas.

TABLE 2—SUMMARY OF DOMESTIC LIVESTOCK GRAZING MANAGEMENT ON BLM [a] AND USFS [b] LANDS IN OCCUPIED HABITAT FOR EACH OF THE GUNNISON SAGE-GROUSE POPULATIONS (FROM BLM (2012) AND USFWS (2010C), COMPILATION OF DATA PROVIDED BY BLM AND USFS)

Population	Number of active USFS allotments	Number of active BLM allotments	Percent: Active allotments with GUSG [c] objectives	Percent: BLM allotments with completed LHA [d]	Percent: Assessed BLM allotments meeting LHA objectives
Gunnison	34	62	100	100	32
San Miguel Basin	*no data*	13	0	77	40
Monticello—Dove Creek:					
Dove Creek	*n/a*	3	0	0	*0*
Monticello	[e] *n/a*	6	100	83	80
Piñon Mesa	*no data*	15	53	27	100
Cerro Summit-Cimarron-Sims Mesa	[e] *n/a*	10	10	50	40
Crawford [f]	[e] *n/a*	7	71	100	86
Poncha Pass	*no data*	8	13	100	100
Rangewide Averages			34	67	60

[a] Bureau of Land Management.
[b] United States Forest Service.
[c] Gunnison sage-grouse.
[d] Land Health Assessments.
[e] No United States Forest land in occupied habitat in this population area.
[f] Includes allotments on National Park Service lands but managed by the Bureau of Land Management.

BLM Land Health Assessment Standards—LHA standards are based on the recognized characteristics of healthy ecosystems and include considerations of upland soils, riparian systems, plant and animal communities, habitat conditions and populations of special status species, and water quality (BLM 1997, pp. 6–7). Each LHA standard, such as the condition and health of soils, riparian areas, or plant communities, has varying degrees of applicability to basic Gunnison sage-grouse habitat needs. The most applicable LHA standard to Gunnison sage-grouse is LHA standard number four, which is specific to special status species (BLM 1997, p. 7). *Special status species* include Federally threatened, endangered, proposed, and candidate species; recently delisted (5 years or less) species; and BLM sensitive species. *BLM sensitive species* are those that require special management consideration to promote their conservation and reduce the likelihood and need for future listing under the ESA; they are designated by the BLM State Director(s) (BLM 2008). Gunnison sage-grouse was designated a BLM sensitive species in 2000 when it and greater sage-grouse were recognized as separate species (BLM 2009, p. 7).

In addition to requiring stable and increasing populations and suitable habitat for special status species, the specific indicators for LHA standard four include the presence of: minimal noxious weeds, sustainably reproducing native plant and animal communities, mixed age classes sufficient to sustain recruitment and mortality fluctuations, habitat connectivity, photosynthetic activity throughout the growing season, diverse and resilient plant and animal communities in balance with habitat potential, plant litter accumulation, and several plant communities in a variety of successional stages and patterns (BLM 1997, p. 7).

We recognize that LHAs are largely qualitative and other factors in addition to recent domestic livestock grazing, including the lingering effects of historic overgrazing, may influence the outcome of LHA determinations. Furthermore, BLM's application of LHA standards, methodologies used, and data interpretation varies depending on the Field Office. Therefore, the relationship between LHA determinations and the effects of domestic livestock grazing on Gunnison sage-grouse is imprecise. We also recognize that if an allotment does not meet LHA standard four, it does not mean the habitat is completely unsuitable for Gunnison sage-grouse. However, the fact that some grazing allotments or areas are not meeting LHA

objectives indicates that habitat conditions are likely degraded for Gunnison sage-grouse in portions of its range, and that domestic livestock grazing is contributing to these conditions.

Federal Lands Grazing in the Gunnison Basin Population Area—The BLM manages approximately 122,376 ha (301,267 ac), or 51 percent of the area currently occupied by Gunnison sage-grouse in the Gunnison Basin. Approximately 98 percent (119,941 ha [296,381 ac]) of this area is actively grazed (USFWS 2010c, p. 1). The USFS manages approximately 34,544 ha (85,361 ac), or 14 percent of the occupied portion of the Gunnison Basin population area. Therefore, this information is pertinent to approximately 65 percent of occupied habitat in the Gunnison Basin.

Within the 296,381 acres of occupied Gunnison sage-grouse habitat that are actively grazed on BLM Gunnison Field Office lands, and with respect to LHA standard four, approximately 24,208 acres (8 percent) are ''meeting'' the standard; 51,314 acres (17 percent) are ''moving towards'' meeting the standard; 187,387 acres (63 percent) are ''not meeting'' the standard; and 33,472 acres (11 percent) are of ''unknown'' status (BLM 2012, pp. 2–3).

This analysis indicates that, without taking into account habitat conditions on private lands and other Federal and State lands, at least 32 percent (187,387 acres ''not meeting'' standard four) of occupied Gunnison sage-grouse habitat in the Gunnison Basin (592,936 total ac) has diminished habitat conditions and likely a reduction in habitat quality for Gunnison sage-grouse.

Including those areas ''moving towards'' meeting LHA standard four (assuming conditions are less than optimal in these areas), overall habitat conditions for Gunnison sage-grouse may be worse than estimated above. Combining areas ''not meeting'' and ''moving toward'' standard four, as much as 81 percent (238,701 ac) of occupied habitat on BLM lands in the Gunnison Basin may have reduced habitat quality for Gunnison sage-grouse. Under these assumptions, as much as 40 percent (238,701 ac) of total occupied habitat in the Gunnison Basin (592,936 ac) may have reduced habitat quality for Gunnison sage-grouse. This estimate may be conservative since it assumes habitat conditions are being met for Gunnison sage-grouse in occupied habitat on the remaining, un-assessed (''unknown'') BLM lands as well as private, State, and other Federal lands in the Gunnison Basin.

In 2007 and 2008, the BLM Gunnison Field Office conducted Gunnison sage-grouse habitat assessments in two major occupied habitat locations in the Gunnison Basin population quantifying vegetation structural characteristics and plant species diversity. Data were collected and compared to Gunnison sage-grouse Structural Habitat Guidelines in the 2005 Rangewide Conservation Plan (RCP) (GSRSC, 2005, Appendix H) during optimal growing conditions in these two major occupied areas. Guidelines for sage cover, grass cover, forb cover, sagebrush height, grass height, and forb height were met in 45, 30, 25, 75, 81, and 39 percent, respectively, of 97 transects (BLM 2009, pp. 31–32). In addition, grazing has negatively impacted several Gunnison sage-grouse treatments (projects aimed at improving habitat condition) in the Gunnison Basin (BLM 2009, p. 34). Although these areas are generally rested from domestic livestock grazing for 2 years after treatment, several have been heavily used by cattle shortly after the treatment and the effectiveness of the treatments decreased (BLM 2009, p. 34), which reduced the potential benefits of the treatments.

As noted earlier, the USFS does not use the LHA process, but monitors allotment trends through a combination of procedures including seasonal inspections, permanent photo points, and inventory and mapping of plant community conditions and changes over time (USFS 2010). Three (9 percent) of the 35 USFS allotments in Gunnison sage-grouse occupied habitat in the Gunnison Basin population area have incorporated habitat objectives in their grazing plans. However, we have no specific data that evaluate allotment conditions as they relate to these objectives. Overall, USFS grazing allotments in the Gunnison Basin population area appear to be improving in forb and grass cover but are declining in sagebrush cover (USFS 2010).

All of this information indicates that grazing management has likely resulted in degraded habitat conditions for Gunnison sage-grouse in portions of the Gunnison Basin. Based on available LHA data for occupied habitat on BLM lands, 32 to 40 percent of total occupied habitat in the Gunnison Basin may have reduced habitat quality for Gunnison sage-grouse. This estimate may be conservative since it assumes habitat conditions are being met for Gunnison sage-grouse in occupied habitat on the remaining, un-assessed (''unknown'') BLM lands as well as private, State, and other Federal lands in the Gunnison Basin. Assuming conditions in occupied habitat on other lands are similar to those on BLM-administered lands, more than 40 percent of Gunnison sage-grouse occupied habitat in the Gunnison Basin may have reduced habitat conditions for Gunnison sage-grouse. Therefore, current and past livestock grazing may be negatively impacting the Gunnison Basin population.

However, the BLM has recently been modifying grazing permit terms and conditions in areas determined to be ''not meeting'' LHA standards through the permit renewal process. Examples of new permit terms or conditions required by the BLM include implementation of rotational grazing systems, deferment or elimination of grazing in certain pastures, reduced grazing duration (season of use), reduced stocking rates, fencing livestock out of riparian areas, or incorporating specific habitat objectives for Gunnison sage-grouse or other special status species (BLM 2012, pp. 1–2). It is anticipated that these changes will minimize further impacts to habitat and, in the future, improve degraded habitats for Gunnison sage-grouse in the Gunnison Basin, but there is no data at this time to substantiate this expectation.

Some data indicate habitat conditions within a portion of the Gunnison Basin may be favorable to Gunnison sage-grouse (Williams and Hild 2011, entire). Detailed vegetation monitoring was conducted on six study sites across the Gunnison Basin during the summer of 2010 in order to determine baseline habitat conditions for a potential future study of the effects of manipulating livestock grazing on Gunnison sage-grouse habitat (Williams and Hild 2011, entire). Transects were conducted on private, BLM, USFS, and CPW land. Results of this study indicated that, despite lower than average precipitation in the preceding year (2010), most vegetation measurements were within the structural habitat guidelines for Gunnison sage-grouse from the 2005 Rangewide Conservation Plan (GSRSC[b] 2005, pp. H–6–H–8). However, the study did not describe the extent of past or ongoing livestock grazing in these areas, nor did it compare un-grazed to grazed areas. Further, transect locations were prioritized and selected in areas used by radio-collared Gunnison sage-grouse. Therefore, the relationship between livestock grazing and habitat conditions is unclear, and the ability to infer conditions in other portions of the Gunnison Basin not prioritized for sampling is limited.

Federal Lands Grazing in All Other Population Areas—The BLM manages approximately 36 percent of the area currently occupied by Gunnison sage-grouse in the San Miguel Basin, and

approximately 79 percent of this area is actively grazed. Grazing certainly occurs on lands owned or managed by other entities, but we have no information on the extent of grazing in these areas. Within the occupied range in the San Miguel population, no active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 9). In 2009, 10 of 15 (77 percent) active allotments had LHAs completed in the last 15 years, 4 of 10 allotments (40 percent) were deemed by the BLM to meet LHA objectives. Gunnison sage-grouse habitats within the 60 percent of allotments not meeting LHA objectives and the 5 allotments with no LHAs completed are likely impacted by grazing in the same manner and proportion. Therefore, it appears that grazing is reducing habitat quality for Gunnison sage-grouse in a large portion of this population area.

More than 81 percent of the area occupied by the Dove Creek group is privately owned. The BLM manages 11 percent of the occupied habitat, and 41 percent of this area is actively grazed. Within the occupied range in the Dove Creek group of the Monticello-Dove Creek population, no active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 3). In 2009, no active allotments in occupied habitat had completed LHAs. Gunnison sage-grouse are not explicitly considered in grazing management planning and the lack of habitat data limits our ability to determine the impact to the habitat on public lands.

More than 95 percent of the area occupied by the Monticello group is privately owned. The BLM manages 4 percent of the occupied habitat, and 83 percent of this area is grazed. Within the occupied range in the Monticello group, all 6 active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 6). In 2009, 88 percent of the area of occupied habitat in active allotments had a recently completed LHA. Approximately 60 percent of the area in occupied habitat in active allotments was deemed by the BLM to meet LHA objectives. Given the small amount of land managed by the BLM in this area, this information suggests that grazing the majority of lands managed by the BLM is likely not contributing to Gunnison sage-grouse habitat degradation in the Monticello population group.

Grazing certainly occurs on lands owned or managed by other entities but we have no information on the extent of grazing in these areas. Livestock grazing on private lands, where present, has a greater potential to impact Gunnison sage-grouse; however, we lack information to make an assessment. Conservation Reserve Program (CRP) land has provided a considerable amount of brood-rearing habitat in the Monticello group because of its forb component. Grazing of CRP land in Utah occurred in 2002 under emergency Farm Bill provisions due to drought and removed at least some of the grass and forb habitat component, thus likely negatively affecting Gunnison sage-grouse chick survival. Radio-collared males and non-brood-rearing females exhibited temporary avoidance of grazed fields during and after grazing (Lupis *et al.* 2006, pp. 959–960), although one hen with a brood continued to use a grazed CRP field.

The BLM manages 28 percent of occupied habitat in the Piñon Mesa population area, and approximately 97 percent of this area is grazed. Over 50 percent of occupied habitat in this population area is privately owned, and while grazing certainly occurs on these lands, we have no information on its extent. Within the occupied range in the Piñon Mesa population, 8 of 15 (53 percent) active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 5). In 2009, 23 percent of the area of occupied Gunnison sage-grouse habitat in active allotments in the Piñon Mesa population area had LHAs completed in the last 15 years, and all of these were deemed by the BLM to meet LHA objectives. Therefore, for the portion of the Piñon Mesa population area for which we have information, it appears that grazing is managed in a manner consistent with Gunnison sage-grouse habitat requirements.

Over 76 percent of the area occupied by the Cerro Summit-Cimarron-Sims Mesa population area is privately owned. The BLM manages only 13 percent of the occupied habitat, and 83 percent of this area is grazed. Within the occupied range in the Cerro Summit-Cimarron-Sims Mesa population, 1 of 10 active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 7). In 2009, of the 10 active allotments, 5 had LHAs completed in the last 15 years, and 3 of these were deemed by the BLM as not meeting LHA objectives. Therefore, for the small portion of the Cerro Summit-Cimarron-Sims Mesa population area for which we have information, it appears that grazing is reducing habitat quality for Gunnison sage-grouse in portions of this population area. Grazing certainly occurs on lands owned or managed by other entities but we have no information on the extent of grazing in these areas. Livestock grazing on private lands, where present, has a greater potential to impact Gunnison sage-grouse because these areas are not required to meet agency-mandated land health standards. Because we lack information on how these lands are managed; we assume that impacts to Gunnison sage-grouse from grazing are similar to the BLM lands.

Lands administered by the BLM and NPS comprise over 75 percent of occupied habitat in the Crawford population, and 96 percent of this area is actively grazed. Grazing allotments on NPS lands in this area are administered by the BLM. Within occupied range in the Crawford population, 1 of 7 active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 8). In 2009, all of the active allotments had LHAs completed in the last 15 years, and 86 percent met LHA objectives. In addition, seasonal forage utilization levels were below 30 percent in most Crawford population allotments, although a small number of allotments had nearly 50 percent utilization (BLM 2009, p. 68). Based on this information, it appears that grazing is managed in a manner consistent with Gunnison sage-grouse conservation in the majority of the Crawford population area.

The BLM manages nearly half of occupied habitat in the Poncha Pass population area, and approximately 98 percent of this area is actively grazed. Within the occupied range in the Poncha Pass population, 1 of 8 active BLM grazing allotments have Gunnison sage-grouse habitat objectives incorporated into the allotment management plans or Records of Decision for permit renewals (USFWS 2010c, p. 4). In 2009, all active allotments in occupied habitat had completed LHAs and all were meeting LHA objectives. Based on this information it appears that grazing is managed in a manner consistent with Gunnison sage-grouse conservation in the majority of the Poncha Pass population area.

Wild Ungulate Herbivory in All Population Areas—Overgrazing by deer and elk may cause local degradation of habitats by removal of forage and residual hiding and nesting cover. Hobbs *et al.* (1996, pp. 210–213) documented a decline in available perennial grasses as elk densities increased. Such grazing could negatively impact nesting cover for sage-grouse. The winter range of deer and elk overlaps the year-round range of the Gunnison sage-grouse. Excessive but localized deer and elk grazing has been documented in the Gunnison Basin (BLM 2005a, pp. 17–18; Jones 2005, pers. comm.).

Grazing by deer and elk occurs in all Gunnison sage-grouse population areas. Although we have no information indicating that competition for resources is limiting Gunnison sage-grouse in the Gunnison Basin, BLM observed that certain mountain shrubs were being browsed heavily by wild ungulates (BLM 2009, p. 34). Subsequent results of monitoring in mountain shrub communities indicated that drought and big game were having large impacts on the survivability and size of mountain mahogany *(Cercocarpus utahensis),* bitterbrush *(Purshia tridentata),* and serviceberry *(Amelanchier alnifolia)* in the Gunnison Basin (Jupuntich *et al.* 2010, pp. 7–9). The authors raised concerns that observed reductions in shrub size and vigor will reduce drifting snow accumulation resulting in decreased moisture availability to grasses and forbs during the spring melt. Reduced grass and forb growth could negatively impact Gunnison sage-grouse nesting and early brood-rearing habitat.

Domestic Grazing and Wild Ungulate Herbivory Summary

Livestock management and domestic grazing have the potential to degrade Gunnison sage-grouse habitat. Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation available for concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species (GSRSC 2005, p. 173).

The impacts of livestock operations on Gunnison sage-grouse depend upon stocking levels and season of use. We recognize that not all livestock grazing results in habitat degradation, and many livestock operations within the range of Gunnison sage-grouse are employing innovative grazing strategies and conservation actions (BLM 2012, pp. 1–2; Gunnison County Stockgrowers 2009, entire) in collaboration with the BLM and Forest Service. As discussed above, habitat conditions are likely favorable to Gunnison sage-grouse in a portion of the Gunnison Basin (Williams and Hild 2011, entire), although the extent of livestock grazing in those areas is unknown.

Available information suggests that LHA objectives important to Gunnison sage-grouse are not being met across portions of the species' range and that livestock grazing is contributing to those conditions. Reduced habitat quality in those areas, as reflected in unmet LHA objectives, is likely negatively impacting Gunnison sage-grouse in most of the populations, including the Gunnison Basin. However, the relationship between LHA determinations and the effects of domestic livestock grazing on Gunnison sage-grouse is imprecise.

We know that grazing can have negative impacts to sagebrush and consequently to Gunnison sage-grouse at local scales. Impacts to sagebrush plant communities as a result of grazing are occurring on a large portion of the range of the species. Given the widespread nature of grazing within the range of Gunnison sage-grouse, the potential for population-level impacts is likely. We expect grazing to persist throughout the range of Gunnison sage-grouse for at least several decades. Effects of domestic livestock grazing are likely being exacerbated by intense browsing of woody species by wild ungulates in portions of the Gunnison Basin. Habitat degradation that can result from improperly managed grazing, particularly with the interacting factors of invasive weed expansion and climate change, is a threat to Gunnison sage-grouse persistence.

Fences

The effects of fencing on sage-grouse include direct mortality through collisions, creation of raptor and corvid perch sites, the potential creation of predator corridors along fences (particularly if a road is maintained next to the fence), incursion of exotic species along the fencing corridor, and habitat fragmentation (Call and Maser 1985, p. 22; Braun 1998, p. 145; Connelly *et al.* 2000a, p. 974; Beck *et al.* 2003, p. 211; Knick *et al.* 2003, p. 612; Connelly *et al.* 2004, p. 1–2).

Sage-grouse frequently fly low and fast across sagebrush flats, and fences can create a collision hazard resulting in direct mortality (Call and Maser 1985, p. 22; Christiansen 2009, pp. 1–2). Not all fences present the same mortality risk to sage-grouse. Mortality risk appears to be dependent on a combination of factors including design of fencing, landscape topography, and spatial relationship with seasonal habitats (Christiansen 2009, pp. 1–2). This variability in fence mortality rate and the lack of systematic fence monitoring make it difficult to determine the magnitude of direct strike mortality impacts to sage-grouse populations; however, in some cases the level of mortality is likely significant to localized areas within populations. Greater sage-grouse fence collisions during the breeding season in Idaho were found to be relatively common and widespread, with collisions being influenced by the technical attributes of the fences, fence length and density, topography, and distance to nearest active sage-grouse lek (Stevens 2011, pp. 102–107). We assume that Gunnison sage-grouse are also killed by fences but do not have species-specific data.

Although the effects of direct strike mortality on populations are not fully analyzed, fences are generally ubiquitous across the landscape. At least 1,540 km (960 mi) of fence are on BLM lands within the Gunnison Basin (Borthwick 2005b, pers. comm.; BLM 2005a, 2005e) and an unquantified amount of fence is located on land owned or managed by other landowners. Fences are present within all other Gunnison sage-grouse population areas, but we have no quantitative information on the amount or types of fencing in these areas.

Fence posts create perching places for raptors and corvids, which may increase their ability to prey on sage-grouse (Braun 1998, p. 145; Oyler-McCance *et al.* 2001, p. 330; Connelly *et al.* 2004, p. 13–12). This is particularly significant for sage-grouse reproduction because corvids were responsible for more than 50 percent of nest predations in Nevada (Coates 2007, pp. 26–30). Greater sage-grouse avoidance of habitat adjacent to fences, presumably to minimize the risk of predation, effectively results in habitat fragmentation even if the actual habitat is not removed (Braun 1998, p. 145). We anticipate that the effect on sage-grouse populations through the creation of new raptor perches and predator corridors into sagebrush habitats is similar to that of powerlines discussed above (Braun 1998, p. 145; Connelly *et al.* 2004, p. 7–3). Because of similarities in behavior and habitat use, the response of Gunnison sage-grouse should be similar to that observed in greater sage-grouse.

Summary of Fences

Fences contribute to habitat fragmentation and increase the potential for loss of individual grouse through collisions or enhanced predation. We expect that the majority of existing

fences will remain on the landscape indefinitely. In the smaller Gunnison sage-grouse populations, fencing is another source of mortality that cumulatively affects the ability of the species to persist. We also recognize that fences are located throughout all Gunnison sage-grouse populations and are, therefore, contributing to the fragmentation of remaining habitat and are a source of mortality within all populations. For these reasons, fences may be another factor contributing to the decline of Gunnison sage-grouse, both directly and indirectly. However, we have no specific data on the scope of this threat.

Invasive Plants

For the purposes of this proposed rule, we define invasive plants as those that are not native to an ecosystem and that have a negative impact on Gunnison sage-grouse habitat. Invasive plants alter native plant community structure and composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7) and may cause declines in native plant populations through competitive exclusion and niche displacement, among other mechanisms (Mooney and Cleland 2001, p. 5446). Invasive plants reduce and can eliminate vegetation that sage-grouse use for food and cover. Invasive plants do not provide quality sage-grouse habitat. Sage-grouse depend on a variety of native forbs and the insects associated with them for chick survival, and on sagebrush, which is used exclusively throughout the winter for food and cover.

Along with replacing or removing vegetation essential to sage-grouse, invasive plants fragment existing sage-grouse habitat. They can create long-term changes in ecosystem processes, such as fire-cycles (see discussion under Fire below) and other disturbance regimes that persist even after an invasive plant is removed (Zouhar *et al.* 2008, p. 33). A variety of nonnative annuals and perennials are invasive to sagebrush ecosystems (Connelly *et al.* 2004, pp. 7–107 and 7–108; Zouhar *et al.* 2008, p 144). Cheatgrass is considered most invasive in Wyoming big sagebrush communities (Connelly *et al.* 2004, p. 5–9). Other invasive plants found within the range of Gunnison sage-grouse that are reported to take over large areas include: Spotted knapweed *(Centaurea maculosa),* Russian knapweed *(Acroptilon repens),* oxeye daisy *(Leucanthemum vulgare),* yellow toadflax *(Linaria vulgaris),* and field bindweed *(Convolvulus arvensis)* (BLM 2009, p. 28, 36; Gunnison Watershed Weed Commission (GWWC) 2009, pp. 4–6).

Although not yet reported to create large expanses in the range of Gunnison sage-grouse, the following weeds are also known from the species' range and have successfully invaded large expanses in other parts of western North America: Diffuse knapweed *(Centaurea diffusa),* whitetop *(Cardaria draba),* jointed goatgrass *(Aegilops cylindrica),* and yellow starthistle *(Centaurea solstitialis).* Other invasive plant species present within the range of Gunnison sage-grouse that are problematic yet less likely to overtake large areas include: Canada thistle *(Cirsium arvense),* musk thistle *(Carduus nutans),* bull thistle *(Cirsium vulgare),* houndstongue *(Cynoglossum officinale),* black henbane *(Hyoscyamus niger),* common tansy *(Tanacetum vulgare),* and absinth wormwood *(A. biennis)* (BLM 2009, p. 28, 36; GWWC 2009, pp. 4–6).

Cheatgrass impacts sagebrush ecosystems by potentially shortening fire intervals from several decades, depending on the type of sagebrush plant community and site productivity, to as low as 3 to 5 years, perpetuating its own persistence and intensifying the role of fire (Whisenant 1990, p. 4). Cheatgrass presence can shorten fire intervals to less than 10 years resulting in the elimination of shrub cover and reducing the availability and quality of forb cover (Connelly *et al.* 2004, p. 7–5). As discussed in the climate change section below, temperature increases may increase the competitive advantage of cheatgrass in higher elevation areas (such as the range of the Gunnison sage-grouse) where its current distribution is limited (Miller *et al.* 2011, pp. 181–183). Decreased summer precipitation reduces the competitive advantage of summer perennial grasses, reduces sagebrush cover, and subsequently increases the likelihood of cheatgrass invasion (Bradley 2009, pp. 202–204; Prevey *et al.* 2009, p. 11). This change could increase the susceptibility of sagebrush areas in Utah and Colorado to cheatgrass invasion (Bradley 2009, p. 204).

A variety of restoration and rehabilitation techniques are used to treat invasive plants, but they can be costly and are mostly unproven and experimental at a large scale. In the last 100 years, no broad-scale cheatgrass eradication method has been developed. Habitat treatments that either disturb the soil surface or deposit a layer of litter increase cheatgrass establishment in the Gunnison Basin when a cheatgrass seed source is present (Sokolow 2005, p. 51). Therefore, researchers recommend using habitat treatment tools, such as brush mowers, with caution and suggest that treated sites should be monitored for increases in cheatgrass emergence (Sokolow 2005, p. 49).

Invasive Plants in the Gunnison Basin Population Area—Quantifying the total amount of Gunnison sage-grouse habitat impacted by invasive plants is difficult due to differing sampling methodologies, incomplete sampling, inconsistencies in species sampled, and varying interpretations of what constitutes an infestation (Miller *et al.,* 2011, pp. 155–156). Cheatgrass has invaded areas in Gunnison sage-grouse range, supplanting sagebrush habitat in some areas (BLM 2009, p. 60). However, we do not have a reliable estimate of the amount of area occupied by cheatgrass in the range of Gunnison sage-grouse. While not ubiquitous, cheatgrass is found at numerous locations throughout the Gunnison Basin (BLM 2009, p. 60). Cheatgrass infestation within a particular area can range from a small number of individuals scattered sparsely throughout a site, to complete or near-complete understory domination of a site. Cheatgrass has increased throughout the Gunnison Basin in the last decade and is becoming increasingly detrimental to sagebrush community types (BLM 2009, p. 7). Currently in the Gunnison Basin, cheatgrass attains site dominance most often along roadways; however, other highly disturbed areas have similar cheatgrass densities. Cheatgrass is currently present in almost every grazing allotment in Gunnison sage-grouse occupied habitat and other invasive plant species, such as Canada thistle, black henbane, spotted knapweed, Russian knapweed, Kochia, bull thistle, musk thistle, oxeye daisy, yellow toadflax and field bindweed, are found in riparian areas and roadsides throughout the Gunnison Basin (BLM 2009, p. 7).

Although disturbed areas most often contain the highest cheatgrass densities, cheatgrass can readily spread into less disturbed and even undisturbed habitat. A strong indicator for future cheatgrass invasion is the proximity to current locations (Bradley and Mustard 2006, p. 1146) as well as summer, annual, and spring precipitation, and winter temperature (Bradley 2009, p. 196). Although we lack the information to make a detailed determination on the actual extent or rate of increase, given its invasive nature, it appears that cheatgrass and its negative influence on Gunnison sage-grouse will increase in the Gunnison Basin in the future because of potential exacerbation from climate change interactions and the

limited success of broad-scale control efforts. Based on experience from other areas in sagebrush ecosystems concerning the rapid spread of cheatgrass and the shortened fire return intervals that can result, the spread of cheatgrass within Gunnison sage-grouse habitat and the likely negative effects to Gunnison sage-grouse populations will increase.

Invasive Plants in All Other Population Areas—Cheatgrass is present throughout much of the current range in the San Miguel Basin (BLM 2005c, p. 6), but is most abundant in the Dry Creek Basin group (CDOW 2005, p. 101), which comprises 62 percent of the San Miguel Basin population. It is present in the five Gunnison sage-grouse subpopulations east of Dry Creek Basin, although at much lower densities that do not currently pose a serious threat to Gunnison sage-grouse (CDOW 2005, p. 101). Invasive species are present at low levels in the Monticello group (San Juan County GSGWG 2005, p. 20). However, there is no evidence that they are affecting the population.

Cheatgrass dominates 10–15 percent of the sagebrush understory in the current range of the Piñon Mesa population (Lambeth 2005, pers. comm.). It occurs in the lower elevation areas below Piñon Mesa that were formerly Gunnison sage-grouse range. Cheatgrass invaded two small prescribed burns in or near occupied habitat conducted in 1989 and 1998 (BLM 2005d, p. 6), and continues to be a concern with new ground-disturbing projects. Invasive plants, especially cheatgrass, occur primarily along roads, other disturbed areas, and isolated areas of untreated vegetation in the Crawford population. The threat of cheatgrass may be greater to sage-grouse than all other nonnative species combined and could be a major limiting factor when and if disturbance is used to improve habitat conditions, unless mitigated (BLM 2005c, p. 6).

Within the Piñon Mesa Gunnison sage-grouse population area, 520 ha (1,284 ac) of BLM lands are currently mapped with cheatgrass as the dominant species (BLM 2009, p. 3). This is not a comprehensive inventory of cheatgrass occurrence, as it only includes areas where cheatgrass dominates the plant community and does not include areas where the species is present at lower densities. Cheatgrass distribution has not been comprehensively mapped for the Monticello-Dove Creek population area; however, cheatgrass is beginning to be assessed on a site-specific and project-level basis. No significant invasive plant occurrences are currently known in the Poncha Pass population area.

Summary of Invasive Plants

Invasive plants negatively impact Gunnison sage-grouse primarily by reducing or eliminating native vegetation that sage-grouse require for food and cover, resulting in habitat loss and fragmentation. Although invasive plants, especially cheatgrass, have affected some Gunnison sage-grouse habitat, the impacts do not currently appear to be threatening individual populations or the species rangewide. However, invasive plants continue to expand their range, facilitated by ground disturbances such as fire, grazing, and human infrastructure. Climate change will likely alter the range of individual invasive species, increasing fragmentation and habitat loss of sagebrush communities. Even with treatments, given the history of invasive plants on the landscape, and our continued inability to control such species, invasive plants will persist and will likely continue to spread throughout the range of the species indefinitely. Therefore, invasive plants and associated increased fire risk will be on the landscape indefinitely. Although currently not a major threat to the persistence of Gunnison sage-grouse at the species level, we anticipate invasive species to become an increasing threat to the species in the future, particularly when considered in conjunction with future climate projections and potential changes in sagebrush plant community composition and dynamics.

Fire

The nature of historical fire patterns in sagebrush communities, particularly in Wyoming big sagebrush, is not well understood, and a high degree of variability likely occurred (Miller and Eddleman 2000, p. 16; Zouhar *et al.* 2008, p. 154; Baker 2011, p. 195). In general, mean fire return intervals in low-lying, xeric (dry) big sagebrush communities range from over 100 to 350 years, and return intervals decrease from 50 to over 200 years in more mesic (wet) areas, at higher elevations, during wetter climatic periods, and in locations associated with grasslands (Baker 2006, p. 181; Mensing *et al.* 2006, p. 75; Baker 2011, pp. 194–195; Miller *et al.* 2011, p. 166).

Mountain big sagebrush, the most important and widespread sagebrush species for Gunnison sage-grouse, is killed by fire and can require decades to recover. In nesting and wintering sites, fire causes direct loss of habitat due to reduced cover and forage (Call and Maser 1985, p. 17). While there may be limited instances where burned habitat is beneficial, these gains are lost if alternative sagebrush habitat is not readily available (Woodward 2006, p. 65). As we describe above in the Current Distribution and Population Estimates section, little alternative habitat is available for Gunnison sage-grouse, so beneficial effects of fire are highly unlikely.

Herbaceous understory vegetation plays a critical role throughout the breeding season as a source of forage and cover for Gunnison sage-grouse females and chicks. The response of herbaceous understory vegetation to fire varies with differences in species composition, pre-burn site condition, fire intensity, and pre- and post-fire patterns of precipitation. In general, when not considering the synergistic effects of invasive species, any beneficial short-term flush of understory grasses and forbs is lost after only a few years and little difference is apparent between burned and unburned sites (Cook *et al.* 1994, p. 298; Fischer *et al.* 1996a, p. 196; Crawford 1999, p. 7; Wrobleski 1999, p. 31; Nelle *et al.* 2000, p. 588; Paysen *et al.* 2000, p. 154; Wambolt *et al.* 2001, p. 250). In addition to altering plant community structure through shrub removal and potential weed invasion, fires can influence invertebrate food sources (Schroeder *et al.* 1999, p. 5). However, because few studies have been conducted and the results of those available vary, the specific magnitude and duration of the effects of fire on insect communities is still uncertain.

The invasion of the exotic annual grass cheatgrass increases fire frequency within the sagebrush ecosystem (Zouhar *et al.* 2008, p. 41; Miller *et al.* 2011, p. 170). Cheatgrass readily invades sagebrush communities, especially disturbed sites, and changes historical fire patterns by providing an abundant and easily ignitable fuel source that facilitates fire spread. While sagebrush is killed by fire and is slow to reestablish, cheatgrass recovers within 1 to 2 years of a fire event (Young and Evans 1978, p. 285). This annual recovery leads to a readily burnable fuel source and ultimately a reoccurring fire cycle that prevents sagebrush reestablishment (Eiswerth *et al.* 2009, p. 1324). The extensive distribution and highly invasive nature of cheatgrass poses substantial increased risk of fire and permanent loss of sagebrush habitat, as areas disturbed by fire are highly susceptible to further invasion and ultimately habitat conversion to an altered community state. For example, Link *et al.* (2006, p. 116) show that risk of fire increases from approximately 46

to 100 percent when ground cover of cheatgrass increases from 12 to 45 percent or more. We do not have a reliable estimate of the amount of area occupied by cheatgrass in the range of Gunnison sage-grouse. However, cheatgrass is found at numerous locations throughout the Gunnison Basin (BLM 2009, p. 60).

A clear positive response of Gunnison or greater sage-grouse to fire has not been demonstrated (Braun 1998, p. 9). The few studies that have suggested fire may be beneficial for greater sage-grouse were primarily conducted in mesic areas used for brood-rearing (Klebenow 1970, p. 399; Pyle and Crawford 1996, p. 323; Gates 1983, *in* Connelly *et al.* 2000c, p. 90; Sime 1991, *in* Connelly *et al.* 2000a, p. 972). In this type of habitat, small fires may maintain a suitable habitat mosaic by reducing shrub encroachment and encouraging understory growth. However, without available nearby sagebrush cover, the utility of these sites is questionable, especially within the six small Gunnison sage-grouse populations where fire could further degrade and fragment the remaining habitat.

Fire in the Gunnison Basin Population Area—Six prescribed burns have occurred on BLM lands in the Gunnison Basin since 1984, totaling approximately 409 ha (1,010 ac) (BLM 2009, p. 35). The fires created large sagebrush-free areas that were further degraded by poor post-burn livestock management (BLM 2005a, p. 13). As a result, these areas are no longer suitable as Gunnison sage-grouse habitat. Approximately 8,470 ha (20,930 ac) of prescribed burns occurred on Forest Service lands in the Gunnison Basin since 1983 (USFS 2009, p. 1). A small wildfire on BLM lands near Hartman Rocks burned 8 ha (20 ac) in 2007 (BLM 2009, p. 35). The total area of occupied Gunnison sage-grouse habitat burned in recent decades is approximately 8,887 ha (21,960 ac), which constitutes 1.5 percent of the occupied Gunnison sage-grouse habitat area. Cumulatively, this area equates to a relatively small amount of habitat burned over a period of nearly three decades. This information suggests that there has not been a demonstrated change in fire cycle in the Gunnison Basin population area to date.

Fire in All Other Population Areas—Two prescribed burns conducted in 1986 (105 ha (260 ac)) and 1992 (140 ha (350 ac)) on BLM land in the San Miguel Basin on the north side of Dry Creek Basin had negative impacts on sage-grouse. The burns were conducted for big game forage improvement, but the sagebrush died and was largely replaced with weeds (BLM 2005b, pp. 7–8). The Burn Canyon fire in the Dry Creek Basin and Hamilton Mesa areas burned 890 ha (2,200 ac) in 2000. Three fires have occurred in Gunnison sage-grouse habitat since 2004 on lands managed by the BLM in the Crawford, Cerro Summit-Cimarron-Sims Mesa, and San Miguel Basin population areas. There have been no fires since 2004 on lands managed by the BLM within the Monticello-Dove Creek population. Because these fires were mostly small in size, we do not believe they resulted in substantial impacts to Gunnison sage-grouse.

Several wildfires near or within the Piñon Mesa population area have occurred in the past 20 years. One fire burned a small amount of occupied Gunnison sage-grouse habitat in 1995, and several fires burned in potential Gunnison sage-grouse habitat. Individual burned areas ranged from 3.6 ha (9 ac) to 2,160 ha (5,338 ac). A wildfire in 2009 burned 1,053 ha (2,602 ac), predominantly within vacant or unknown Gunnison sage-grouse habitat (suitable habitat for sage-grouse that is separated from occupied habitats that has not been adequately inventoried, or without recent documentation of grouse presence) near the Piñon Mesa population. Since 2004, a single 2.8-ha (7-ac) wildfire occurred in the Cerro Summit-Cimarron-Sims Mesa population area, and two prescribed fires, both less than 12 ha (30 ac), were implemented in the San Miguel population area. There was no fire activity within occupied Gunnison sage-grouse habitat in the last two decades in the Poncha Pass population area (CDOW 2009b, pp. 125–126) or the Monticello-Dove Creek population area (CDOW 2009b, p. 75; UDWR 2009, p. 5). Because fires have burned primarily outside of occupied Gunnison sage-grouse habitat in the Piñon Mesa population area and fire has been recently absent or minimal in most other population areas, fire has not resulted in substantial impacts to Gunnison sage-grouse in these population areas.

Summary of Fire

Fires can cause the proliferation of weeds and can degrade suitable sage-grouse habitat, which may not recover to suitable conditions for decades, if at all (Pyke 2011, p. 539). Recent fires in Gunnison sage-grouse habitat were mostly small in size and did not result in substantial impacts to Gunnison sage-grouse, and there has been no obvious change in fire cycle in any Gunnison sage-grouse population area to date. Therefore, we do not consider fire to be a threat to the persistence of Gunnison sage-grouse at this time. We do not have the information to predict the extent or location of future fire events. However, the best available data indicates that fire frequency may increase in the future as cheatgrass continues to encroach on the sagebrush habitat and with the projected effects of climate change (see Invasive Plants and Climate Change discussions, above and below, respectively). Fire is, therefore, likely to become a threat to the persistence of Gunnison sage-grouse in the future.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. 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. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

According to the Intergovernmental Panel on Climate Change (IPCC), ''Warming of the climate system in recent decades is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global sea level'' (IPCC 2007, p. 1). Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 30). Over the past 50 years cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more

frequent. Heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 30).

For the southwestern region of the United States, including western Colorado, warming is occurring more rapidly than elsewhere in the country (Karl *et al.* 2009, p. 129). Annual average temperature in west-central Colorado increased 3.6 °C (2 °F) over the past 30 years, but high variability in annual precipitation precludes the detection of long-term precipitation trends (Ray *et al.* 2008, p. 5). Under high greenhouse gas emission scenarios, future projections for the southwestern United States show increased probability of drought (Karl *et al.* 2009, pp. 129–134) and the number of days over 32 °C (90 °F) could double by the end of the century (Karl *et al.* 2009, p. 34). Climate models predict annual temperature increase of approximately 2.2 °C (4 °F) in the Southwest by 2050, with summers warming more than winters (Ray *et al.* 2008, p. 29). Projections also show declines in snowpack across the West with the most dramatic declines at lower elevations (below 2,500 m (8,200 ft)) (Ray *et al.,* p. 29).

Colorado's complex, mountainous topography results in a high degree of spatial variability across the State. As a result, localized climate projections are problematic for mountainous areas because current global climate models are unable to capture this variability at local or regional scales (Ray *et al.* 2008, pp. 7, 20). To obtain climate projections specific to the range of Gunnison sage-grouse, we requested a statistically downscaled model from the National Center for Atmospheric Research for a region covering western Colorado. The resulting projections indicate the highest probability scenario is that average summer (June through September) temperature could increase by 2.8 °C (5.1 °F), and average winter (October through March) temperature could increase by 2.2 °C (4.0 °F) by 2050 (University Corporation for Atmospheric Research (UCAR) 2009, pp. 1–15). Annual mean precipitation projections for Colorado are unclear; however, multimodel averages show a shift towards increased winter precipitation and decreased spring and summer precipitation (Ray *et al.* 2008, p. 34; Karl *et al.* 2009, p. 30). Similarly, the multimodel averages show the highest probability of a 5 percent increase in average winter precipitation and a 5 percent decrease in average spring-summer precipitation in 2050 (UCAR 2009, p. 15). It is unclear at this time whether or not the year 2050 predicted changes in precipitation and temperature will be of enough magnitude to significantly alter sagebrush plant community composition and dynamics.

For sagebrush, spring and summer precipitation comprises the majority of the moisture available to the species; thus, the interaction between reduced precipitation in the spring-summer growing season and increased summer temperatures will likely decrease growth of mountain big sagebrush. This could result in a significant long-term reduction in the distribution of sagebrush communities (Miller *et al.* 2011, pp. 171–174). In the Gunnison Basin, increased summer temperature was strongly correlated with reduced growth of mountain big sagebrush (Poore *et al.* 2009, p. 558). Based on these results and the likelihood of increased winter precipitation falling as rain rather than snow and the corresponding increase in evaporation and decrease in deep soil water recharge, Poore *et al* (2009, p. 559) predict decreased growth of mountain big sagebrush, particularly at the lower elevation limit of the species. Because Gunnison sage-grouse are sagebrush obligates, loss of sagebrush would result in a reduction of suitable habitat and negatively impact the species. The interaction of climate change with other stressors likely has impacted and will impact the sagebrush steppe ecosystem within which Gunnison sage-grouse occur.

Climate change is likely to alter fire frequency, community assemblages, and the ability of nonnative species to proliferate. Increasing temperature as well as changes in the timing and amount of precipitation will alter the competitive advantage among plant species (Miller *et al.* 2011, pp. 175–179), and may shift individual species and ecosystem distributions (Bachelet *et al.* 2001, p. 174). Temperature increases may increase the competitive advantage of cheatgrass in higher elevation areas where its current distribution is limited (Miller *et al.* 2011, p. 182). Decreased summer precipitation reduces the competitive advantage of summer perennial grasses, reduces sagebrush cover, and subsequently increases the likelihood of cheatgrass invasion (Prevey *et al.* 2009, p. 11). This impact could increase the susceptibility of areas within Gunnison sage-grouse range to cheatgrass invasion (Bradley 2009, p. 204), which would reduce the overall cover of native vegetation, reduce habitat quality, and potentially decrease fire return intervals, all of which would negatively affect the species.

Under drought conditions, plants generally are less vigorous and less successful in reproduction and may require several years to recover following drought (Weltzin *et al.* 2003, p. 946). Increased drought and shifts in the magnitude and timing of temperature and precipitation could reduce herbaceous and insect production within Gunnison sage-grouse habitats. A recent climate change vulnerability index applied to Gunnison sage-grouse ranked the species as ''highly vulnerable'' to modeled climate change by the year 2050 (The Nature Conservancy 2011, p. 11). The mechanism of this vulnerability was considered to be the degradation of high-quality brood-rearing habitat due to the loss of adequate moisture to maintain mesic meadows, springs, seeps, and riparian areas, as well as potential changes in the fire regime and subsequent loss of sagebrush cover. A reduction in the quality and amount of these resources will likely affect key demographic processes such as the productivity of breeding hens and survival of chicks and result in reduced population viability. The drought conditions from 1999 through 2003 were closely associated with reductions in the sizes of all populations, although population estimates did recover to pre-drought levels in some populations (CDOW 2009, entire). The small sizes of six of seven Gunnison sage-grouse populations make them particularly sensitive to stochastic fluctuations, and these fluctuations are exacerbated by drought (GSRSC 2005, p. G–22).

Summary of Climate Change

Climate change predictions are based on models with assumptions, and there are uncertainties regarding the magnitude of associated climate change parameters such as the amount and timing of precipitation and seasonal temperature changes. There is also uncertainty as to the magnitude of effects of predicted climate parameters on sagebrush plant community dynamics. These factors make it difficult to predict whether or to what extent climate change will affect Gunnison sage-grouse. We recognize that climate change has the potential to alter Gunnison sage-grouse habitat by facilitating an increase in the distribution of cheatgrass and concurrently increasing the potential for wildfires, and reducing herbaceous vegetation and insect production in drought years, which would have negative effects on Gunnison sage-grouse. We do not consider climate change to be a threat to the persistence of Gunnison sage-grouse at this time

because of the uncertainties described above. However, based on the best available information on climate change projections into the next 40 years, climate change has the potential to alter the distribution and extent of cheatgrass and sagebrush and associated fire frequencies, and key seasonal Gunnison sage-grouse food resources, and, therefore, is likely to become an increasingly important threat to the persistence of Gunnison sage-grouse.

Renewable Energy Development—Geothermal, Wind, Solar

Geothermal Energy Development—Geothermal energy production is similar to oil and gas development in that it requires surface exploration, exploratory drilling, field development, and plant construction and operation and likely results in similar degrees of direct and functional habitat loss. Wells are drilled to access the thermal source. This can require 3 weeks to 2 months of continuous drilling (Suter 1978, p. 3), which may cause disturbance to sage-grouse. The ultimate number of wells, and, therefore, potential loss of habitat, depends on the thermal output of the source and expected production of the plant (Suter 1978, p. 3). Pipelines are needed to carry steam or superheated liquids to the generating plant, which is similar in size to a coal- or gas-fired plant, resulting in further habitat destruction and indirect disturbance. Direct habitat loss occurs from well pads, structures, roads, pipelines and transmission lines, and impacts would be similar to those described below for oil and gas development. The development of geothermal energy requires intensive human activity during field development and operation, which could lead to habitat loss. Furthermore, geothermal development could cause toxic gas release. The type and effect of these gases depends on the geological formation in which drilling occurs (Suter 1978, pp. 7–9). The amount of water necessary for drilling and condenser cooling may be high. Local water depletions may be a concern if such depletions result in the loss or degradation of brood-rearing habitat.

Geothermal Energy in the Gunnison Basin Population Area—Approximately 87 percent of the entire occupied range of Gunnison sage-grouse, including the entire Gunnison Basin, is within a region of known geothermal potential (BLM and USFS 2010, p. 1). We have no information on the presence of active geothermal energy generation facilities; however, we are aware of three current applications for geothermal leases within the range of Gunnison sage-grouse. All of the applications are located in the Gunnison Basin in the same general vicinity on private, BLM, USFS, and Colorado State Land Board lands near Tomichi Dome and Waunita Hot Springs in southeastern Gunnison County. The cumulative area of the geothermal lease application parcels is approximately 4,061 ha (10,035 ac), of which approximately 3,802 ha (9,395 ac) is occupied Gunnison sage-grouse habitat, or approximately 2 percent of the Gunnison Basin population area.

One active lek and two inactive leks are located within the lease application parcels. In addition, six active leks and four inactive leks are within 6.4 km (4 mi) of the lease application parcels indicating that a high degree of seasonal use may occur within the area surrounding these leks (GSRSC 2005, p. J–4). There are 74 active leks in the Gunnison Basin population, so approximately 10 percent of active leks may be affected. A significant amount of high-quality Gunnison sage-grouse nesting habitat also exists on and near the lease application parcels (Aldridge *et al.* 2011, p. 9). If geothermal development occurs on the lease application parcels, it would likely negatively impact Gunnison sage-grouse through the direct loss of habitat and the functional loss of habitat resulting from increased human activity in the area. However, we cannot determine the potential extent of the impacts of such development at this time because the size and location of potential geothermal energy generation infrastructure and final resource protection conditions currently are unknown, nor do we know where potential geothermal developments might occur.

Geothermal Energy in All Other Population Areas—We could find no information on the presence of existing, pending, or authorized geothermal energy sites, nor any other areas with high potential for geothermal energy development, within any other Gunnison sage-grouse population area.

Wind Energy Development—Most published reports of the effects of wind development on birds focus on the risks of collision with towers or turbine blades. No published research is specific to the effects of wind farms on Gunnison or greater sage-grouse. However, the avoidance of human-made structures such as powerlines and roads by sage-grouse and other prairie grouse is documented (Holloran 2005, p. 1; Pruett *et al.* 2009, pp. 1255–1256). Renewable energy facilities, including wind power, typically require many of the same features for construction and operation as do nonrenewable energy resources. Therefore, we anticipate that potential impacts from direct habitat losses, habitat fragmentation through roads and powerlines, noise, and increased human presence (Connelly *et al.* 2004, pp. 7–40 to 7–41) will generally be similar to those discussed below for nonrenewable energy development.

Wind farm development begins with site monitoring and collection of meteorological data to accurately characterize the wind regime. Turbines are installed after the meteorological data indicate the appropriate siting and spacing. Roads are necessary to access the turbine sites for installation and maintenance. Each turbine unit has an estimated footprint of 0.4 to 1.2 ha (1 to 3 ac) (BLM 2005e, pp. 3.1–3.4). One or more substations may be constructed depending on the size of the farm. Substation footprints are 2 ha (5 ac) or less in size (BLM 2005e, p. 3.7).

The average footprint of a turbine unit is relatively small from a landscape perspective. Turbines require careful placement within a field to avoid loss of output from interference with neighboring turbines. Spacing improves efficiency but expands the overall footprint of the field. Sage-grouse populations are impacted by the direct loss of habitat, primarily from construction of access roads as well as indirect loss of habitat due to avoidance of the wind turbines. Sage-grouse could be killed by flying into turbine rotors or towers (Erickson *et al.* 2001, entire), although reported collision mortalities have been few. One sage-grouse was found dead within 45 m (148 ft) of a turbine on the Foote Creek Rim wind facility in south-central Wyoming, presumably from flying into a turbine (Young *et al.* 2003, Appendix C, p. 61). This is the only known sage-grouse mortality at this facility during three years of monitoring. We have no recent reports of sage-grouse mortality due to collision with a wind turbine; however, many facilities may not be monitored. No deaths of gallinaceous birds were reported in a comprehensive review of avian collisions and wind farms in the United States; the authors hypothesized that the average tower height and flight height of grouse, and diurnal migration habitats of some birds minimized the risk of collision (Johnson *et al.* 2000, pp. ii–iii; Erickson *et al.* 2001, pp. 8, 11, 14, 15).

Noise is produced by wind turbine mechanical operation (gear boxes, cooling fans) and airfoil interaction with the atmosphere. No published studies have focused specifically on the effects of wind power noise and Gunnison or greater sage-grouse. In studies

conducted in oil and gas fields, noise may have played a factor in habitat selection and decrease in greater sage-grouse lek attendance (Holloran 2005, pp. 49, 56). However, comparison between wind turbine and oil and gas operations is difficult based on the character of sound. Adjusting for manufacturer type and atmospheric conditions, the audible operating sound of a single wind turbine has been calculated as the same level as conversational speech at 1 m (3 ft) at a distance of 600 m (2,000 ft) from the turbine. This level is typical of background levels of a rural environment (BLM 2005e, p. 5–24). However, commercial wind farms do not have a single turbine, and multiple turbines over a large area would likely have a much larger noise print. Low-frequency vibrations created by rotating blades also produce annoyance responses in humans (van den Berg 2003, p. 1), but the specific effect on birds is not documented.

Moving blades of turbines cast moving shadows that cause a flickering effect producing a phenomenon called ''shadow flicker'' (AWEA 2008, p. 5–33). Shadow flicker could mimic predator shadows and elicit an avoidance response in birds during daylight hours, but this potential effect has not been investigated. However, greater sage-grouse hens with broods have been observed under turbines at Foote Creek Rim (Young 2004, pers. comm.).

Wind Energy in the Monticello Subpopulation Area—There appears to be an increasing interest in wind energy development in the vicinity of the Monticello subpopulation as two energy development companies have recently leased private properties for wind turbine construction (UDWR 2011, p. 3). We have no further information on potential plans for development, or the size or scope of any planned development. A 388-ha (960-ac) wind energy generation facility is also authorized on BLM lands in San Juan County, UT. However, the authorized facility is approximately 12.9 km (8 mi) from the nearest lek in the Monticello subpopulation.

The State of Utah recently completed a statewide screening study to identify geographic areas with a high potential for renewable energy development (UDNR 2009, entire). An approximately 80,200-ha (198,300-ac) area northwest of the city of Monticello, UT, was identified, with a high level of confidence, as a wind power production zone with a high potential for utility-scale wind development (production of greater than 500 megawatts) (UDNR 2009, p. 19). The mapped wind power production zone overlaps with nearly all Gunnison sage-grouse occupied habitat in the Monticello subpopulation, as well as the large area surrounding the perimeter of occupied habitat. The Monticello subpopulation is currently small (approximately 100 individuals).

Wind Energy in All Other Population Areas—We could find no information on the presence of existing, pending, or authorized wind energy sites, or any other areas with high potential for wind energy development within any other Gunnison sage-grouse population area.

Solar Energy Development—Current information does not indicate that solar energy development is under consideration in the Gunnison sage-grouse range, and, therefore, there is no information indicating that the species may be exposed to any threats posed by such development.

Summary of Renewable Energy Development

Because of the lack of information on future development, we do not consider renewable energy development to be a threat to the persistence of Gunnison sage-grouse at this time. However, geothermal energy development could increase in the Gunnison Basin in the future and could (depending on the level of development and minimization and mitigation measures) influence the overall long-term viability of the Gunnison Basin population. Similarly, wind energy development could increase in the future in the Monticello subpopulation, which may lead to further population declines in this already small population and could lead to the extirpation of this subpopulation. Because we have no information indicating the presence of existing, pending, or authorized solar energy sites, nor any solar energy study areas within the range of Gunnison sage-grouse, we do not consider solar energy to be a threat to Gunnison sage-grouse.

Nonrenewable Energy Development

Energy development on Federal (BLM and USFS) lands is regulated by the BLM and can contain conservation measures for wildlife species (see Factor D for a more thorough discussion). The BLM (1999a, p. 1) has classified the area encompassing all Gunnison sage-grouse habitat for its gas and oil potential. Two populations have areas with high oil and gas development potential (San Miguel Basin, Monticello-Dove Creek) or medium (Crawford) oil and gas potential, while the remaining populations are classified as low or none. San Miguel County, where much oil and gas activity has occurred in the last few years, ranked 9 out of 39 in Colorado counties producing natural gas in 2009 (Colorado Oil and Gas Conservation Commission 2010, p. 1) and 29 of 39 in oil production in 2009 (Colorado Oil and Gas Conservation commission 2010, p. 2).

Energy development impacts sage-grouse and sagebrush habitats through direct habitat loss from well pad construction, seismic surveys, roads, powerlines and pipeline corridors, and indirectly from noise, gaseous emissions, changes in water availability and quality, and human presence. The interaction and intensity of effects could cumulatively or individually lead to habitat fragmentation (Suter 1978, pp. 6–13; Aldridge 1998, p. 12; Braun 1998, pp. 144–148; Aldridge and Brigham 2003, p. 31; Knick *et al.* 2003, pp. 612, 619; Lyon and Anderson 2003, pp. 489–490; Connelly *et al.* 2004, pp. 7–40 to 7–41; Holloran 2005, pp. 56–57; Holloran 2007 *et al.,,* pp. 18–19; Aldridge and Boyce 2007, pp. 521–522; Walker *et al.* 2007a, pp. 2652–2653; Zou *et al.* 2006, pp. 1039–1040; Doherty *et al.* 2008, p. 193; Leu and Hanser 2011, pp. 270–271). Increased human presence resulting from oil and gas development can also impact sage-grouse either through avoidance of suitable habitat, or disruption of breeding activities (Braun *et al.* 2002, pp. 4–5; Aldridge and Brigham 2003, pp. 30–31; Aldridge and Boyce 2007, p. 518; Doherty *et al.* 2008, p. 194).

The development of oil and gas resources requires surveys for economically recoverable reserves, construction of well pads and access roads, subsequent drilling and extraction, and transport of oil and gas, typically through pipelines. Ancillary facilities can include compressor stations, pumping stations, electrical generators and powerlines (Connelly *et al.* 2004, p. 7–39; BLM 2007, p. 2–110). Surveys for recoverable resources occur primarily through noisy seismic exploration activities. These surveys can result in the crushing of vegetation. Well pads vary in size from 0.10 ha (0.25 ac) for coal-bed natural gas wells in areas of level topography to greater than 7 ha (17.3 ac) for deep gas wells and multi-well pads (Connelly *et al.* 2004, p. 7–39; BLM 2007, p. 2–123). Pads for compressor stations require 5–7 ha (12.4–17.3 ac) (Connelly *et al.* 2004, p. 7–39).

The amount of direct habitat loss within an area of oil and gas development is ultimately determined by well densities and the associated loss from ancillary facilities. Roads associated with oil and gas development were suggested to be the primary impact

to greater sage-grouse due to their persistence and continued use even after drilling and production ceased (Lyon and Anderson 2003, p. 489). Declines in male greater sage-grouse lek attendance were reported within 3 km (1.9 mi) of a well or haul road with a traffic volume exceeding one vehicle per day (Holloran 2005, p. 40). Because of reasons discussed previously, we believe the effects to Gunnison sage-grouse are similar to those observed in greater sage-grouse. Sage-grouse also may be at increased risk for collision with vehicles simply due to the increased traffic associated with oil and gas activities (Aldridge 1998, p. 14; BLM 2003, p. 4–222).

Habitat fragmentation resulting from oil and gas development infrastructure, including access roads, may have greater effects on sage-grouse than the associated direct habitat losses. Energy development and associated infrastructure works cumulatively with other human activity or development to decrease available habitat and increase fragmentation. Greater sage-grouse leks had the lowest probability of persisting (40–50 percent) in a landscape with less than 30 percent sagebrush within 6.4 km (4 mi) of the lek (Walker *et al.* 2007a, p. 2652). These probabilities were even less in landscapes where energy development also was a factor.

Nonrenewable Energy Development in All Population Areas—Approximately 33 percent of the Gunnison Basin population area ranked as low oil and gas potential with the remainder having no potential for oil and gas development (GSRSC 2005, p. 130). Nonrenewable energy production is currently taking place on 43 gas wells that occur on private lands within the occupied range of the Gunnison sage-grouse. Of these, 27 wells occur in the San Miguel population, 8 in the Gunnison Basin population, 6 in the Dove Creek group of the Monticello-Dove Creek population, and 1 in each of the Crawford and Cerro Summit-Cimarron-Sims Mesa populations (derived from Colorado Oil and Gas Commission 2010, GIS dataset).

No Federal lands leased for oil and gas development exist within the Gunnison Basin population area (BLM and USFS 2010). The Monticello group is in an area of high energy potential (GSRSC 2005, p. 130); however, less than two percent of the population area contains Federal leases that are currently in production, and no producing leases occur in currently occupied Gunnison sage-grouse habitat (BLM and USFS 2010). No oil and gas wells or authorized Federal leases are within the Piñon Mesa population area (BLM 2009, p. 1; BLM and USFS 2010), and no potential for oil or gas exists in this area except for a small area on the eastern edge of the largest habitat block (BLM 1999, p. 1; GSRSC 2005, p. 130). The Crawford population is in an area with medium potential for oil and gas development (GSRSC 2005, p. 130). A single authorized Federal lease (BLM and USFS 2010) constitutes less than 1 percent of the Crawford population area.

Energy development is occurring primarily in the San Miguel Basin population area in Colorado. The entire San Miguel Basin population area has high potential for oil and gas development (GSRSC 2005, p. 130). Approximately 13 percent of occupied habitat area within the San Miguel Basin population has authorized Federal leases; of that, production is occurring on approximately 5 percent of the lease area (BLM and USFS 2010). Currently, 25 gas wells are active within occupied habitat of the San Miguel Basin, and an additional 18 active wells occur immediately adjacent to occupied habitat (San Miguel County 2009, p. 1). All of these wells are in or near the Dry Creek group. The exact locations of any future drill sites are not known, but because the area is small, they will likely lie within 3 km (2 mi) of one of only three leks in this group (CDOW 2005, p. 108).

Since 2005, the BLM has deferred (temporarily withheld from recent lease sales) oil and gas parcels nominated for leasing in occupied Gunnison sage-grouse habitat in Colorado. Nonetheless, we expect energy development in the San Miguel Basin on public and private lands to continue over the next 20 years based on the length of development and production projects described in existing project and management plans. Current impacts from gas development may be negatively impacting a portion of the Dry Creek subpopulation because this area contains some of the poorest habitat and smallest grouse populations within the San Miguel population (SMBGSWG) 2009, pp. 28 and 36).

Summary of Nonrenewable Energy Development

The San Miguel Basin population area is the only area within the Gunnison sage-grouse range that currently has a moderate amount of oil and gas production. However, immediate impacts to Gunnison sage-grouse in this area, and the species range more generally, are limited because only 13 percent of occupied habitat in the San Miguel population area is currently leased and the Uncompahgre Field Office of the BLM (San Miguel, Crawford, and Cerro Summit-Cimarron-Sims Mesa populations) is deferring additional leases in this area and in the species' range more generally, until they can be considered within Land Use Plans (BLM 2009, p. 78). We recognize that the Dry Creek subpopulation may currently be impacted by nonrenewable energy development. However, nonrenewable energy activities are limited to a small portion of the range. While the San Miguel, Monticello-Dove Creek, and Crawford populations have high or medium potential for future development, the potential for future development is low throughout the remaining population areas, which represent the majority of the range of the species. Because of these localized impacts we do not consider nonrenewable energy development to be a threat to the long-term persistence of the species at this time. However, given the already small and fragmented nature of the populations where oil and gas leases are most likely to occur, additional development within occupied habitat would negatively impact those populations by causing additional actual and functional habitat loss and fragmentation.

Piñon-Juniper Encroachment

Piñon-juniper woodlands are a native habitat type dominated by piñon pine *(Pinus edulis)* and various juniper species *(Juniperus spp.)* that can encroach upon, infill, and eventually replace sagebrush habitat. Piñon-juniper extent has increased ten-fold in the Intermountain West since Euro-American settlement, causing the loss of many bunchgrass and sagebrush-bunchgrass communities (Miller and Tausch 2001, pp. 15–16). Piñon-juniper woodlands have also been expanding throughout portions of the range of Gunnison sage-grouse (BLM 2009, pp. 14, 17, 25), although we do not have information that quantifies this expansion. Piñon-juniper expansion has been attributed to the reduced role of fire, the introduction of livestock grazing, increases in global carbon dioxide concentrations, climate change, and natural recovery from past disturbance (Miller and Rose 1999, pp. 555–556; Miller and Tausch 2001, p. 15; Baker 2011, p. 199). In addition, Gambel oak invasion as a result of fire suppression also has been identified as a potential threat to Gunnison sage-grouse (CDOW 2002, p.139).

Similar to powerlines, trees provide perches for raptors, and as a consequence, Gunnison sage-grouse avoid areas with piñon-juniper (Commons *et al.* 1999, p. 239). The number of male Gunnison sage-grouse on leks in southwestern Colorado

doubled after piñon-juniper removal and mechanical treatment of mountain sagebrush and deciduous brush (Commons *et al.* 1999, p. 238).

Piñon-Juniper Encroachment in All Population Areas—The Gunnison Basin population area is not currently undergoing significant piñon-juniper encroachment. All other populations have some degree of documented piñon-juniper encroachment. A considerable portion of the Piñon Mesa population is undergoing piñon-juniper encroachment. Approximately 9 percent (1,140 ha [3,484 ac]) of occupied habitat in the Piñon Mesa population area have piñon-juniper coverage, while 7 percent (4,414 ha [10,907 ac)] of vacant or unknown and 13 percent (7,239 ha [17,888 ac]) of potential habitat (unoccupied habitats that could be suitable for occupation of sage-grouse if practical restoration were applied) have encroachment (BLM 2009, p. 17).

Some areas on lands managed by the BLM within other population areas are known to be undergoing piñon-juniper invasion. However, the extent of the area affected has not been quantified (BLM 2009, p. 74; BLM 2009, p. 9). Approximately 9 percent of the 1,300 ha (3,200 ac) of the current range in the Crawford population is classified as dominated by piñon-juniper (GSRSC 2005, p. 264). However, BLM (2005d, p. 8) estimates that as much as 20 percent of the population area is occupied by piñon-juniper. Piñon and juniper trees have been encroaching in peripheral habitat on Sims Mesa, and to a lesser extent on Cerro Summit, but not to the point where it is a serious threat to the Cerro Summit-Cimarron-Sims Mesa population area (CDOW 2009b, p. 47). Piñon and juniper trees are reported to be encroaching throughout the current range in the Monticello group, based on a comparison of historical versus current aerial photos, but no quantification or mapping of the encroachment has occurred (San Juan County GSWG 2005, p. 20). A relatively recent invasion of piñon and juniper trees between the Dove Creek and Monticello groups appears to be contributing to their isolation from each other (GSRSC 2005, p. 276).

Within the range of Gunnison sage-grouse, approximately 5,341 ha (13,197 ac) of piñon-juniper have been treated with various methods designed to remove piñon and juniper trees since 2005, and nearly half of which occurred in the Piñon Mesa population area (CDOW 2009b, pp. 111–113). Mechanical treatment of areas experiencing piñon-juniper encroachment continues to be one of the most successful and economical treatments for the benefit of Gunnison sage-grouse habitat. However, the effect of such treatments on Gunnison sage-grouse population numbers is unclear as the Gunnison sage-grouse population has declined over the past 11 years in the Piñon Mesa population area.

Summary of Piñon-Juniper Encroachment

Most Gunnison sage-grouse population areas are experiencing low to moderate levels of piñon-juniper encroachment; however, considerable piñon-juniper encroachment in the Piñon Mesa has occurred. The encroachment of piñon-juniper into sagebrush habitats contributes to the fragmentation of Gunnison sage-grouse habitat. However, piñon-juniper treatments, particularly when completed in the early stages of encroachment when the sagebrush and forb understory is still intact, have the potential to provide an immediate benefit to sage-grouse. Approximately 5,341 ha (13,197 ac) of piñon-juniper encroachment within the range of Gunnison sage-grouse has been treated. Based on the rate of past treatment efforts (CDOW 2009c, entire), we expect piñon-juniper encroachment and corresponding treatment efforts to continue. Although piñon-juniper encroachment is contributing to habitat fragmentation in a limited area, the level of encroachment is not sufficient to pose a threat to Gunnison sage-grouse at a population or rangewide level at this time. However, in combination with other factors such as those contributing to habitat fragmentation (roads, powerlines, invasive plants, etc.), piñon-juniper encroachment potentially poses a threat to the species.

Conversion to Agriculture

While sage-grouse may forage on agricultural croplands, they avoid landscapes dominated by agriculture (Aldridge *et al.* 2008, p. 991) and do not nest or winter in agricultural lands where shrub cover is lacking. Influences resulting from agricultural activities extend into adjoining sagebrush, and include increased predation and reduced nest success due to predators associated with agriculture (Connelly *et al.* 2004, p. 7–23). Agricultural conversion can provide some limited benefits for sage-grouse as some crops such as alfalfa *(Medicago sativa)* and young bean sprouts (*Phaseolus* spp.) are eaten or used for cover by Gunnison sage-grouse (Braun 1998, pers. comm.). However, crop monocultures do not provide adequate year-round food or cover (GSRSC 2005, pp. 22–30).

Current Agriculture in All Gunnison Sage-grouse Population Areas—The following estimates of land area dedicated to agriculture (including grass/forb pasture) were derived from SWReGAP landcover data (USGS 2004, entire). Agricultural parcels are distributed patchily amongst what was recently a sagebrush landscape. These agricultural parcels are likely used briefly by grouse to move between higher quality habitat patches. Habitat conversion to agriculture is most prevalent in the Monticello-Dove Creek population area where approximately 23,220 ha (57,377 ac) or 51 percent of Gunnison sage-grouse occupied range is currently in agricultural production. In the Gunnison Basin, approximately 20,754 ha (51,285 ac) or 9 percent of the occupied range is currently in agricultural production. Approximately 6,287 ha (15,535 ac) or 15 percent of the occupied range in the San Miguel Basin is currently in agricultural production. In the Cerro Summit-Cimarron-Sims Mesa population, approximately 14 percent (5,133 ha (2,077 ac)) of the occupied range is currently in agricultural production. Habitat conversion due to agricultural activities is limited in the Crawford, Piñon Mesa, and Poncha Pass populations, with 3 percent or less of the occupied range currently in agricultural production in each of the population areas.

Other than in Gunnison County, total area of harvested cropland has declined over the past two decades in all counties within the occupied range of Gunnison sage-grouse (USDA NASS 2010, entire). The majority of agricultural land use in Gunnison County is in hay production, which has declined over the past two decades (USDA NASS 2010, p. 1). We do not have any information that predicts changes in the amount of land devoted to agricultural purposes. However, because of this long-term trend in reduced land area devoted to agriculture, we do not expect a significant amount of Gunnison sage-grouse habitat to be converted to agricultural purposes in the future.

Conservation Reserve Program—The loss of Gunnison sage-grouse habitat to conversion to agriculture has been mitigated somewhat by the Conservation Reserve Program (CRP). The CRP is administered by the United States Department of Agriculture (USDA) Farm Service Agency (FSA), which provides incentives to agricultural landowners to plant more natural vegetation in lands previously devoted to agricultural uses. Except in emergency situations such as drought, CRP-enrolled lands are not hayed or grazed.

Lands within the occupied range of Gunnison sage-grouse enrolled into the CRP are limited to Dolores and San Miguel counties in Colorado, and San Juan County in Utah (USDA FSA 2010, entire). From 2000 to 2008, CRP enrollment averaged 10,622 ha (26,247 ac) in Dolores County, 1,350 ha (3,337 ac) in San Miguel County, and 14,698 ha (36,320 ac) in San Juan County (USDA FSA 2010, entire). In 2011, approximately 9,793 ha (24,200 ac) are enrolled in the CRP program within occupied Gunnison sage-grouse habitat in the Monticello portion of the Monticello-Dove Creek population (UDWR 2011, p. 7). This area represents approximately 34 percent of the occupied habitat in the Monticello portion of the Monticello-Dove Creek population and approximately 22 percent of the entire occupied population area. Lands that recently dropped out of the CRP program were replaced by newly enrolled properties and the total acreage of lands enrolled in the CRP program remains at the maximum allowed by the FSA for San Juan County, UT (UDWR 2011, p. 7).

In San Juan County, Gunnison sage-grouse use CRP lands in proportion to their availability (Lupis *et al.* 2006, p. 959). The CRP areas are used by grouse primarily as foraging and brood-rearing habitat, but these areas vary greatly in plant diversity and forb abundance, and generally lack any shrub cover (Lupis *et al.* 2006, pp. 959–960; Prather 2010, p. 32) and thus are of limited value for nesting and wintering habitat. In response to a severe drought, four CRP parcels totaling 1,487 ha (3,674 ac) in San Juan County, UT, were emergency grazed for a duration of one to two months in the summer of 2002 (Lupis 2006, p. 959). Male and broodless females avoided the grazed areas while cattle were present but returned after cattle were removed (Lupis *et al.* 2006, pp. 960–961). Thus, the direct effects of habitat avoidance are negative but relatively short in duration, but the potential long-term implications to Gunnison sage-grouse survival are unknown.

Largely as a result of agricultural conversion, sagebrush patches in the Monticello-Dove Creek subpopulation area have progressively become smaller and more fragmented, which has limited the amount of available nesting and winter habitat (GSRSC 2005, pp. 82, 276). Overall, the CRP has provided important foraging habitat and has protected a portion of the Monticello-Dove Creek population from more intensive agricultural use and development. However, the overall value of CRP lands is limited at this time because they largely lack sagebrush cover required by Gunnison sage-grouse throughout most of the year. A new CRP signup for individual landowners is not anticipated until 2012, and the extent to which existing CRP lands will be reenrolled is unknown (UDWR 2009, p. 4).

Summary of Conversion to Agriculture

Throughout the range of Gunnison sage-grouse, the amount of land area devoted to agriculture is declining. Therefore, although we expect most land currently in agricultural production to remain so indefinitely, we do not expect significant additional, future habitat conversion to agriculture within the range of Gunnison sage-grouse. The loss of sagebrush habitat from 1958 to 1993 was estimated to be approximately 20 percent throughout the range of Gunnison sage-grouse (Oyler-McCance *et al.* 2001, p. 326). The exception is the Monticello-Dove Creek population where more than half of the occupied range is currently in agriculture or other land uses incompatible with Gunnison sage-grouse conservation. This habitat loss is being somewhat mitigated by the current enrollment of lands in the CRP. Because of its limited extent, we do not consider future conversion of sagebrush habitats to agriculture to be a current or future threat to the persistence of Gunnison sage-grouse. However, the large scale of historic conversion of sagebrush to agriculture has fragmented the remaining Gunnison sage-grouse habitat to a degree that currently occupied lands do not provide the species with adequate protection from extinction, especially in light of other threats discussed throughout this proposed rule.

Water Development

Water Development in All Population Areas—Irrigation projects have resulted in loss of sage-grouse habitat (Braun 1998, p. 6). Reservoir development in the Gunnison Basin flooded 3,700 ha (9,200 ac), or 1.5 percent of likely sage-grouse habitat (McCall 2005, pers. comm.). Three other reservoirs inundated approximately 2 percent of habitat in the San Miguel Basin population area (Garner 2005, pers. comm.). We are unaware of any plans for additional reservoir construction. Because of the small amount of Gunnison sage-grouse habitat lost to water development projects and the unlikelihood of future projects, we do not consider water development alone to be a current or future threat to the persistence of Gunnison sage-grouse. However, we expect these existing reservoirs to be maintained indefinitely, thus acting as another source of fragmentation of Gunnison sage-grouse habitat that, in combination with other factors, potentially poses a threat to the species.

Candidate Conservation Agreement With Assurances (CCAA)

The CPW has been implementing the CCAA referenced earlier in this document. As of the fall of 2012, 14 landowners have completed Certificates of Inclusion (CI) for their properties, enrolling a total of 13,200 ha (32,619 ac). Because the Service issues a permit to applicants with an approved CCAA, we have some regulatory oversight over the implementation of the CCAA. However, permit holders and landowners can voluntarily opt out of the CCAA at any time. Other properties currently going through the CCAA process (a total of 11,563 ha (28,573 ac) in Gunnison sage-grouse occupied habitat) include two properties under final review (406 ha (1,004 ac)); 12 properties in progress (10,322 ha (25,507 ac)); and five properties with completed baseline reports (834 ha (2,062 ac)) (CPW 2012b, pp. 11–12). Baseline reports describe property infrastructure and number of acres of Gunnison sage-grouse seasonal habitat. A CPW review of all these reports and the condition of the habitat is pending.

The CCAA/CI efforts described in this section provide conservation benefits to Gunnison sage-grouse throughout their range where they are completed and in place (9 in the Gunnison Basin, one in the San Miguel, two in the Crawford, and two in the Piñon Mesa population areas). Even assuming the acreage of all landowners who have not yet complete CIs but have expressed interest in pursuing CIs through the completion of baseline habitat reports will ultimately be covered under CIs, these properties constitute only 8.5 percent of the total private land throughout the species range. Completed and pending CI's (see preceding paragraph) combined would cover approximately 16 percent of the total private land throughout the species range. Several parcels covered under CIs are also under conservation easements. However, the Gunnison sage-grouse CCAA is voluntary, potentially temporary, and is limited in scale relative to the species' range Therefore, the CCAA/CI provides some protection for Gunnison sage-grouse, but does not cover a sufficient portion of the species' range to adequately protect Gunnison sage-grouse from the threat of habitat loss and fragmentation and ensure the species long-term conservation.

Gunnison Basin Candidate Conservation Agreement (CCA)

In January 2010, the Gunnison Basin Sage-Grouse Strategic Committee and the Service began developing a Candidate Conservation Agreement (CCA) for Gunnison sage-grouse in the Gunnison Basin (GBSSC 2012). Once finalized, the CCA will identify and provide for implementation of conservation measures to address specific threats to Gunnison sage-grouse on Federal lands in this area including existing and future development (roads, transmission lines, phone lines, etc.), recreation (roads and trails, special recreation permits, etc.), and livestock grazing authorizations (permit renewals). As planned, the CCA will cover the estimated 160,769 ha (397,267 ac) of occupied habitat on Federal lands in the Gunnison Basin, or about 67 percent of the total estimated 239,953 ha (592,936 ac) of occupied habitat in the Gunnison Basin. The CCA would thus cover approximately 78 percent of rangewide occupied habitat on Federal lands, and approximately 42 percent of rangewide occupied habitat. It is anticipated that signatories to the CCA will include CPW, Gunnison County, Saguache County, BLM, U.S. Forest Service, National Park Service, Natural Resources Conservation Service, and the Service.

Conservation measures in the CCA to address the above threats are expected to include, but would not be limited to, avoidance of high quality habitats or sensitive areas, seasonal restrictions and closures, siting and construction restrictions, weed control and reclamation standards, realigning or decommissioning of travel routes, monitoring of habitat conditions and standards, and modifying grazing practices. In addition, the CCA is expected to incorporate an adaptive management approach, an off-site mitigation plan for habitat loss, a comprehensive monitoring plan, and annual reporting requirements.

Candidate Conservation Agreements are formal, voluntary agreements between the Service and one or more parties to address the conservation needs of one or more candidate species or species likely to become candidates in the near future. Participants commit to implement specific actions designed to remove or reduce threats to the covered species, so that listing may not be necessary. Unlike CCAAs, CCAs do not provide assurances that additional conservation measures will not be required if a species is listed or critical habitat is designated.

Although CCAs are voluntary agreements, the anticipated Federal signatories have expressed a desire to conference with the Service, pursuant to section 7 of the ESA, on the Gunnison Basin CCA. This process would result in a conference opinion by the Service that it could confirm as a biological opinion if the species is listed or critical habitat is designated. If the Service adopts the conference opinion as a biological opinion, Federal projects and activities covered under the biological opinion would be required to apply the principles, conditions, and conservation measures identified in the CCA. Based on this information, the CCA may result in some level of protection for Gunnison sage-grouse in the Gunnison Basin. However, the effectiveness of the CCA will depend largely on the conservation measures proposed and their implementation.

Even with the planned CCA in place, negative impacts are still likely to occur to Gunnison sage-grouse on Federal lands in the Gunnison Basin due to Federal and other projects and activities. In addition, approximately 22 percent of rangewide occupied habitat on Federal lands—all within the six smaller, declining population areas—would not be covered under the CCA. Given this limited geographic scope, additional protections on Federal lands are essential for the conservation of these declining populations. Therefore, although the pending CCA may provide some protection to Gunnison sage-grouse, depending on the conservation measures implemented, it will not cover enough of the species' range to adequately protect Gunnison sage-grouse from the threat of habitat loss and fragmentation.

Summary of Factor A

Gunnison sage-grouse require large, contiguous areas of sagebrush for long-term persistence, and thus are affected by factors that occur at the landscape scale. Broad-scale characteristics within surrounding landscapes influence habitat selection, and adult Gunnison sage-grouse exhibit a high fidelity to all seasonal habitats, resulting in low adaptability to habitat changes. Fragmentation of sagebrush habitats are a primary cause of the decline of Gunnison and greater sage-grouse populations (Patterson 1952, pp. 192–193; Connelly and Braun 1997, p. 4; Braun 1998, p. 140; Johnson and Braun 1999, p. 78; Connelly *et al.* 2000a, p. 975; Miller and Eddleman 2000, p. 1; Schroeder and Baydack 2001, p. 29; Johnsgard 2002, p. 108; Aldridge and Brigham 2003, p. 25; Beck *et al.* 2003, p. 203; Pedersen *et al.* 2003, pp. 23–24; Connelly *et al.* 2004, p. 4–15; Schroeder *et al.* 2004, p. 368; Leu *et al.* 2011, p. 267). Documented negative effects of fragmentation include reduced lek persistence, lek attendance, population recruitment, yearling and adult annual survival, female nest site selection, and nest initiation rates, as well as the loss of leks and winter habitat (Holloran 2005, p. 49; Aldridge and Boyce 2007, pp. 517–523; Walker *et al.* 2007a, pp. 2651–2652; Doherty *et al.* 2008, p. 194).

We examined a number of factors that result in habitat loss and fragmentation. Historically, 93 percent of Gunnison sage-grouse habitat was lost to conversion for agricultural croplands; however, agricultural conversion has slowed or slightly reversed in recent decades. Currently, direct and functional loss of habitat due to residential and road development in all populations, including the largest population in the Gunnison Basin, is the principal threat to Gunnison sage-grouse. Functional habitat loss also contributes to habitat fragmentation as sage-grouse avoid areas due to human activities, including noise, even when sagebrush remains intact. The collective disturbance from human activities around residences and roads reduces the effective habitat around these areas, making them inhospitable to Gunnison sage-grouse. Human populations are increasing in Colorado and throughout the range of Gunnison sage-grouse. This trend will continue at least through 2050. The resulting habitat loss and fragmentation is diminishing the probability of Gunnison sage-grouse persistence.

Other threats from human infrastructure such as fences and powerlines may not individually threaten the probability of persistence of Gunnison sage-grouse. However, the cumulative presence of all these features, particularly when considered in conjunction with residential and road development, does constitute a major threat to Gunnison sage-grouse as they collectively contribute to habitat loss and fragmentation. This impact is particularly of consequence in light of the decreases in Gunnison sage-grouse population sizes observed in the six smallest populations. These infrastructure components are associated with overall increases in human populations, and thus we expect them to continue to increase.

Several issues discussed above, such as fire, invasive species, and climate change, may not individually threaten the probability of persistence of Gunnison sage-grouse. However, the documented synergy among these issues result in a high likelihood that they will

threaten the species in the future. Nonnative invasive plants, including cheatgrass and other noxious weeds, continue to expand their range, facilitated by ground disturbances such as fire, grazing, and human infrastructure. Invasive plants negatively impact Gunnison sage-grouse primarily by reducing or eliminating native vegetation that sage-grouse require for food and cover, resulting in habitat loss (both direct and functional) and fragmentation. Cheatgrass is present at varying levels in nearly all Gunnison sage-grouse population areas, but there has not yet been a demonstrated change in fire cycle in the range of Gunnison sage-grouse. However, climate change may alter the range of invasive plants, intensifying the proliferation of invasive plants to the point that they become a threat to the species. Even with aggressive treatments, invasive plants will persist and will likely continue to spread throughout the range of Gunnison sage-grouse.

Livestock management has the potential to degrade sage-grouse habitat at local scales by causing the loss of nesting cover and decreases in native vegetation, and by increasing the probability of incursion of invasive plants. Given the widespread nature of grazing within the range of Gunnison sage-grouse, the potential for population-level impacts is highly likely. Effects of domestic livestock grazing are likely being exacerbated by intense browsing of woody species by wild ungulates in portions of the Gunnison Basin. We conclude that habitat degradation that can result from improper grazing is a threat to Gunnison sage-grouse persistence.

We do not consider nonrenewable energy development to be impacting Gunnison sage-grouse habitat to the extent that it is a threat to the long-term persistence of the species at this time, because its current and anticipated extent is limited throughout the range of Gunnison sage-grouse. We do not consider renewable energy development to be a threat to the persistence of Gunnison sage-grouse at this time. However, geothermal and wind energy development could increase in the Gunnison Basin and Monticello areas, respectively, in the future. Piñon-juniper encroachment does not pose a threat to Gunnison sage-grouse at a population or rangewide level because of its limited distribution throughout the range of Gunnison sage-grouse. Current energy development alone may not threaten Gunnison sage-grouse. However, the cumulative presence of energy development and other threats within Gunnison sage-grouse habitat has the potential to threaten the species both now and in the future.

A review of a database compiled by the CPW that included local, State, and Federal ongoing and proposed Gunnison sage-grouse conservation actions (CDOW 2009c, entire) revealed a total of 224 individual conservation efforts. Of these 224 efforts, a total of 165 efforts have been completed and were focused on habitat improvement or protection. These efforts resulted in the treatment of 9,324 ha (23,041 ac), or approximately 2.5 percent of occupied Gunnison sage-grouse habitat. A monitoring component was included in 75 (45 percent) of these 165 efforts, although we do not have information on the overall effectiveness of these efforts. At least five habitat improvement or protection projects occurred between January 2011 and September 2012, treating an additional 300 acres (CPW 2012b, p. 7). We recognize ongoing and proposed conservation efforts by all entities across the range of the Gunnison sage-grouse, and all parties should be commended for their conservation efforts.

Our review of conservation efforts indicates that the measures identified are not adequate to address the primary threat of habitat fragmentation at this time in a manner that effectively reduces or eliminates the factors contributing to this threat. All of the conservation efforts are limited in size and the measures provided to us were simply not implemented at the scale (even when considered cumulatively) that would be required to effectively reduce the threats to the species and its habitat across its range. Depending on conservation measures implemented under the planned Gunnison Basin CCA and their effectiveness, some protection may be provided for Gunnison sage-grouse on federal lands in the Gunnison Basin, but would not cover enough of the species' range to ensure the species' long-term conservation. Similarly, the existing CCAA provides limited protection for Gunnison sage-grouse, but does not provide sufficient coverage of the species' range to ensure the species' long-term conservation. Thus, although the ongoing conservation efforts are a positive step toward the conservation of the Gunnison sage-grouse, and some have likely reduced the severity of some threats to the species (e.g., piñon-juniper invasion), on the whole we find that the conservation efforts in place at this time are not sufficient to offset the degree of threat posed to the species by the present and threatened destruction, modification, or curtailment of its habitat.

Threats identified above, particularly exurban and residential development and associated infrastructure such as roads and powerlines, are cumulatively causing significant habitat fragmentation, which is negatively affecting Gunnison sage-grouse. We have evaluated the best scientific information available on the present or threatened destruction, modification, or curtailment of the Gunnison sage-grouse's habitat or range. Based on the current and anticipated habitat threats identified above and their cumulative effects as they contribute to the overall fragmentation of Gunnison sage-grouse habitat, we have determined that the present or threatened destruction, modification, or curtailment of Gunnison sage-grouse habitat poses a threat to the species throughout its range. This threat is current (as evidenced by population declines) and is projected to continue and increase into the future with additional anthropogenic pressures.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Hunting

Hunting for Gunnison sage-grouse does not currently occur. Hunting was eliminated in the Gunnison Basin in 2000 due to concerns with meeting Gunnison sage-grouse population objectives (Colorado Sage Grouse Working Group (CSGWG) 1997, p. 66). Hunting has not occurred in the other Colorado populations of Gunnison sage-grouse since 1995 when the Piñon Mesa area was closed (GSRSC 2005, p. 122). Utah has not allowed hunting of Gunnison sage-grouse since 1989 (GSRSC 2005, p. 82).

Both Colorado and Utah will consider hunting of Gunnison sage-grouse only if populations can be sustained (GSRSC 2005, pp. 5, 8, 229). The local Gunnison Basin working group plan calls for a minimum population of 500 males counted on leks before hunting would occur again (CSGWG 1997, p. 66). The minimum population level in the Gunnison Basin population has been exceeded in all years since 1996, except 2003 and 2004 (CDOW 2009d, pp. 18–19). However, the sensitive State regulatory status and potential political ramifications of hunting the species has precluded the States from opening a hunting season. If hunting does ever occur again, harvest will likely be restricted to only 5 to 10 percent of the fall population, and will be structured to limit harvest of females to the extent possible (GSRSC 2005, p. 229). However, the ability of these measures

to be implemented is in question, as adequate means to estimate fall population size have not been developed (Reese and Connelly 2011, pp. 110–111) and limiting female harvest may not be possible (WGFD 2004, p. 4; WGFD 2006, pp. 5, 7).

One sage-grouse was known to be illegally harvested in 2001 in the Poncha Pass population (Nehring 2010, pers. comm.), but based on the best available information illegal harvest has not contributed to Gunnison sage-grouse population declines in either Colorado or Utah. We do not anticipate hunting to be opened in the Gunnison Basin or smaller populations for many years, if ever. Consequently, we do not consider hunting to be a threat to the species.

Lek Viewing

The Gunnison sage-grouse was designated as a new species in 2000 (American Ornithologists' Union 2000, pp. 847–858), which has prompted a much increased interest by bird watchers to view the species on their leks (Pfister 2010, pers. comm.). Daily human disturbances on sage-grouse leks could cause a reduction in mating, and some reduction in total production (Call and Maser 1985, p. 19). Human disturbance, particularly if additive to disturbance by predators, could reduce the time a lek is active, as well as reduce its size by lowering male attendance (Boyko *et al.* 2004, *in* GSRSC 2005, p. 125). Smaller lek sizes have been hypothesized to be less attractive to females, thereby conceivably reducing the numbers of females mating. Disturbance during the peak of mating also could result in some females not breeding (GSRSC 2005, p. 125). Furthermore, disturbance from lek viewing might affect nesting habitat selection by females (GSRSC 2005, p. 126), as leks are typically close to areas in which females nest. If females move to poorer quality habitat farther away from disturbed leks, nest success could decline. If chronic disturbance causes sage-grouse to move to a new lek site away from preferred and presumably higher quality areas, both survival and nest success could decline. Whether any or all of these have significant population effects would depend on timing and degree of disturbance (GSRSC 2005, p. 126).

Throughout the range of Gunnison sage-grouse, public viewing of leks is limited by a general lack of knowledge of lek locations, seasonal road closures in some areas, and difficulty in accessing many leks. Furthermore, 52 of 109 active Gunnison sage-grouse leks occur on private lands, which further limits access by the public. The BLM closed a lek in the Gunnison Basin to viewing in the late 1990s due to declining population counts perceived as resulting from recreational viewing, although no scientific studies were conducted (BLM 2005a, p. 13; GSRSC 2005, pp. 124, 126). The Waunita lek east of Gunnison is the only lek in Colorado designated by the CPW for public viewing (CDOW 2009b, p. 86). Since 1998, a comparison of male counts on the Waunita lek versus male counts on other leks in the Doyleville zone show that the Waunita lek's male counts generally follow the same trend as the others (CDOW 2009d, pp. 31–32). In fact, in 2008 and 2009, the Waunita lek increased in the number of males counted along with three other leks, while seven leks decreased in the Doyleville zone (CDOW 2009d, pp. 31–32). These data suggest that lek viewing on the Waunita lek has not impacted the Gunnison sage-grouse. Two lek viewing tours per year are organized and led by UDWR on a privately owned lek in the Monticello population. The lek declined in males counted in 2009, but 2007 and 2008 had the highest counts for several years, suggesting that lek viewing is also not impacting that lek. Data collected by CPW on greater sage-grouse viewing leks also indicates that controlled lek visitation has not impacted greater sage-grouse at the viewed leks (GSRSC 2005, p. 124).

A lek viewing protocol has been developed and has largely been followed on the Waunita lek, likely reducing impacts to sage-grouse (GSRSC 2005, p. 125). During 2004–2009, the percentage of individuals or groups of people in vehicles following the Waunita lek viewing protocol in the Gunnison Basin ranged from 71 to 92 percent (CDOW 2009b, pp. 86, 87; Magee *et al.* 2009, pp. 7, 10). Violations of the protocol, such as showing up after the sage-grouse started to display and creating noise, caused one or more sage-grouse to flush from the lek (CDOW 2009b, pp. 86, 87). Despite the protocol violations, the percentage of days from 2004 to 2009 that grouse were flushed by humans was relatively low, ranging from 2.5 percent to 5.4 percent (Magee *et al.* 2009, p. 10). Nonetheless, the lek viewing protocol is currently being revised to make it more stringent and to include considerations for photography, research, and education-related viewing (CDOW 2009b, p. 86). Implementation of this protocol should preclude lek viewing from becoming a threat to this lek.

The CPW and UDWR will continue to coordinate and implement lek counts to determine population levels. We expect annual lek viewing and lek counts to continue indefinitely. However, all leks counted will receive lower disturbance from counters than the Waunita lek receives from public viewing, so we do not consider lek counts a threat to the Gunnison sage-grouse.

Scientific Research

Gunnison sage-grouse have been the subject of scientific studies, some of which included the capture and handling of the species. Most of the research has been conducted in the Gunnison Basin population, San Miguel Basin population, and Monticello portion of the Monticello-Dove Creek population. Between zero and seven percent mortality of handled adults or juveniles and chicks has occurred during recent Gunnison sage-grouse studies where trapping and radio-tagging was done (Apa 2004, p. 19; Childers 2009, p. 14; Lupis 2005, p. 26; San Miguel Basin Gunnison Sage-grouse Working Group (SMBGSWG) 2009, p. A–10). Additionally, one radio-tagged hen was flushed off a nest during subsequent monitoring and did not return after the second day, resulting in loss of 10 eggs (Ward 2007, p. 52). The CPW does not believe that these losses or disturbance have any significant impacts on the sage-grouse (CDOW 2009b, p. 29).

Some radio-tagged sage-grouse have been translocated from the Gunnison Basin to other populations. Over a 5-year period (2000–2002 and 2006–2007), 68 sage-grouse were translocated from the Gunnison Basin to the Poncha Pass and San Miguel Basin populations (CDOW 2009b, p. 9). These experimental translocations were conducted to determine translocation techniques and survivorship in order to increase both size of the receiving populations and to increase genetic diversity in populations outside of the Gunnison Basin. However, the translocated grouse experienced 40–50 percent mortality within the first year after release, which is double the average annual mortality of nontranslocated sage-grouse (CDOW 2009b, p. 9). Greater sage-grouse translocations have not appeared to fare any better. Over 7,200 greater sage-grouse were translocated between 1933 and 1990, but only five percent of the translocation efforts were considered to be successful in producing sustained, resident populations at the translocation sites (Reese and Connelly 1997, pp. 235–238, 240). More recent translocations from 2003 to 2005 into Strawberry Valley, Utah, resulted in a 40 percent annual mortality rate (Baxter *et al.* 2008, p. 182). We believe the lack of success of translocations found in

greater sage-grouse is applicable to Gunnison sage-grouse because the two species exhibit similar behavior and life-history traits, and are managed accordingly.

Because the survival rate for translocated sage-grouse has not been as high as desired, the CPW started a captive-rearing program in 2009 to study whether techniques can be developed to captively rear and release Gunnison sage-grouse and enhance their survival (CDOW 2009b, pp. 9–12). The GSRSC conducted a review of captive-rearing attempts for both greater sage-grouse and other gallinaceous birds and concluded that survival will be very low, unless innovative strategies are developed and tested (GSRSC 2005, pp. 181–183). However, greater sage-grouse have been captively reared, and survival of released chicks was similar to that of wild chicks (CDOW 2009b, p. 10). Consequently, the CPW decided to try captive rearing of Gunnison sage-grouse. Of 40 Gunnison sage-grouse eggs taken from the wild, only 11 chicks (about 25 percent) survived through October 2009. In 2010, 27 captive-reared chicks were introduced to wild Gunnison sage-grouse broods. Apparent survival of all introduced chicks was 29%, which is comparable to wild chicks of the same age. In 2011, the same study introduced 51 captive-reared chicks to wild Gunnison sage-grouse broods. In that case, none of the released chicks survived. Although introduced chick survival has been low, chick survival during captivity increased with improved protocols, and valuable knowledge on Gunnison sage-grouse rearing techniques has been gained (CPW 2011d). As techniques improve, the CPW intends to develop a captive-breeding manual (CDOW 2009b, p. 11). Although adults or juveniles have been captured and moved out of the Gunnison Basin, as well as eggs, the removal of the grouse only accounts for a very small percentage of the total population of the Gunnison Basin sage-grouse population (about 1 percent).

The CPW has a policy regarding trapping, handling, and marking techniques approved by their Animal Use and Care Committee (SMBGSWG 2009, p. A–10, Childers 2009, p. 13). Evaluation of research projects by the Animal Use and Care Committee and improvement of trapping, handling, and marking techniques over the last several years has resulted in fewer mortalities and injuries. In fact, in the San Miguel Basin, researchers have handled more than 200 sage-grouse with no trapping mortalities (SMBGSWG 2009, p. A–10). The CPW has also drafted a sage-grouse trapping and handling protocol, which is required training for people handling Gunnison sage-grouse, to minimize mortality and injury of the birds (CDOW 2002, pp. 1–4 in SMBWG 2009, pp. A–22–A–25). Injury and mortality does occasionally occur from trapping, handling, marking, and flushing off nests. However, research-related mortality is typically below three percent of handled birds and equates to one half of one percent or less of annual population estimates (Apa 2004, p. 19; Childers 2009, p. 14; Lupis 2005, p. 26; SMBGSWG 2009, p. A–10).

Scientific research needs may gradually dwindle over the years but annual or occasional research is expected to continue. Short-term disturbance effects to individuals occur as does injury and mortality, but we do not believe these effects cause a threat to the Gunnison sage-grouse population as a whole. Based on the best available information, scientific research on Gunnison sage-grouse has a relatively minor impact that does not rise to the level of a threat to the species.

Summary of Factor B

We have no evidence suggesting that hunting, when it was legal, resulted in overutilization of Gunnison sage-grouse. However, a high degree of Gunnison sage-grouse harvest from an inadvertently opened hunting season resulted in a significant population decrease in the already small Poncha Pass population. If hunting is allowed again, future hunting may result in additive mortality due to habitat degradation and fragmentation, despite harvest level restrictions and management intended to limit impacts to hens. Nonetheless, we do not expect hunting to be reinstated in the future. Illegal hunting has only been documented once in Colorado and is not a threat. Lek viewing has not affected the Gunnison sage-grouse, and lek viewing protocols designed to reduce disturbance have generally been followed. CPW is currently revising their lek viewing protocol to make it more stringent and to include considerations for photography, research, and education-related viewing. Mortality from scientific research is low (2 percent) and is not a threat. We know of no overutilization for commercial or educational purposes. Thus, based on the best scientific and commercial data available, we have concluded that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to Gunnison sage-grouse at this time.

C. Disease or Predation

Disease

No research has been published about the types or pathology of diseases in Gunnison sage-grouse. However, multiple bacterial and parasitic diseases have been documented in greater sage-grouse (Patterson 1952, pp. 71–72; Schroeder *et al.* 1999, pp. 14, 27). Some early studies have suggested that greater sage-grouse populations are adversely affected by parasitic infections (Batterson and Morse 1948, p. 22). However, the role of parasites or infectious diseases in population declines of greater sage-grouse is unknown based on the few systematic surveys conducted (Connelly *et al.* 2004, p. 10–3). No parasites have been documented to cause mortality in Gunnison sage-grouse, but the protozoan, *Eimeria* spp., which causes coccidiosis, has been reported to cause death in greater sage-grouse (Connelly *et al.* 2004, p. 10–4). Infections tend to be localized to specific geographic areas, and no cases of greater sage-grouse mortality resulting from coccidiosis have been documented since the early 1960s (Connelly *et al.* 2004, p. 10–4).

Parasites have been implicated in greater sage-grouse mate selection, with potentially subsequent effects on the genetic diversity of this species (Boyce 1990, p. 263; Deibert 1995, p. 38). These relationships may be important to the long-term ecology of greater sage-grouse, but they have not been shown to be significant to the immediate status of populations (Connelly *et al.* 2004, p. 10–6). Although diseases and parasites have been suggested to affect isolated sage-grouse populations (Connelly *et al.* 2004, p. 10–3), we have no evidence indicating that parasitic diseases are a threat to Gunnison sage-grouse populations.

Greater sage-grouse are subject to a variety of bacterial, fungal, and viral pathogens. The bacterium *Salmonella* sp. has caused a single documented mortality in the greater sage-grouse and studies have shown that infection rates in wild birds are low (Connelly *et al.* 2004, p. 10–7). The bacteria are apparently contracted through exposure to contaminated water supplies around livestock stock tanks (Connelly *et al.* 2004, p. 10–7). Other bacteria found in greater sage-grouse include *Escherichia coli,* botulism *(Clostridium* spp.), avian tuberculosis *(Mycobacterium avium),* and avian cholera *(Pasteurella multocida).* These bacteria have never been identified as a cause of mortality in greater sage-grouse and the risk of exposure and hence, population effects, is low (Connelly *et al.* 2004, p. 10–7 to

10–8). In Gunnison sage-grouse, captive reared chicks have died due to bacterial infections by *Klebsiella spp., E. coli,* and *Salmonella spp.* In one case (CDOW 2009b, p. 11), bacterial growth was encouraged by a wood-based brooder substrate used to raise chicks. However, in a subsequent study (CPW 2011d, pp. 14–15) where the wood-based substrate was not used, similar bacterial infections and chick mortality still occurred. The sources of infection could not be determined. This suggests that Gunnison sage-grouse may be less resistant to bacterial infections than greater sage-grouse. However, we have no information that shows the risk of exposure in the wild is different for Gunnison sage-grouse; therefore, these bacteria do not appear to be a threat to the species.

West Nile virus was introduced into the northeastern United States in 1999 and has subsequently spread across North America (Marra *et al.* 2004, p. 394). In sagebrush habitats, West Nile virus transmission is primarily regulated by environmental factors, including temperature, precipitation, and anthropogenic water sources, such as stock ponds and coal-bed methane ponds that support the mosquito vectors (Reisen *et al.* 2006, p. 309; Walker and Naugle 2011, pp. 131–132). The virus persists largely within a mosquito-bird-mosquito infection cycle (McLean 2006, p. 45). However, direct bird-to-bird transmission of the virus has been documented in several species (McLean 2006, pp. 54, 59), including the greater sage-grouse (Walker and Naugle 2011, p. 132; Cornish 2009, pers. comm.). The frequency of direct transmission has not been determined (McLean 2006, p. 54). Cold ambient temperatures preclude mosquito activity and virus amplification, so transmission to and in sage-grouse is limited to the summer (mid-May to mid-September) (Naugle *et al.* 2005, p. 620; Zou *et al.* 2007, p. 4), with a peak in July and August (Walker and Naugle 2011, p. 131). Reduced and delayed West Nile virus transmission in sage-grouse has occurred in years with lower summer temperatures (Naugle *et al.* 2005, p. 621; Walker *et al.* 2007b, p. 694). In non-sagebrush ecosystems, high temperatures associated with drought conditions increase West Nile virus transmission by allowing for more rapid larval mosquito development and shorter virus incubation periods (Shaman *et al.* 2005, p. 134; Walker and Naugle 2011, p. 131).

Greater sage-grouse congregate in mesic habitats in the mid-late summer (Connelly *et al.* 2000, p. 971), thereby increasing their risk of exposure to mosquitoes. If West Nile virus outbreaks coincide with drought conditions that aggregate birds in habitat near water sources, the risk of exposure to West Nile virus will be elevated (Walker and Naugle 2011, p. 131). Greater sage-grouse inhabiting higher elevation sites in summer (similar to the northern portion of the Gunnison Basin) are likely less vulnerable to contracting West Nile virus than birds at lower elevation (similar to Dry Creek Basin of the San Miguel population) as ambient temperatures are typically cooler (Walker and Naugle 2011, p. 131).

West Nile virus has caused population declines in wild bird populations on the local and regional scale (Walker and Naugle 2011, pp. 128–129) and has been shown to affect survival rates of greater sage-grouse (Naugle *et al.* 2004, p. 710; Naugle *et al.* 2005, p. 616). Experimental results, combined with field data, suggest that a widespread West Nile virus infection has negatively affected greater sage-grouse (Naugle *et al.* 2004, p. 711; Naugle *et al.* 2005, p. 616). The selective use of mesic habitats by sage-grouse in the summer potentially increases their exposure to West Nile virus. Greater sage-grouse are considered to have a high susceptibility to West Nile virus, with resultant high levels of mortality (Clark *et al.* 2006, p. 19; McLean 2006, p. 54). Greater sage-grouse do not develop a resistance to the disease, and death is certain once an individual is exposed (Clark *et al.* 2006, p. 18).

To date, West Nile virus has not been documented in Gunnison sage-grouse despite the presence of West Nile virus-positive mosquitoes in nearly all counties throughout their range (Colorado Department of Public Health 2009, pp. 1–4; U.S. Centers for Disease Control and Prevention 2004, entire). We do not know whether this is a result of the small number of birds that are marked, the relatively few birds that exist in the wild, or unsuitable conditions in Gunnison sage-grouse habitat for the virus to become virulent. West Nile virus activity within the range of Gunnison sage-grouse has been low compared to other parts of Colorado and the western United States. A total of 77 wild bird (other than Gunnison sage-grouse) deaths resulting from West Nile virus has been confirmed from counties within the occupied range of Gunnison sage-grouse since 2002 when reporting began in Colorado (USGS 2009, entire). Fifty-two (68 percent) of these West Nile virus-caused bird deaths were reported from Mesa County (where the Piñon Mesa population is found). Only San Miguel, Dolores, and Hinsdale Counties had no confirmed avian mortalities resulting from West Nile virus.

Walker and Naugle (2011, p. 140) predict that West Nile virus outbreaks in small, isolated, and genetically depauperate populations could reduce sage-grouse numbers below a threshold from which recovery is unlikely because of limited or nonexistent demographic and genetic exchange from adjacent populations. Thus, a West Nile virus outbreak in any Gunnison sage-grouse population, except perhaps the Gunnison Basin population, could limit the persistence of these populations.

Although West Nile virus is a potential threat in the future, the best available information suggests that it is not currently a threat to Gunnison sage-grouse, since West Nile virus has not been documented in Gunnison sage-grouse despite the presence of West Nile virus-positive mosquitoes in nearly all counties throughout their range. No other diseases or parasitic infections are considered to be threatening the Gunnison sage-grouse at this time.

Predation

Predation is the most commonly identified cause of direct mortality for sage-grouse during all life stages (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; Connelly *et al.* 2011, p. 66). However, sage-grouse have co-evolved with a variety of predators, and their cryptic plumage and behavioral adaptations have allowed them to persist despite this mortality factor (Schroeder *et al.* 1999, p. 10; Coates 2008, p. 69; Coates and Delehanty 2008, p. 635; Hagen 2011, p. 96). Until recently, little published information has been available that indicates predation is a limiting factor for the greater sage-grouse (Connelly *et al.* 2004, p. 10–1), particularly where habitat quality has not been compromised (Hagen 2011, p. 96). Although many predators will consume sage-grouse, none specialize on the species (Hagen 2011, p. 97). Generalist predators have the greatest effect on ground-nesting birds because predator numbers are independent of the density of a single prey source since they can switch to other prey sources when a given prey source (e.g., Gunnison sage-grouse) is not abundant (Coates 2007, p. 4). We believe that the effects of predation observed in greater sage-grouse are applicable to the effects anticipated in Gunnison sage-grouse since overall behavior and life-history traits are similar for the two species.

Major predators of adult sage-grouse include many species including golden eagles (*Aquila chrysaetos*), red foxes (*Vulpes fulva*), and bobcats (*Felis rufus*) (Hartzler 1974, pp. 532–536; Schroeder *et al.* 1999, pp. 10–11; Schroeder and

Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen 2011, p. 97). Juvenile sage-grouse also are killed by many raptors as well as common ravens (*Corvus corax*), badgers (*Taxidea taxus*), red foxes, coyotes (*Canis latrans*), and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows (*Corvus brachyrhyncos*), and magpies (*Pica* spp.), elk (*Cervus canadensis*) (Holloran and Anderson 2003, p. 309), and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425–426). Ground squirrels (*Spermophilus* spp.) also have been identified as nest predators (Patterson 1952, p. 107; Schroeder *et al.* 1999, p. 10; Schroder and Baydack 2001, p. 25), but recent data show that they are physically incapable of puncturing eggs (Holloran and Anderson 2003, p. 309; Coates *et al.* 2008, p. 426; Hagen 2011, p. 97). Several other small mammals visited sage-grouse nests in Nevada, but none resulted in predation events (Coates *et al.* 2008, p. 425).

The most common predators of Gunnison sage-grouse eggs are weasels, coyotes, and corvids (Young 1994, p. 37). Most raptor predation of sage-grouse is on juveniles and older age classes (GSRSC 2005, p. 135). Golden eagles were found to be the dominant raptor species recorded perching on power poles in Utah in Gunnison sage-grouse habitat (Prather and Messmer 2009, p. 12), indicating a possible source of predation. In a recent study, 22 and 40 percent of 111 adult mortalities were the result of avian and mammalian predation, respectively (Childers 2009, p. 7). Twenty-five and 35 percent of 40 chick mortalities were caused by avian and mammalian predation, respectively (Childers 2009, p. 7). A causative agent of mortality was not determined in the remaining depredations observed in the western portion of the Gunnison Basin from 2000 to 2009 (Childers 2009, p. 7).

Adult male Gunnison and greater sage-grouse are very susceptible to predation while on the lek (Schroeder *et al.* 1999, p. 10; Schroeder and Baydack 2001, p. 25; Hagen 2011, p. 5), presumably because they are conspicuous while performing their mating displays. Because leks are attended daily by numerous grouse, predators also may be attracted to these areas during the breeding season (Braun 1995, p. 2). In a study of greater sage-grouse mortality causes in Idaho, it was found that, among males, 83 percent of the mortality was due to predation and 42 percent of those mortalities occurred during the lekking season (March through June) (Connelly *et al.* 2000b, p. 228). In the same study, 52 percent of the mortality of adult females was due to predation and 52 percent of those mortalities occurred between March and August, which includes the nesting and brood-rearing periods (Connelly *et al.* 2000b, p. 228). The vast majority of adult female mortality outside of the breeding season was caused by hunting (Connelly *et al.* 2000b, p. 228). Adult female greater sage-grouse are susceptible to predators while on the nest but mortality rates are low (Hagen 2011, p. 97). Hens will abandon their nest when disturbed by predators (Patterson 1952, p. 110), likely reducing this mortality (Hagen 2011, p. 97). Sage-grouse populations are likely more sensitive to predation upon females given the highly negative response of Gunnison sage-grouse population dynamics to adult female reproductive success and chick mortality (GSRSC, 2005, p. 173). Predation of adult sage-grouse is low outside the lekking, nesting, and brood-rearing season (Connelly *et al.* 2000b, p. 230; Naugle *et al.* 2004, p. 711; Moynahan *et al.* 2006, p. 1536; Hagen 2011, p. 97).

Estimates of predation rates on juvenile sage-grouse are limited due to the difficulties in studying this age class (Aldridge and Boyce 2007, p. 509; Hagen 2011, p. 97). For greater sage-grouse, chick mortality from predation ranged from 10 to 51 percent in 2002 and 2003 on three study sites in Oregon (Gregg *et al.* 2003, p. 15; 2003b, p. 17). Mortality due to predation during the first few weeks after hatching was estimated to be 82 percent (Gregg *et al.* 2007, p. 648). Survival of juveniles to their first breeding season was estimated to be low (10 percent). It is reasonable, given the sources of adult mortality, to assume that predation is a contributor to the high juvenile mortality rates (Crawford *et al.* 2004, p. 4).

Sage-grouse nests are subject to varying levels of predation. Predation can be total (all eggs destroyed) or partial (one or more eggs destroyed). However, hens abandon nests in either case (Coates, 2007, p. 26). Over a 3-year period in Oregon, 106 of 124 nests (84 percent) were preyed upon (Gregg *et al.* 1994, p. 164). Patterson (1952, p. 104) reported nest predation rates of 41 percent in Wyoming. Holloran and Anderson (2003, p. 309) reported a predation rate of 12 percent (3 of 26) in Wyoming. Moynahan *et al.* (2007, p. 1777) attributed 131 of 258 (54 percent) of nest failures to predation in Montana. Re-nesting efforts may partially compensate for the loss of nests due to predation (Schroeder 1997, p. 938), but re-nesting rates for greater sage-grouse are highly variable (Connelly *et al.* 2011, p. 63). However, re-nesting rates are low in Gunnison sage-grouse (Young, 1994, p. 44; Childers, 2009, p. 7), indicating that re-nesting is unlikely to offset losses due to predation. Losses of breeding hens and young chicks to predation can influence overall greater and Gunnison sage-grouse population numbers, as these two groups contribute most significantly to population productivity (GSRSC, 2005, p. 29, Baxter *et al.* 2008, p. 185; Connelly *et al,* 2011, pp. 64–65).

Nesting success of greater sage-grouse is positively correlated with the presence of big sagebrush and grass and forb cover (Connelly *et al.* 2000, p. 971). Females actively select nest sites with these qualities (Schroeder and Baydack 2001, p. 25; Hagen *et al.* 2007, p. 46). Nest predation appears to be related to the amount of herbaceous cover surrounding the nest (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1–2; DeLong *et al.* 1995, p. 90; Braun 1998; Coggins 1998, p. 30; Connelly *et al.* 2000b, p. 975; Schroeder and Baydack 2001, p. 25; Coates and Delehanty 2008, p. 636). Loss of nesting cover from any source (e.g., grazing, fire) can reduce nest success and adult hen survival. However, Coates (2007, p. 149) found that badger predation was facilitated by nest cover as it attracts small mammals, a badger's primary prey. In contrast, habitat alteration that reduces cover for young chicks can increase their rate of predation (Schroeder and Baydack 2001, p. 27).

In a review of published nesting studies, Connelly *et al.* (2011, pp. 63–64) reported that nesting success was greater in unaltered habitats versus habitats affected by anthropogenic activities. Where greater sage-grouse habitat has been altered, the influx of predators can decrease annual recruitment (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1–2; Braun 1998; DeLong *et al.* 1995, p. 91; Schroeder and Baydack 2001, p. 28; Coates 2007, p. 2; Hagen 2011, pp. 97–98). Agricultural development, landscape fragmentation, and human populations can increase predation pressure on all life stages of greater sage-grouse by forcing birds to nest in less suitable or marginal habitats, increasing travel time through altered habitats where they are vulnerable to predation, and increasing the diversity and density of predators (Ritchie *et al.* 1994, p. 125; Schroeder and Baydack 2001, p. 25; Connelly *et al.* 2004, p. 7–23; and Summers *et al.* 2004, p. 523). We believe the aforementioned information is also applicable to Gunnison sage-grouse because overall behavior and life-history traits are

similar for the two species (Young 1994, p. 4).

Abundance of red fox and corvids, which historically were rare in the sagebrush landscape, has increased in association with human-altered landscapes (Sovada *et al.* 1995, p. 5). In the Strawberry Valley of Utah, low survival of greater sage-grouse may have been due to an unusually high density of red foxes, which apparently were attracted to that area by anthropogenic activities (Bambrough *et al.* 2000). The red fox population has increased within the Gunnison Basin (BLM, 2009, p. 37), while just recently being observed in habitat within the Monticello, Utah, population area (UDWR 2011, p. 4). Ranches, farms, and housing developments have resulted in the introduction of nonnative predators including domestic dogs (*Canis domesticus*) and cats (*Felis domesticus*) into greater sage-grouse habitats (Connelly *et al.* 2004, p. 12–2). Local attraction of ravens to nesting hens may be facilitated by loss and fragmentation of native shrublands, which increases exposure of nests to potential predators (Aldridge and Boyce 2007, p. 522; Bui 2009, p. 32). The presence of ravens was negatively associated with greater sage-grouse nest and brood fate in western Wyoming (Bui 2009, p. 27).

Raven abundance has increased as much as 1,500 percent in some areas of western North America since the 1960s (Coates 2007, p. 5). Breeding bird survey trends from 1966 to 2007 indicate increases throughout Colorado and Utah (USGS, 2009, pp. 1–2). Increases in raven numbers are suggested in the Piñon Mesa population, though data have not been collected (CDOW 2009b, p. 110). Raven numbers in the Monticello subpopulation remain high (UDWR 2011, p. 4). Human-made structures in the environment increase the effect of raven predation, particularly in low canopy cover areas, by providing ravens with perches (Braun 1998, pp. 145–146; Coates 2007, p. 155; Bui 2009, p. 2).

Reduction in patch size and diversity of sagebrush habitat, as well as the construction of fences, powerlines, and other infrastructure, also are likely to encourage the presence of the common raven (Coates *et al.* 2008, p. 426; Bui 2009, p. 4). For example, raven counts have increased by approximately 200 percent along the Falcon-Gondor transmission line corridor in Nevada (Atamian *et al.* 2007, p. 2). Ravens contributed to lek disturbance events in the areas surrounding the transmission line (Atamian *et al.* 2007, p. 2), but as a cause of decline in surrounding sage-grouse population numbers, it could not be separated from other potential impacts, such as West Nile virus. Holloran (2005, p. 58) attributed increased sage-grouse nest depredation to high corvid abundances, which resulted from anthropogenic food and perching subsidies in areas of natural gas development in western Wyoming. Bui (2009, p. 31) also found that ravens used road networks associated with oil fields in the same Wyoming location for foraging activities. Holmes (2009, pp. 2–4) also found that common raven abundance increased in association with oil and gas development in southwestern Wyoming.

Raven abundance was strongly associated with sage-grouse nest failure in northeastern Nevada, with resultant negative effects on sage-grouse reproduction (Coates 2007, p. 130). The presence of high numbers of predators within a sage-grouse nesting area may negatively affect sage-grouse productivity without causing direct mortality. Increased raven abundance was associated with a reduction in the time spent off the nest by female sage-grouse, thereby potentially compromising their ability to secure sufficient nutrition to complete the incubation period (Coates 2007, pp. 85–98).

As more suitable grouse habitat is converted to exurban development, agriculture, or other non-sagebrush habitat types, grouse nesting and brood-rearing become increasingly spatially restricted (Bui 2009, p. 32). As discussed in Factor A, we anticipate a substantial increase in the distribution of residential development throughout the range of Gunnison sage-grouse. This increase will likely cause additional restriction of nesting habitat within the species' range, given removal of sagebrush habitats and the strong selection for sagebrush by the species. Additionally, Gunnison sage-grouse avoid residential development, resulting in functional habitat loss (Aldridge *et al.* 2011, p. 14). Ninety-one percent of nest locations in the western portion of the Gunnison Basin population occur within 35 percent of the available habitat (Aldridge *et al.* 2011, p. 7). Unnaturally high nest densities, which result from habitat fragmentation or disturbance associated with the presence of edges, fencerows, or trails, may increase predation rates by making foraging easier for predators (Holloran 2005, p. C37). Increased nest density could negatively influence the probability of a successful hatch (Holloran and Anderson, 2005, p. 748).

The influence of the human footprint in sagebrush ecosystems may be underestimated (Leu and Hanser 2011, pp. 270–271) since it is uncertain how much more habitat sage-grouse (a large landscape-scale species) need for persistence in increasingly fragmented landscapes (Connelly *et al.* 2011, pp. 80–82). Therefore, the influence of ravens and other predators associated with human activities may be underestimated. In addition, nest predation may be higher, more variable, and have a greater impact on the small, fragmented Gunnison sage-grouse populations, particularly the six smallest populations (GSRSC 2005, p. 134). Unfortunately, except for the relatively few studies presented here, data are lacking that link Gunnison sage-grouse population numbers and predator abundance. However, in at least six of the seven populations where habitats have been significantly altered by human activities, we believe that predation could be limiting Gunnison sage-grouse populations.

Ongoing studies in the San Miguel population indicate that the lack of recruitment in Gunnison sage-grouse is likely due to predation (CDOW 2009b, p. 31). In this area, six of 12 observed nests were destroyed by predation, with none of the chicks from the remaining nests surviving beyond two weeks (CDOW 2009b, p. 30). In small and declining populations, small changes to habitat abundance or quality, or in predator abundance, could have large consequences. A predator control program initiated by CPW occurred between March 2011 and June 2012 in the Miramonte subpopulation area of the San Miguel population to evaluate the effects of predator removal on Gunnison sage-grouse juvenile recruitment in the subpopulation (CPW 2012b, pp. 8–10). Over the two-year period, the United States Department of Agriculture Animal and Plant Health Inspection Service removed 155 coyotes, 101 corvids, two bobcats, eight badgers, two raccoons, and three red foxes by means of aerial gunning, calling, ground shooting, and bait stations. Radio-marked hens, nest success, and chick survival were monitored during this time, and results were compared to baseline data collected for the same area from 2007 to 2010. Prior to predator control, of eight marked chicks, no individuals survived to 3 months. From 2011 through August of 2012, during which predator control occurred, of 10 marked chicks, four (40 percent) chicks survived to three months, and two (20 percent) survived at least one year. The study did not compare chick survival rates to non-predator removal areas, so it is unknown whether the apparent increase

in chick survival was due to predator control or other environmental factors (e.g., weather, habitat conditions, etc.).

Predator removal efforts have sometimes shown short-term gains that may benefit fall populations, but not breeding population sizes (Cote and Sutherland 1997, p. 402; Hagen 2011, pp. 98–99; Leu and Hanser 2011, p. 270). Predator removal may have greater benefits in areas with low habitat quality, but predator numbers quickly rebound without continual control (Hagen 2011, p. 99). Red fox removal in Utah appeared to increase adult greater sage-grouse survival and productivity, but the study did not compare these rates against other nonremoval areas, so inferences are limited (Hagen 2011, p. 98).

Slater (2003, p. 133) demonstrated that coyote control failed to have an effect on greater sage-grouse nesting success in southwestern Wyoming. However, coyotes may not be an important predator of sage-grouse. In a coyote prey base analysis, Johnson and Hansen (1979, p. 954) showed that sage-grouse and bird egg shells made up a very small percentage (0.4–2.4 percent) of analyzed scat samples. Additionally, coyote removal can have unintended consequences resulting in the release of smaller predators, many of which, like the red fox, may have greater negative impacts on sage-grouse (Mezquida *et al.* 2006, p. 752).

Removal of ravens from an area in northeastern Nevada caused only short-term reductions in raven populations (less than 1 year), as apparently transient birds from neighboring sites repopulated the removal area (Coates 2007, p. 151). Additionally, badger predation appeared to partially compensate for decreases due to raven removal (Coates 2007, p. 152). In their review of literature regarding predation, Connelly *et al.* (2004, p. 10–1) noted that only two of nine studies examining survival and nest success indicated that predation had limited a sage-grouse population by decreasing nest success, and both studies indicated low nest success due to predation was ultimately related to poor nesting habitat. Bui (2009, pp. 36–37) suggested removal of anthropogenic subsidies (e.g., landfills, tall structures) may be an important step to reducing the presence of sage-grouse predators. Leu and Hanser (2011, p. 270) also argue that reducing the effects of predation on sage-grouse can only be effectively addressed by precluding these features.

Summary of Predation

Gunnison sage-grouse may be increasingly subject to levels of predation that would not normally occur in the historically contiguous unaltered sagebrush habitats. Gunnison sage-grouse are adapted to minimize predation by cryptic plumage and behavior, however, predation has a strong relationship with anthropogenic factors on the landscape, and human presence on the landscape will continue to increase. The impacts of predation on greater sage-grouse can increase where habitat quality has been compromised by anthropogenic activities (exurban development, road development, etc.) (e.g., Coates 2007, pp. 154, 155; Bui 2009, p. 16; Hagen 2011, p. 100). Landscape fragmentation, habitat degradation, and human populations have the potential to increase predator populations through increasing ease of securing prey and subsidizing food sources and nest or den substrate. Thus, otherwise suitable habitat may change into a habitat sink (habitat in which reproduction is insufficient to balance mortality) for grouse populations (Aldridge and Boyce 2007, p. 517).

Anthropogenic influences on sagebrush habitats that increase suitability for ravens may also limit sage-grouse populations (Bui 2009, p. 32). Current land-use practices in the intermountain West favor high predator (in particular, raven) abundance relative to historical numbers (Coates *et al.* 2008, p. 426). The interaction between changes in habitat and predation may have substantial effects to sage-grouse at the landscape level (Coates 2007, pp. 3–5). Since the Gunnison and greater sage-grouse have such similar behavior and life-history traits, we believe the current impacts on Gunnison sage-grouse are at least as significant as those documented in greater sage-grouse and to date in Gunnison sage-grouse. Given the small population sizes and fragmented nature of the remaining Gunnison sage-grouse habitat, we believe that the impacts of predation will likely be even greater as habitat fragmentation continues.

The studies presented above for greater sage-grouse suggest that, in areas of intensive habitat alteration and fragmentation, sage-grouse productivity and, therefore, populations could be negatively affected by increasing predation. As more habitats face development, even dispersed development such as that occurring throughout the range of Gunnison sage-grouse, we expect this threat to spread and increase. Studies of the effectiveness of predator control have failed to demonstrate a long-term inverse relationship between the predator numbers and sage-grouse nesting success or population numbers. Therefore, the best available information shows that predation is currently a threat to the Gunnison sage-grouse and will continue to be a threat to the species.

Summary of Factor C

We have reviewed the available information on the effects of disease and predation on the long-term persistence of the Gunnison sage-grouse. The only disease that currently presents a potential impact on the survival of the Gunnison sage-grouse is West Nile virus. This virus is distributed throughout most of the species' range. However, despite its near 100 percent lethality, disease occurrence is sporadic in other taxa across the species' range and has not been detected to date in Gunnison sage-grouse. While we have no evidence of West Nile virus acting on the Gunnison sage-grouse, because of its presence within the species' range and the continued development of anthropogenic water sources in the area, the virus may pose a future threat to the species. We anticipate that West Nile virus will persist within the range of Gunnison sage-grouse indefinitely and will be exacerbated by any factor (e.g., climate change) that increases ambient temperatures and the presence of the vector on the landscape.

The best available information shows that existing and continued landscape fragmentation will increase the effects of predation on this species, particularly in the six smaller populations, resulting in a reduction in sage-grouse productivity and abundance in the future.

We have evaluated the best available scientific information regarding disease and predation and their effects on the Gunnison sage-grouse. Based on the information available, we have determined that predation is a threat to the persistence of the species throughout its range and that disease is not currently a threat but has the potential to become a threat in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether threats to the Gunnison sage-grouse are adequately addressed by existing regulatory mechanisms. Existing regulatory mechanisms that could provide some protection for Gunnison sage-grouse include: (1) Local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threat to the species such that listing is not

warranted. Conversely, threats on the landscape continue to affect the species and may be exacerbated when not addressed by existing regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced). We cannot predict when or how local, State, and/or Federal laws, regulations, and policies will change; however, most Federal land use plans are valid for at least 20 years.

An example of a regulatory mechanism is the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and would be considered a regulatory mechanism under this analysis. Other examples include city or county ordinances, State governmental actions enforced under a State statute or constitution, or Federal action under statute. Actions adopted by local groups, States, or Federal entities that are discretionary or are not enforceable, including conservation strategies and guidance, are typically not regulatory mechanisms. In this section we review actions undertaken by local, State, and Federal entities designed to reduce or remove threats to Gunnison sage-grouse and its habitat.

Local Laws and Regulations

Approximately 41 percent of occupied Gunnison sage-grouse habitat is privately owned (calculation from Table 1). Gunnison County and San Miguel County, Colorado, are the only local or county entities that have regulations and policy, respectively, that provide a level of conservation consideration for the Gunnison sage-grouse or its habitats on private land (Dolores County 2002; Mesa County 2003; Montrose County 2003). In 2007, the Gunnison County, Colorado Board of County Commissioners approved Land Use Resolution (LUR) Number 07–17 to ensure all applications for land use change permits, including building permits, individual sewage disposal system permits, Gunnison County access permits, and Gunnison County Reclamation permits be reviewed for impact to Gunnison sage-grouse habitat within occupied Gunnison sage-grouse habitat. If impacts are determined to result from a project, impacts are to be avoided, minimized, and/or mitigated. Approximately 79 percent of private land occupied by the Gunnison Basin population is in Gunnison County, and thereby under the purview of these regulations. The remaining 21 percent of the private lands in the Gunnison Basin population is in Saguache County where similar regulations are not in place or applicable.

Colorado State statute (C.R.S. 30–28–101) exempts parcels of land of 14 ha (35 ac) or more per home from regulation, so county zoning laws in Colorado such as LUR 07–17 only apply to properties with housing densities greater than one house per 14 ha (35 ac). C.R.S. 30–28–101 allows these parcels to be exempt from county regulation LUR 07–17 and may negatively affect Gunnison sage-grouse. A total of 1,190 parcels, covering 16,351 ha (40,405 ac), within occupied habitat in Gunnison County currently contain development. Of those 1,190 parcels, 851 are less than 14 ha (35 ac) in size and are thus subject to County review. However, those 851 parcels encompass only 13.1 percent of private land acreage with existing development in occupied habitat within Gunnison County. Parcels greater than 14 ha (35 ac) in size (339 of the 1,190) encompass 86.9 of the existing private land acreage within occupied habitat within Gunnison County. Cumulatively, 91 percent of the private land within the Gunnison County portion of the Gunnison Basin population that either has existing development or is potentially developable land is allocated in lots greater than 14 ha (35 ac) in size and, therefore, not subject to Gunnison County LUR 07–17. This situation limits the effectiveness of LUR 07–17 in providing protection to Gunnison sage-grouse in Gunnison County.

The only required review by Gunnison County under LUR 07–17 pertains to the construction of roads, driveways, and individual building permits. Gunnison County reviews all new development applications in the County. Gunnison County reviewed 380 projects from July 2006 through September 2012 under the LUR for impacts to Gunnison sage-grouse. All but six projects were within the overall boundary of the Gunnison Basin population's occupied habitat, with most of the activity focused in the northern portion of this population. All of these projects were approved and allowed to proceed with restrictions on pets and animals, timing of construction, adjustment of building envelopes, and other recommendations (Gunnison County 2012, pp. 1–13).

The majority of these projects were within established areas of development, and some were for activities such as outbuildings or additions to existing buildings; nonetheless, these projects provide an indication of further encroachment and fragmentation of the remaining occupied habitat. Sixty-six projects (17.4 percent of total projects) were within 1 km (0.6 mi) of a lek; most permits associated with these projects contained conditions or recommendations for the control of pets and animals, timing of construction, building envelopes, and similar restrictions. These minimally regulated negative impacts will continue to fragment the habitat and thus have substantial impacts on the conservation of the species. In summary, Gunnison County is to be highly commended for the regulatory steps it has implemented. However, the scope and implementation of that regulatory authority is limited in its ability to effectively and collectively conserve Gunnison sage-grouse due to the County's limited authority within the Gunnison Basin portion of the species' range. Furthermore, Saguache County, which contains approximately 21 percent of the Gunnison Basin population area, has no Gunnison sage-grouse specific LUR.

In 2005, San Miguel County amended its Land Use Codes to include consideration and implementation, to the extent possible, of conservation measures recommended in the 2005 RCP (GSRSC 2005, entire) for the Gunnison sage-grouse when considering land use activities and development located within its habitat (San Miguel County 2005). The County is only involved when there is a request for a special use permit, which limits their involvement in review of projects adversely affecting Gunnison sage-grouse and their habitat and providing recommendations. Conservation measures are solicited from the CPW and a local Gunnison sage-grouse working group. Implementation of the conservation measures is dependent on negotiations between the County and the applicant. Some positive measures (e.g., locating a special use activity outside grouse habitat, establishing a 324-ha (800-ac) conservation easement; implementing speed limits to reduce likelihood of bird/vehicle collisions) have been implemented as a result of the policy. Typically, the County has not been involved with residential development, and most measures that result from discussions with applicants result in measures that may minimize, but do not prevent, or mitigate for impacts (Henderson 2010, pers. comm.). The San Miguel County Land Use Codes provide some conservation benefit to the species through some minimization of impacts and encouraging landowners to voluntarily minimize/mitigate impacts of residential development in grouse habitat. However, they do not implement adequate regulatory authority to address the continued

degradation and fragmentation of the species habitat within the county.

In addition to the county regulations, Gunnison County hired a Gunnison Sage-grouse Coordinator (2005 to present) and organized a Strategic Committee (2005 to present) to facilitate implementation of conservation measures in the Gunnison Basin under both the local Conservation Plan and 2005 RCP (2005 RCP). San Miguel County hired a Gunnison Sage-grouse Coordinator for the San Miguel Basin population in March 2006. The Crawford working group hired a Gunnison sage-grouse coordinator in December 2009. Saguache County has applied for a grant to hire a part-time coordinator for the Poncha Pass population (grant status still pending). These efforts facilitate coordination relative to sage-grouse management and reflect positively on these counties' willingness to conserve Gunnison sage-grouse, but have no regulatory authority. None of the other counties with Gunnison sage-grouse populations have regulations or staff that implements regulation or policy review that consider the conservation needs of Gunnison sage-grouse.

Regulatory conservation measures implemented by Gunnison County in concert with State and Federal agencies include: Closing of shed antler collection in the Gunnison Basin by the Colorado Wildlife Commission due to its disturbance of Gunnison sage-grouse during the early breeding season; and a BLM/USFS/Gunnison County/CPW collective effort to implement and enforce road closures during the early breeding season (March 15 to May 15). These regulatory efforts have provided benefits to Gunnison sage-grouse during the breeding season. However, these mechanisms do not address the primary threat to the species of fragmentation of its habitat.

Habitat loss is not adequately regulated or monitored in Colorado counties where Gunnison sage-grouse occur. Therefore, conversion of agricultural land from one use to another, such as native pasture containing sagebrush converted to another use, such as cropland, would not normally come before a county zoning commission. Based on the information we have available for the range of the species, we do not believe that habitat loss from conversion of sagebrush habitat to agricultural lands is occurring at a level that makes it a threat. The permanent loss, and associated fragmentation and degradation, of sagebrush habitat is considered the largest threat to Gunnison sage-grouse (GSRSC 2005, p. 2). The minimally regulated residential/exurban development found throughout the vast majority of the species range is a primary cause of this loss, fragmentation, and/or degradation of Gunnison sage-grouse habitat. We are not aware of any local regulations that adequately address this threat.

We recognize that county or city ordinances in San Juan County, Utah, that address agricultural lands, transportation, and zoning for various types of land uses have the potential to influence sage-grouse. We have no information to suggest that other counties within the range of Gunnison sage-grouse have regulatory mechanisms that provide any protections for Gunnison sage-grouse.

Each of the seven population areas of Gunnison sage-grouse has a Conservation Plan written by the respective local working group with publication dates of 1999 to 2009. These plans provide recommendations for management of Gunnison sage-grouse and have been the basis for identifying and prioritizing local conservation efforts, but do not provide regulatory mechanisms for the conservation of the grouse.

State Laws and Regulations

State laws and regulations may impact sage-grouse conservation by providing specific authority for sage-grouse conservation over lands that are directly owned by the State, providing broad authority to regulate and protect wildlife on all lands within their borders, and providing a mechanism for indirect conservation through regulation of threats to the species (e.g., noxious weeds).

Colorado Revised Statutes section 33–1–104 gives CPW Board responsibility for the management and conservation of wildlife resources within State borders. Title 33 Article 1–101, Legislative Declaration requires a continuous operation of planning, acquisition, and development of wildlife habitats and facilities for wildlife-related opportunities. The CPW, which operates under the direction of the CPW Board, is required by statute (C.R.S. 24–65.1–302) to provide counties with information on ''significant wildlife habitat,'' and provide technical assistance in establishing guidelines for designating and administering such areas, if asked. The CPW Board also has authority to regulate possession of the Gunnison sage-grouse, set hunting seasons, and issue citations for poaching. CRS 33–1–106. These authorities provide individual Gunnison sage-grouse with protection from direct mortality from hunting.

The Wildlife Resources Code of Utah (Title 23) provides UDWR with the powers, duties, rights, and responsibilities to protect, propagate, manage, conserve, and distribute wildlife throughout the State. Section 23–13–3 declares that wildlife existing within the State, not held by private ownership and legally acquired, is property of the State. Sections 23–14–18 and 23–14–19 authorize the Utah Wildlife Board to prescribe rules and regulations for the taking and/or possession of protected wildlife, including Gunnison sage-grouse. These authorities provide adequate protection to individual Gunnison sage-grouse from direct mortality from hunting.

Gunnison sage-grouse are managed by CPW and UDWR on all lands within each State as resident native game birds. In both States this classification allows the direct human taking of the bird during hunting seasons authorized and conducted under State laws and regulations. In 2000, CPW closed the hunting season for Gunnison sage-grouse in the Gunnison Basin, the only area then open to hunting for the species. The hunting season for Gunnison sage-grouse in Utah has been closed since 1989. The Gunnison sage-grouse is listed as a species of special concern in Colorado, as a sensitive species in Utah, and as a Tier I species under the Utah Wildlife Action Plan, providing heightened priority for management (CDOW 2009b, p. 40; UDWR 2009, p. 9). Hunting and other State regulations that deal with issues such as harassment provide adequate protection for individual birds (see discussion under Factor B), but do not protect the habitat. Therefore, the protection afforded through the aforementioned State regulatory mechanisms is limited and is not sufficient to protect the Gunnison sage-grouse from extinction in the absence of listing under the Act.

In April 2009, the Colorado Oil and Gas Conservation Commission (COGCC), which is the entity responsible for permitting oil and gas well development in Colorado, adopted new rules addressing the impact of oil and gas development on wildlife resources (COGCC 2009 entire, promulgated pursuant to HB 07–1298, also available at 4 CCR 404–1). The rules went into effect on private lands on April 1, 2009, and on Federal lands July 1, 2009. The new rules require that permittees and operators determine whether their proposed development location overlaps with ''sensitive wildlife habitat,'' or is within a restricted surface occupancy (RSO) area. For Gunnison sage-grouse, areas within

1 km (0.6 mi) of an active lek can be designated as RSOs by CPW (CDOW 2009b, p. 27), and surface area occupancy will be avoided except in cases of economic or technical infeasibility (CDOW 2009b, p. 27).

Areas within approximately 6.4 km (4 mi) of an active lek are considered sensitive wildlife habitat (CDOW 2009b, p. 27), with the result that the development proponent is required to consult with the CPW to identify measures to (1) avoid impacts on wildlife resources, including sage-grouse; (2) minimize the extent and severity of those impacts that cannot be avoided; and (3) mitigate those effects that cannot be avoided or minimized (COGCC 2009, section 1202.a). The COGCC will consider CPW's recommendations in the permitting decision, although the final permitting and conditioning authority remains with COGCC. As stated in Section 1202.d of the new rules, consultation with CPW is not required under certain circumstances, such as the issuance of a variance by the Director of the COGCC, the existence of a previously CPW-approved wildlife mitigation plan, and others. Other categories for potential exemptions also can be found in the new rules (e.g., 1203.b).

Because the new rules have been in place for only 3 years and their implementation is still being discussed, it is not known what level of protection they will afford the Gunnison sage-grouse. However, since we did not consider that nonrenewable energy development, based on the information available to us, rose to the level of a threat to the species now or in the future, it is not necessary to consider the effectiveness of the relative regulatory mechanism.

We nonetheless note that the new rules could provide for greater consideration of the conservation needs of the species. Leases that have already been approved but not drilled (e.g., COGCC 2009, 1202.d(1)), or drilling operations that are already on the landscape, may continue to operate without further restriction into the future. We also are not aware of any situations where RSOs have been effectively applied or where conservation measures have been implemented for potential oil and gas development impacts to Gunnison sage-grouse on private lands underlain with privately owned minerals.

Colorado and Utah have laws that directly address the priorities for use of State school section lands, which require that management of these properties be based on maximizing financial returns. State school section lands account for only 1 percent of occupied habitat in Colorado and 1 percent in Utah, so impacts may be considered negligible. We have no information of any conservation measures that will be implemented under regulatory authority for Gunnison sage-grouse on State school section lands, other than a request to withdraw or apply ''no surface occupancy'' and conservation measures from the 2005 RCP (GSRSC 2005) to four sections available for oil and gas leasing in the San Miguel Basin population (see Factor A for further discussion).

In 2007, the Colorado State Land Board (SLB) purchased the Miramonte Meadows property (approximately 809 ha (2,300 ac) next to the Dan Noble State Wildlife Area (SWA)). Roughly 526 ha (1,300 ac) is considered prime Gunnison sage-grouse habitat (Garner 2010, pers. comm.). Discussions with the SLB have indicated a willingness to implement habitat improvements (juniper removal) on the property. They have also accepted an application to designate the tract as a ''Stewardship Trust'' parcel. The Stewardship Trust program is capped at 119,383 to 121,406 ha (295,000 to 300,000 ac), and no more property can be added until another tract is removed from the program. Because of this cap, it is unknown if or when the designation of the tract as a Stewardship Trust parcel may occur. The scattered nature of State school sections (generally single sections of land) across the landscape and the requirement to conduct activities to maximize financial returns minimize the likelihood of implementation of measures that will benefit Gunnison sage-grouse. Thus, no regulatory mechanisms are present on State trust lands to minimize degradation and fragmentation of habitat and thus ensure conservation of the species.

Some States require landowners to control noxious weeds, a potential habitat threat to sage-grouse (as discussed in Factor A). The types of plants considered to be noxious weeds vary by State. Cheatgrass is listed as a Class C species in Colorado (Colorado Department of Agriculture 2010, p. 3). The Class C designation delegates to local governments the choice of whether or not to implement activities for the control of cheatgrass. Gunnison, Saguache, and Hinsdale Counties target cheatgrass with herbicide applications (GWWC 2009, pp. 2–3). The CPW annually sprays for weeds on SWAs (CDOW 2009b, p. 106). The State of Utah does not consider cheatgrass as noxious within the State (Utah Department of Agriculture 2010, p. 1) nor in San Juan County (Utah Department of Agriculture 2010a, p. 1). The laws dealing with other noxious and invasive weeds may provide some protection for sage-grouse in local areas by requiring some control of the invasive plants, although large-scale control of the most problematic invasive plants is not occurring. Rehabilitation and restoration techniques for sagebrush habitats are mostly unproven and experimental (Pyke 2011, p. 543). These regulatory mechanisms have not been demonstrated to be effective in addressing the overall impacts of invasive plants on the degradation and fragmentation of sagebrush habitat within the species' range.

Federal Laws and Regulations

Gunnison sage-grouse are not covered or managed under the provisions of the Migratory Bird Treaty Act (16 U.S.C. 703–712) because they are considered resident game species. Federal agencies are responsible for managing 54 percent of the total Gunnison sage-grouse habitat. The Federal agencies with the most sagebrush habitat are BLM, an agency of the Department of the Interior, and USFS, an agency of the Department of Agriculture. The NPS in the Department of the Interior also has responsibility for lands that contain Gunnison sage-grouse habitat.

BLM

About 42 percent of Gunnison sage-grouse occupied habitat is on BLM-administered land (see Table 1). 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. Section 102(a)(8) of FLPMA specifically recognizes wildlife and fish resources as being among the uses for which these lands are to be managed. Regulations pursuant to FLPMA and the Mineral Leasing Act (30 U.S.C. 181 et seq.) that address wildlife habitat protection on BLM-administered land include 43 CFR 3162.3–1 and 43 CFR 3162.5–1; 43 CFR 4120 et seq.; and 43 CFR 4180 et seq.

Gunnison sage-grouse have been designated as a BLM Sensitive Species since they were first identified and described in 2000 (BLM 2009, p. 7). The management guidance afforded sensitive species under BLM Manual 6840—Special Status Species Management (BLM 2008, entire) states that ''Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA'' (BLM 2008, p.

05V). BLM Manual 6840 further requires that Resource Management Plans (RMPs) should address sensitive species, and that implementation ''should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary'' (BLM 2008, p. 2A1). As a designated sensitive species under BLM Manual 6840, sage-grouse conservation must be addressed in the development and implementation of RMPs on BLM lands.

RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. They establish allowable resource uses, resource condition goals and objectives to be attained, program constraints and general management practices needed to attain the goals and objectives, general implementation sequences, and intervals and standards for monitoring and evaluating the plan to determine its effectiveness and the need for amendment or revision (43 CFR 1601 et seq.).

The RMPs provide a framework and programmatic guidance for activity plans, which are site-specific plans written to implement decisions made in a RMP. Examples include Allotment Management Plans that address livestock grazing, oil and gas field development, travel management (motorized and mechanized road and trail use), and wildlife habitat management. Activity plan decisions normally require additional planning and National Environmental Policy Act (NEPA) analysis. If an RMP contains specific direction regarding sage-grouse habitat, conservation, or management, it represents an enforceable regulatory mechanism to ensure that the species and its habitats are considered during permitting and other decision making on BLM lands.

The BLM in Colorado manages Gunnison sage-grouse habitat under five existing RMPs. All five RMPs, and their subsequent revisions, contain some specific measures or direction pertinent to management of Gunnison sage-grouse or their habitats. Three of these RMPs (San Juan, Grand Junction, and Uncompahgre—covering all or portions of the San Miguel, Piñon Mesa, Crawford, and Cerro Summit-Cimarron-Sims Mesa populations, and the Dove Creek group) are in various stages of revision. All RMPs currently propose some conservation measures (measures that if implemented should provide a level of benefit to Gunnison sage-grouse) outlined in the 2005 RCP (GSRSC 2005, entire) or local Gunnison sage-grouse working group conservation plans through project or activity level NEPA reviews (BLM 2009, p. 6). In addition, several offices have undergone other program-level planning, such as travel management, which incorporates some conservation measures to benefit the species (BLM 2009, p. 6). However, the information provided to us by the BLM in Colorado did not specify what requirements, direction, measures, or guidance will ultimately be included in the revised RMPs to address threats to sage-grouse and sagebrush habitat. The 2008 final RMP for the BLM Monticello Field Office in Utah incorporates the recommendations of the 2005 RCP, which provides a level of benefit for Gunnison sage-grouse.

Current BLM RMPs do provide limited regulatory protection for Gunnison sage-grouse as they are being implemented through project-level planning (e.g., travel management (the management of the motorized and nonmotorized use of public lands) and grazing permit renewals). We do not know what final measures will be included in the revised RMPs and, therefore, what will ultimately be implemented. Based on modeling results demonstrating the effects of roads on Gunnison sage-grouse (Aldridge *et al.* 2011, entire—discussed in detail in Factor A), implementation of even the most restrictive travel management alternatives proposed by the BLM and USFS will still result in further degradation and fragmentation of Gunnison sage-grouse habitat in the Gunnison Basin.

In addition to land use planning, BLM uses Instruction Memoranda (IM) to provide instruction to district and field offices regarding specific resource issues. Instruction Memoranda are guidance that require a process to be followed but do not mandate results. Additionally, IMs are of short duration (1 to 2 years) and are intended to address resource concerns by providing direction to staff until a threat passes or the resource issue can be addressed in a long-term planning document. BLM issued IM Number CO–2005–038 on July 12, 2005, stating BLM's intent and commitment to assist with and participate in the implementation of the 2005 RCP. Although this IM has not been formally updated or reissued, it continues to be used for BLM-administered lands in the State of Colorado (BLM 2009, p. 6) and offers some conservation benefit for Gunnison sage-grouse through the establishment of Gunnison sage-grouse-specific management goals.

The BLM has regulatory authority for oil and gas leasing on Federal lands and on private lands with a severed Federal mineral estate, as provided at 43 CFR 3100 et seq., and they are authorized to require stipulations as a condition of issuing a lease. The BLM's planning handbook has program-specific guidance for fluid minerals (which include oil and gas) that specifies that RMP decisions will identify restrictions on areas subject to leasing, including closures, as well as lease stipulations (BLM 2000, Appendix C, p. 16). The handbook also specifies that all stipulations must have waiver, exception, or modification criteria documented in the plan, and notes that the least restrictive constraint to meet the resource protection objective should be used (BLM 2000, Appendix C, p. 16).

The BLM has regulatory authority to condition ''Application for Permit to Drill'' authorizations that are conducted under a lease that does not contain specific sage-grouse conservation stipulations, but utilization of conditions is discretionary and we are uncertain as to how this authority will be applied. However, since we did not consider that nonrenewable energy development, based on the information available to us, rose to the level of a threat to the species in the future, it is not necessary to consider the effectiveness of the relative regulatory mechanism. Also, oil and gas leases have a 200-m (650-ft) stipulation, which allows movement of the drilling area by that distance to avoid sensitive resources. However, in most cases this small amount of movement would have little to no conservation benefit to Gunnison sage-grouse because sage-grouse respond to nonrenewable energy development at much further distances (Holloran *et al.* 2007, p. 12; Walker *et al.* 2007, p. 10). Many of the BLM field offices work with the operators to move a proposed drilling site farther or justify such a move through the site-specific NEPA process.

For existing oil and gas leases on BLM land in occupied Gunnison sage-grouse habitat, oil and gas companies can conduct drilling operations if they wish, but are always subject to permit conditions. To our knowledge, BLM Field Offices are deferring the sale of new drilling leases in ''priority'' habitats for Gunnison sage-grouse until RMP revisions are complete and/or adequate protective stipulations are in place. However, there is currently no policy or regulatory mechanism in effect which assures that future lease sales in occupied habitat will not occur. In addition, leases already exist in 17 percent of the Piñon Mesa population, and 49 percent of the San Miguel Basin population. Given the already small and

fragmented nature of the populations where oil and gas leases are likely to occur, additional development within occupied habitat would negatively impact those populations by causing additional actual and functional habitat loss and fragmentation. Since we have no information on what minimization and mitigation measures might be applied, we cannot assess the overall conservation impacts of potential BLM regulations to those populations.

The oil and gas leasing regulations authorize BLM to modify or waive lease terms and stipulations if the authorized officer determines that the factors leading to inclusion of the term or stipulation have changed sufficiently to no longer justify protection, or if proposed operations would not cause unacceptable impacts (43 CFR 3101.1–4). We have no information that the BLM has granted any waivers of stipulations pertaining to the Gunnison sage-grouse and/or their habitat, which likely has benefitted the species.

The Energy Policy and Conservation Act Amendments of 2000 included provisions requiring the Secretary of the Department of the Interior to conduct a scientific inventory of all onshore Federal lands to identify oil and gas resources underlying these lands and the nature and extent of any restrictions or impediments to the development of such resources (42 U.S.C. 6217). On May 18, 2001, President Bush signed Executive Order 13212, Actions to Expedite Energy-Related Projects (66 FR 28357, May 22, 2001), which states that the executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. The Executive Order specifies that this direction includes expediting review of permits or taking other actions as necessary to accelerate the completion of projects, while maintaining safety, public health, and environmental protections. Due to the relatively small amount of energy development activities occurring within Gunnison sage-grouse habitat (with the exception of the Dry Creek Basin subpopulation of the San Miguel population) and the low potential for oil and gas development over the majority of the species' range (BLM 2009, p. 1), we do not believe that energy development activities alone are a threat to Gunnison sage-grouse.

As stated previously, Gunnison sage-grouse are considered a BLM Sensitive Species and therefore receive Special Status Species management considerations. The BLM regulatory authority for grazing management is provided at 43 CFR 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions determined by BLM to be appropriate to achieve management and resource condition objectives on the public lands and other lands administered by BLM, and to ensure that habitats are, or are making significant progress toward being, restored or maintained for BLM special status species (43 CFR 4180.1(d)). The State or regional standards for grazing administration must address habitat for endangered, threatened, proposed, candidate, or special status species, and habitat quality for native plant and animal populations and communities (43 CFR 4180.2(d)(4) and (5)). The guidelines must address restoring, maintaining, or enhancing habitats of BLM special status species to promote their conservation, as well as maintaining or promoting the physical and biological conditions to sustain native populations and communities (43 CFR 4180.2(e)(9) and (10)). The BLM is required to take appropriate action not later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines (43 CFR 4180.2(c)).

The BLM agreed to work with their resource advisory councils to expand the rangeland health standards required under 43 CFR 4180 so that there are public land health standards relevant to all ecosystems, not just rangelands, and that they apply to all BLM actions, not just livestock grazing (BLM Manual 180.06.A). Both Colorado and Utah have resource advisory councils. For instance, as of 2012, all active BLM grazing permits in occupied habitat managed by the BLM Gunnison Field Office have vegetation structure guidelines specific to Gunnison sage-grouse incorporated into allotment management plans or Records of Decision for permit renewals (BLM 2012, pp. 3–4). Habitat objectives for Gunnison sage-grouse within allotment management plans were designed such that they should provide good habitat for the species when allotments are managed in accordance with the objectives. Similar objectives are also incorporated into allotment plans in portions of some of the smaller population areas (see section, Public Lands Grazing in other Population Areas). However, as noted earlier (see Domestic Grazing and Wild Ungulate Herbivory under Factor A), available information suggests that LHA objectives important to Gunnison sage-grouse are not being met across portions of the species' range. Reduced habitat quality in those areas, as reflected in unmet LHA objectives, is likely negatively impacting Gunnison sage-grouse. However, the relationship between LHA determinations and the effects of domestic livestock grazing on Gunnison sage-grouse is imprecise.

Specific Gunnison sage-grouse habitat objectives from the Rangewide Conservation Plan are incorporated in some grazing permits and are likely the most effective means of ensuring that the needs of Gunnison sage-grouse are met on grazed lands. Certain grazing permits contain standard terms and conditions, such as forage utilization standards, that may indirectly help achieve habitat objectives for Gunnison sage-grouse. However, regulatory mechanisms applied within livestock grazing permits and leases are currently inadequate in portions of the range of Gunnison sage-grouse. It is anticipated that future changes will minimize further grazing impacts to habitat on BLM-administered lands and, in the future, improve degraded habitats for Gunnison sage-grouse, but there is no data at this time to substantiate this expectation.

USFS

The USFS manages 10 percent of the occupied Gunnison sage-grouse habitat (Table 1). Management of 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 all National Forests must have a Land and Resource Management Plan (LRMP) (16 U.S.C. 1600) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. The NFMA requires USFS to incorporate standards and guidelines into LRMPs (16 U.S.C. 1600). USFS conducts NEPA analysis on its LRMPs, which include provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The USFS planning process is similar to that of BLM.

The Gunnison sage-grouse is a USFS sensitive species in both Region 2 (Colorado) and Region 4 (Utah). USFS policy provides direction to analyze potential impacts of proposed management activities to sensitive species in a biological evaluation. The National Forests within the range of sage-grouse provide important seasonal habitats for the species, particularly the

Grand Mesa, Uncompahgre, and Gunnison (GMUG) National Forests. The 1991 Amended Land and Resource Management Plan for the GMUG National Forests has not directly incorporated Gunnison sage-grouse conservation measures or habitat objectives. The Regional Forester signed the 2005 RCP and as such has agreed to follow and implement those recommendations. Three of the 34 grazing allotments in occupied grouse habitat have incorporated Gunnison sage-grouse habitat objectives. To date, USFS has not deferred or withdrawn oil and gas leasing in occupied habitat, but sage-grouse conservation measures can be included at the ''Application for Permit to Drill'' stage. The BLM, which regulates oil and gas leases on USFS lands, has the authority to defer leases. However, the only population within USFS lands that is in an area of high or even medium potential for oil and gas reserves is the San Miguel Basin, and USFS lands only make up 1.4 percent of that population (GSRSC 2005, D–8). While consideration as a sensitive species and following the recommendations contained in the 2005 RCP (GSRSC 2005, entire) can provide some conservation benefits, they are voluntary in nature. Considering the aforementioned, the USFS has minimal regulatory authority that has been implemented to provide for the long-term conservation of Gunnison sage-grouse.

NPS

The NPS manages 2 percent of occupied Gunnison sage-grouse habitat (Table 1), which means that there is little opportunity for the agency to affect range-wide conservation of the species. The NPS Organic Act (39 Stat. 535; 16 U.S.C. 1, 2, 3, and 4) states that NPS will administer areas under their jurisdiction ''by such means and measures as conform to the fundamental purpose of said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historical objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Lands in the Black Canyon of the Gunnison National Park and the Curecanti National Recreation Area include portions of occupied habitat of the Crawford and Gunnison Basin populations. The 1993 Black Canyon of the Gunnison General Management Plan (NPS 1993, entire) and the 1995 Curecanti National Recreation Area General Management Plan (NPS 1995, entire) do not identify any specific conservation measures for Gunnison sage-grouse. However, these plans are outdated and will be replaced with Resource Stewardship Strategies, which will be developed in the next 5 to 7 years. In the meantime, NPS's ability to actively manage for species of special concern is not limited by the scope of their management plans.

NPS completed a Fire Management Plan in 2006 (NPS 2006, entire). Both prescribed fire and fire use (allowing wildfires to burn) are identified as a suitable use in Gunnison sage-grouse habitat. However, Gunnison sage-grouse habitat is identified as a Category C area, meaning that, while fire is a desirable component of the ecosystem, ecological constraints must be observed. For Gunnison sage-grouse, constraints include limitation of acreage burned per year and limitation of percent of project polygons burned. The NPS is currently following conservation measures in the local conservation plans and the 2005 RCP (Stahlnecker 2010, pers. comm.). In most cases, implementation of NPS fire management policies should result in minimal adverse effects since emphasis is placed on activities that will minimize, or ideally benefit, impacts to Gunnison sage-grouse habitat. Overall, implementation of NPS regulations should minimize impacts to Gunnison sage-grouse because they result in actions that intend to protect Gunnison sage-grouse habitat. Certain activities, such as human recreational activities occurring within occupied habitat, may have adverse effects although we believe the limited nature of such activities on NPS lands would limit their impacts on the species and thus not be considered a threat to Gunnison sage-grouse persistence. Grazing management activities on NPS lands are governed by BLM regulations, and their implementation and the results of these regulations are likely similar to those discussed for the BLM.

Conservation Easements and Fee Title Properties

Easements that prevent long-term or permanent habitat loss by prohibiting development are held by CPW, UDWR, Natural Resources Conservation Service (NRCS), NPS, and nongovernmental organizations. In addition, state and nongovernmental conservation organizations have secured properties through fee title acquisition. Some of the easements include conservation measures that are specific for Gunnison sage-grouse, while many are directed at other species, such as big game (GSRSC 2005, pp. 59–103). As of 2012, approximately 29,058 ha (71,084 ac), or 21 percent, of private lands in occupied Gunnison sage-grouse habitat in Colorado have been placed in conservation easements or acquired in fee title for conservation purposes (CPW 2011c, p. 11; CPW 2012b, p. 6; Cochran 2012, pers. comm.). This constitutes approximately 7.6 percent of rangewide occupied habitat (379,464 ha (937,676 ac)). Approximately 7,982 ha (19,725 ac), or 2 percent, of rangewide occupied habitat are under fee title ownership by conservation agencies or organizations noted above (Table 3).

Although the decision of whether to enter into a conservation easement is voluntary on the part of the landowner, conservation easements are legally binding documents once they are recorded. Therefore, we have determined that perpetual conservation easements that are recorded may offer some regulatory protection to the species, depending on the terms of the easement. Some of these easements protect existing Gunnison sage-grouse habitat. Similarly, fee title conservation properties (e.g. State Wildlife Areas) may offer regulatory protection to Gunnison sage-grouse, depending on the organization and conservation goals for the property.

TABLE 3—CONSERVATION EASEMENTS [a] BY POPULATION AND PERCENTAGES OF OCCUPIED HABITAT IN CONSERVATION EASEMENTS

[Lavender et al. 2011, CPW 2012b, p. 6]

Population	Hectares	Acres	Percent of occupied habitat in conservation easement
Gunnison Basin	11,334	28,008	4.7
Piñon Mesa	4,772	11,791	30.3

TABLE 3—CONSERVATION EASEMENTS [a] BY POPULATION AND PERCENTAGES OF OCCUPIED HABITAT IN CONSERVATION EASEMENTS—Continued

[Lavender et al. 2011, CPW 2012b, p. 6]

Population	Hectares	Acres	Percent of occupied habitat in conservation easement
Cerro Summit-Cimarron-Sims Mesa	1,395	3,447	9.3
Monticello	1,036	2,560	3.6
San Miguel Basin	1,029	2,543	2.5
Dove Creek Group	330	815	2.0
Crawford	249	616	1.8
Poncha Pass	0	0	0
Rangewide	20,145	49,780	5.3

[a] Includes conservation easements of all types and ownership as of September 2009, plus new CPW conservation easements since that time (CPW 2012b, p.6).

Based on our GIS analysis of data from Colorado Ownership Management and Protection (COMaP) data (Lavendar et al. 2011), approximately 69 percent of the area under conservation easements have land cover types other than agricultural (covering 31 percent) that provide habitat for Gunnison sage-grouse. However, considering that the total conservation easements recorded to date cover only 5.3 percent of rangewide occupied habitat, and not all easements have sage-grouse-specific habitat and/or conservation measures, and their scattered distribution throughout the range of the species, easements provide some level of protection from future development, but they do not provide adequate certainty against loss and fragmentation of Gunnison sage-grouse habitat. Similarly, since fee title properties held by conservation agencies or organizations cover only about 2 percent of rangewide occupied habitat, and protections vary widely depending on the owner or organization goals, they do not provide adequate certainty against loss and fragmentation of Gunnison sage-grouse habitat. The establishment of future conservation easements and fee title acquisition of properties will likely be limited considering their cost compared to the revenue generated by development of those lands, and money available through all sources to secure conservation properties. In addition, because entering into a conservation easement is voluntary on the part of the landowner, and fee title acquisitions will depend on the availability of lands for sale, market conditions, and other factors, we do not know if any future conservation easements or purchases will occur in such a configuration and magnitude that they will offer the species adequate protection.

Summary of Factor D

Gunnison sage-grouse conservation has been addressed in some local, State, and Federal plans, laws, regulations, and policies. Gunnison County has implemented regulatory authority over some development within their area of jurisdiction, for which they are to be highly commended. While the regulatory authority that has been implemented in Gunnison County has minimized some impacts, it has not curtailed the habitat loss, fragmentation, and/or degradation occurring within the County's jurisdictional boundary. Other counties with jurisdiction within occupied Gunnison sage-grouse habitat have not enacted regulations to address impacts resulting from residential development. Due to the limited scope and applicability of the regulations that exist throughout the range of the species and within all populations, the current local land use or development planning regulations do not provide adequate regulatory authority to protect sage-grouse from development or other harmful land uses that result in habitat loss, degradation, and/or fragmentation.

The CPW, UDWR, and other entities have implemented and continue to pursue conservation easements in Colorado and Utah, respectively, to conserve Gunnison sage-grouse habitat and meet the species' needs. These easements provide protection for the species where they occur, but do not cover enough of the landscape to provide for long-term conservation of the species. State wildlife regulations provide protection for individual Gunnison sage-grouse from direct mortality due to hunting but do not protect its habitat from the main threat of loss and fragmentation.

Energy development is currently only considered a threat in the Dry Creek Basin subpopulation of the San Miguel population. However, renewable and non-renewable energy development is likely to increase in the future in the Monticello-Dove Creek population which may impact this already small population. For the BLM and USFS, RMPs and LRMPs are mechanisms through which adequate and enforceable protections for Gunnison sage-grouse could be implemented. The extent to which appropriate measures to reduce or eliminate threats to sage-grouse have been incorporated into those planning documents, or are being implemented, varies across the range. As evidenced by the discussion above, and the ongoing threats described under Factor A, BLM and the USFS are not fully implementing the regulatory mechanisms available to conserve Gunnison sage-grouse and their habitats on their lands.

We have evaluated the best available scientific information on the adequacy of existing regulatory mechanisms to address threats to Gunnison sage-grouse and its habitats. While 54 percent of Gunnison sage-grouse habitat is managed by Federal agencies, these lands are interspersed with private lands which, as described above, do not have adequate regulatory mechanisms to ameliorate the further loss and fragmentation of habitat in all populations. This interspersion of private lands throughout Federal and other public lands extends the negative influence of those activities beyond the actual 41 percent of occupied habitat that private lands overlay. While we are unable to quantify the extent of the impacts on Federal lands resulting from activities on private lands, we have determined that the inadequacy of regulatory mechanisms on private lands as they pertain to human infrastructure development combined with inadequate regulatory mechanisms on some Federal

lands pose a threat to the species throughout its range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Other factors potentially affecting the Gunnison sage-grouse's continued existence include genetic risks, drought, recreational activities, pesticides and herbicides, and contaminants.

Genetics and Small Population Size

Small populations face three primary genetic risks: Inbreeding depression; loss of genetic variation; and accumulation of new mutations. Inbreeding can have individual and population consequences by either increasing the phenotypic expression of recessive, deleterious alleles (the expression of harmful genes through the physical appearance) or by reducing the overall fitness of individuals in the population (GSRSC 2005, p. 109 and references therein). At the species level, Gunnison sage-grouse have low levels of genetic diversity particularly when compared to greater sage-grouse (Oyler-McCance *et al.* 2005, p. 635). There is no consensus regarding how large a population must be in order to prevent inbreeding depression. However, the San Miguel Basin Gunnison sage-grouse effective population size is below the level at which inbreeding depression has been observed to occur (Stiver *et al.* 2008, p. 479). Lowered hatching success is a well-documented indicator of inbreeding in wild bird populations (Stiver *et al.* 2008, p. 479 and references therein). Stiver *et al.* (2008, p. 479) postulated that the observed lowered hatching success rate of Gunnison sage-grouse in their study may be caused by inbreeding depression. Similarities of hatchability rates exist among other bird species that had undergone genetic bottlenecks. The application of the same procedures of effective population size estimation as used for the San Miguel Basin to the other Gunnison sage-grouse populations indicated that all populations other than the Gunnison Basin population may have population sizes low enough to induce inbreeding depression; and all populations could be losing adaptive potential (Stiver *et al.* 2008, p. 479).

Population structure of Gunnison sage-grouse was investigated using mitochondrial DNA sequence (mtDNA, maternally-inherited DNA located in cellular organelles called mitochondria) and nuclear microsatellite data from six geographic areas (Crawford, Gunnison Basin, Curecanti area of the Gunnison Basin, Monticello-Dove Creek, Piñon Mesa, and San Miguel Basin) (Oyler-McCance *et al.* 2005, entire). The Cerro Summit-Cimarron-Sims Mesa population was not included in the analysis due to inadequate sample sizes. The Poncha Pass population also was not included as it is composed of individuals transplanted from Gunnison Basin. Levels of genetic diversity were highest in the Gunnison Basin, which had more alleles and most of the alleles present in other populations (Oyler-McCance *et al.* 2005, entire). All other populations had much lower levels of diversity. The lower diversity levels are linked to small population sizes and a high degree of geographic isolation.

Collectively, the smaller populations contain 24 percent of the genetic diversity of the species. Individually, each of the small populations may not be important genetically to the survival of the species, but collectively it is likely that 24 percent of the genetic diversity is important to future rangewide survival of the species. Some of the genetic makeup contained within the smaller populations (with the potential exception of the Poncha Pass population since it consists of birds from the Gunnison Basin) may be critical to maintaining adaptability in the face of issues such as climate change or other environmental change. All populations sampled were found to be genetically discrete units (Oyler-McCance *et al.* 2005, p. 635), so the loss of any of them would result in a decrease in genetic diversity of the species. In addition, multiple populations across a broad geographic area provide insurance against a single catastrophic event (such as drought), and the aggregate number of individuals across all populations increases the probability of demographic persistence and preservation of overall genetic diversity by providing an important genetic reservoir (GSRSC 2005, p. 179). Thus, the loss of any one population would have a negative effect on the species as a whole.

Historically, the Monticello-Dove Creek, San Miguel, Crawford, and Piñon Mesa populations were larger and were connected through more contiguous areas of sagebrush habitat. The loss and fragmentation of sagebrush habitat between the late 1950s and the early 1990s led to the current isolation of these populations, which is reflected in low amounts of gene flow and isolation by distance (Oyler-McCance *et al.* 2005, p. 635). However, Oyler-McCance *et al.* (2005, p. 636) noted that a few individuals in their analysis appeared to have the genetic characteristics of a population other than their own, suggesting they were dispersers from a different population. Two probable dispersers were individuals moving from the San Miguel Basin population into Monticello-Dove Creek and Crawford. The San Miguel population itself appeared to have a mixture of individuals with differing probabilities of belonging to different clusters. This information suggests that the San Miguel population may act as a conduit of gene flow among the satellite populations surrounding the larger Gunnison Basin population. Additionally, another potential disperser into Crawford was found from the Gunnison Basin (Oyler-McCance *et al.* 2005, p. 636). This result is not surprising given their close geographic proximity.

Effective population size (Ne) is an important parameter in conservation biology. It is defined as the size of an idealized population of breeding adults that would experience the same rate of (1) loss of heterozygosity (the amount and number of different genes within individuals in a population), (2) change in the average inbreeding coefficient (a calculation of the amount of breeding by closely related individuals), or (3) change in variance in allele (one member of a pair or series of genes occupying a specific position in a specific chromosome) frequency through genetic drift (the fluctuation in gene frequency occurring in an isolated population) as the actual population.

The effective size of a population is often much less than its actual size or number of individuals. As effective population size decreases, the rate of loss of allelic diversity via genetic drift increases. Two consequences of this loss of genetic diversity, reduced fitness through inbreeding depression and reduced response to sustained directional selection (''adaptive potential''), are thought to elevate extinction risk (Stiver *et al.,* 2008, p. 472 and references therein). While no consensus exists on the population size needed to retain a level of genetic diversity that maximizes evolutionary potential (i.e., the ability to adapt to local changes), up to 5,000 greater sage-grouse may be necessary to maintain an effective population size of 500 birds (Aldridge and Brigham, 2003, p. 30). Other recent recommendations also suggest populations of at least 5,000 individuals to deal with evolutionary and demographic constraints (Traill *et al.* 2009, p. 3, and references therein). While the persistence of wild populations is usually influenced more by ecological rather than by genetic effects, once populations are reduced in size, genetic factors become increasingly important (Lande 1995, p. 318).

The CPW contracted a population viability analysis (PVA) for the

Gunnison sage-grouse (GSRSC 2005, Appendix G). The purpose of the Gunnison sage-grouse PVA was to assist the CPW in evaluating the relative risk of extinction for each population under the conditions at that time (i.e., the risk of extinction if nothing changed), to estimate relative extinction probabilities and loss of genetic diversity over time for various population sizes, and to determine the sensitivity of Gunnison sage-grouse population growth rates to various demographic parameters (GSRSC 2005, p. 169). The PVA was used as a tool to predict the relative, not absolute or precise, probability of extinction for the different populations under various management scenarios based on information available at that time and with the understanding that no data were available to determine how demographic rates would be affected by habitat loss or fragmentation. The analysis indicated that small populations (<50 birds) are at a serious risk of extinction within the next 50 years (assuming some degree of consistency of environmental influences in sage-grouse demography).

In contrast, populations in excess of 500 birds had an extinction risk of less than 5 percent within the next 50 years. These results suggested that the Gunnison Basin population is likely to persist long term in the absence of threats acting on it. In the absence of intervention, however, the Cerro Summit-Cimarron-Sims Mesa and Poncha Pass populations and the Dove Creek group of the Monticello-Dove Creek population were likely to become extirpated (GSRSC 2005, pp. 168–179). Based on a combination of information including the PVA (GSRSC 2005, p. 179), 2011 population estimates, and an overall declining population trend, the same three populations may soon be extirpated. Additionally, Gunnison sage-grouse estimates in the Crawford and Piñon Mesa populations have declined by more than 50 percent since the PVA was conducted (Table 2), so they too are likely trending towards extirpation. The San Miguel population has also declined, by 40 percent since 2004, so cumulative factors may be combining to cause its future extirpation.

The lack of large expanses of sagebrush habitat required by Gunnison sage-grouse in at least six of the seven Gunnison sage-grouse populations (as discussed in Factor A), combined with the results of the PVA and current population trends suggest that at least five, and most likely six, of the seven Gunnison sage-grouse populations are at high risk of extirpation due to small population size. The loss of genetic diversity from the extirpation of the aforementioned populations would result in a loss of genetic diversity of the species as a whole and thus contribute to decreased functionality of the remaining populations in maintaining viability and adaptability, as well as the potential loss of these populations' contribution to rangewide population connectivity and the continued existence of the entire species.

Six of the seven Gunnison sage-grouse populations may have effective sizes low enough to induce inbreeding depression, and all seven could be losing adaptive potential, with the assumption that the five populations smaller than the San Miguel population are exhibiting similar demography to the San Miguel population (Stiver *et al.* 2008, p. 479) and thus trending towards extirpation. Stiver *et al.* (2008, p. 479) suggested that long-term persistence of the six smaller populations would require translocations to supplement genetic diversity. The only population currently providing individuals to be translocated is the Gunnison Basin population, but because of substantial population declines such as those observed between the 2001 and 2004 lek counts (Stiver *et al.,* 2008, p. 479), questions arise as to whether this population would be able to sustain the loss of individuals required by a long-term, sustained translocation program. Lek counts, and consequently population estimates, especially in the San Miguel Basin and Gunnison Basin populations, have undergone substantial declines (Table 2) since peaks observed in the annual 2004 and 2005 counts, thus making inbreeding depression even more likely to be occurring within all populations except the Gunnison Basin. While we recognize that sage-grouse population sizes are cyclical, and that there are concerns about the statistical reliability of lek counts and the resulting population estimates (CDOW 2009b, pp. 1–3), we nonetheless believe that the overall declining trends of six of the seven Gunnison sage-grouse populations, and for the species as a whole, are such that they are impacting the species' ability to persist.

In summary, the declines in estimates of grouse numbers since 2005 are likely to contribute to even lower levels of genetic diversity and higher levels of inbreeding depression than previously considered, thus making the species as a whole less adaptable to environmental variables and more vulnerable to extirpation. Based on the information presented above, we have determined that genetics risks related to the small population size of Gunnison sage-grouse are a threat to the species.

Drought

Drought is a common occurrence throughout the range of the Gunnison and greater sage-grouse (Braun 1998, p. 148) and is considered a universal ecological driver across the Great Plains (Knopf 1996, p. 147). Infrequent, severe drought may cause local extinctions of annual forbs and grasses that have invaded stands of perennial species, and recolonization of these areas by native species may be slow (Tilman and El Haddi 1992, p. 263). Drought reduces vegetation cover (Milton *et al.* 1994, p. 75; Connelly *et al.* 2004, p. 7–18), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity. Drought also can exacerbate other natural events such as defoliation of sagebrush by insects. For example, approximately 2,544 km^2 (982 mi^2) of sagebrush shrublands died in Utah in 2003 as a result of drought and infestations with the *Aroga* (webworm) moth (Connelly *et al.* 2004, p. 5–11). Sage-grouse are affected by drought through the loss of vegetative habitat components, reduced insect production (Connelly and Braun 1997, p. 9), and increased risk of West Nile virus infections as described in Factor C above. These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality associated with decreased nest cover and food availability (Braun 1998, p. 149; Moynahan *et al.* 2007, p. 1781).

Greater sage-grouse populations declined during the 1930s period of drought (Patterson 1952, p. 68; Braun 1998, p. 148). Drought conditions in the late 1980s and early 1990s also coincided with a period when sage-grouse populations were at historically low levels (Connelly and Braun 1997, p. 8). Although drought has been a consistent and natural part of the sagebrush-steppe ecosystem, drought impacts on sage-grouse can be exacerbated when combined with other habitat impacts, such as human developments, that reduce cover and food (Braun 1998).

Aldridge *et al.* (2008, p. 992) found that the number of severe droughts from 1950 to 2003 had a weak negative effect on patterns of greater sage-grouse persistence. However, they cautioned that drought may have a greater influence on future sage-grouse populations as temperatures rise over the next 50 years, and synergistic effects of other threats affect habitat quality (Aldridge *et al.* 2008, p. 992). Populations on the periphery of the

range may suffer extirpation during a severe and prolonged drought (Wisdom *et al.* 2011, pp. 468–469).

Gunnison sage-grouse are capable of enduring moderate or severe, but relatively short-term, drought as observed from persistence of the populations during drought conditions from 1999 through 2003 throughout much of the range. The drought that began by at least 2001 and was most severe in 2002 had varying impacts on Gunnison sage-grouse habitat and is discussed in detail in our April 18, 2006, finding (71 FR 19954). Habitat appeared to be negatively affected by drought across a broad area of the Gunnison sage-grouse's range. However, the reduction of sagebrush density in some areas, allowing for greater herbaceous growth and stimulating the onset of sagebrush seed crops, may have been beneficial to sagebrush habitats over the long term. Nonetheless, six of the seven grouse populations (except for the Gunnison Basin population) have decreased in number since counts were conducted during the drought year of 2002 (Table 2).

Data are not available to scientifically determine if the declines are due to the drought alone. It is likely that drought exacerbates other impacts such as discussed above in Factors A through D. The current status of the various populations throughout the species' range make it highly susceptible to stochastic factors such as drought, particularly when it is acting in conjunction with others factors such as habitat fragmentation, small population size, predation, and low genetic diversity, as discussed in Factors A and C above and previously in Factor E. The available information is too speculative to conclude that drought alone is a threat to the species at this time; however, based on rapid species decline in drought years, it is likely that drought exacerbates other known threats and thus can negatively affect the species.

Recreation

Nonconsumptive recreational activities can degrade wildlife resources, water, and the land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and simplifying plant communities (Boyle and Samson 1985, pp. 110–112). Sage-grouse response to disturbance may be influenced by the type of activity, recreationist behavior, predictability of activity, frequency and magnitude, timing, and activity location (Knight and Cole 1995, p. 71). We do not have any published literature concerning measured direct effects of recreational activities on Gunnison or greater sage-grouse, but can infer potential impacts on Gunnison sage-grouse from studies on related species and from research on nonrecreational activities. Baydack and Hein (1987, p. 537) reported displacement of male sharp-tailed grouse at leks from human presence resulting in loss of reproductive opportunity during the disturbance period. Female sharp-tailed grouse were observed at undisturbed leks while absent from disturbed leks during the same time period (Baydack and Hein 1987, p. 537). Disturbance of incubating female sage-grouse could cause displacement from nests, increased predator risk, or loss of nests. Disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood-rearing could affect reproduction or survival (Baydack and Hein 1987, pp. 537–538).

Recreational use of off-highway vehicles (OHVs) is one of the fastest-growing outdoor activities. In the western United States, greater than 27 percent of the human population used OHVs for recreational activities between 1999 and 2004 (Knick *et al.* 2011, p. 217). Knick *et al.* (2011, p. 219) reported that widespread motorized access for recreation facilitated the spread of predators adapted to humans and the spread of invasive plants. Any high-frequency human activity along established corridors can affect wildlife through habitat loss and fragmentation (Knick *et al.* 2011, p. 219). The effects of OHV use on sagebrush and sage-grouse have not been directly studied (Knick *et al.* 2011, p. 216). However, local working groups considered recreational uses, such as off-road vehicle use and biking, to be a risk factor in many areas.

Recreation from OHVs, hikers, mountain bikes, campers, snowmobiles, bird watchers, and other sources has affected many parts of the range, especially portions of the Gunnison Basin and Piñon Mesa population (BLM 2005a, p. 14; BLM 2005d, p. 4; BLM 2009, p. 36). These activities can result in abandonment of lekking activities and nest sites, energy expenditure reducing survival, and greater exposure to predators (GSRSC 2005).

Recreation is a significant use on lands managed by BLM (Connelly *et al.* 2004, p. 7–26). Recreational activities within the Gunnison Basin are widespread, occur during all seasons of the year, and have expanded as more people move to the area or come to recreate (BLM 2009, pp. 36–37). Four wheel drive, OHV, motorcycle, and other mechanized travel has been increasing rapidly. The number of annual OHV registrations in Colorado increased from 12,000 in 1991 to 131,000 in 2007 (BLM 2009, p. 37). Recreational activities have direct and indirect impacts to the Gunnison sage-grouse and their habitat (BLM 2009, p. 36). The Grand Mesa, Uncompaghre, and Gunnison (GMUG) National Forest is the fourth most visited National Forest in the Rocky Mountain Region of the USFS (Region 2) (Kocis et. al., 2004 in Draft Environmental Impact Statement for Gunnison Basin Federal Lands Travel Management (2009, p. 137)). The GMUG is the second most heavily visited National Forest on the western slope of Colorado (DEIS Gunnison Basin Federal Lands Travel Management 2009, p. 137). However, it is unknown what percentage of the visits occurs within Gunnison sage-grouse habitat on the Gunnison Ranger District (DEIS Gunnison Basin Federal Lands Travel Management 2009, p. 137). With human populations expected to increase in towns and cities within and adjacent to the Gunnison Basin and nearby populations (see Factor A), the impacts to Gunnison sage-grouse from recreational use will continue to increase.

The BLM and Gunnison County have 38 closure points to minimize impacts to Gunnison sage-grouse within the Basin from March 15 to May 15 each year (BLM 2009, p. 40). While road closures may be violated in a small number of situations, road closures are having a beneficial effect on Gunnison sage-grouse through avoidance or minimization of impacts during the breeding season.

Dispersed camping occurs at a low level on public lands in all of the populations, particularly during the hunting seasons for other species. However, we have no information indicating that these camping activities are adversely affecting Gunnison sage-grouse.

Domestic dogs accompanying recreationists or associated with residences can disturb, harass, displace, or kill Gunnison sage-grouse. Authors of many wildlife disturbance studies concluded that dogs with people, dogs on leash, or loose dogs provoked the most pronounced disturbance reactions from their study animals (Sime 1999 and references within). The primary consequences of dogs being off leash is harassment, which can lead to physiological stress as well as the separation of adult and young birds, or flushing incubating birds from their nest. However, we have no data indicating that this activity is adversely affecting Gunnison sage-grouse population numbers such that it can be

considered a rangewide or population level threat.

Recreational activities as discussed above do not singularly pose a threat to Gunnison sage-grouse. However, there may be certain situations where recreational activities are impacting local concentrations of Gunnison sage-grouse, especially in areas where habitat is already fragmented such as in the six small populations and in certain areas within the Gunnison Basin.

Pesticides and Herbicides

Insects are an important component of sage-grouse chick and juvenile diets (GSRSC 2005, p. 132 and references therein). Insects, especially ants (Hymenoptera) and beetles (Coleoptera), can comprise a major proportion of the diet of juvenile sage-grouse and are important components of early brood-rearing habitats (GSRSC 2005, p. 132 and references therein). Most pesticide applications are not directed at control of ants and beetles. Pesticides are used primarily to control insects causing damage to cultivated crops on private lands and to control grasshoppers (Orthoptera) and Mormon crickets (*Mormonius sp.*) on public lands.

Few studies have examined the effects of pesticides to sage-grouse, but at least two have documented direct mortality of greater sage-grouse from use of these chemicals. Greater sage-grouse died as a result of ingestion of alfalfa sprayed with organophosphorus insecticides (Blus *et al.* 1989, p. 1142; Blus and Connelly 1998, p. 23). In this case, a field of alfalfa was sprayed with methamidophos and dimethoate when approximately 200 greater sage-grouse were present; 63 of these sage-grouse were later found dead, presumably as a result of pesticide exposure (Blus *et al.* 1989; p. 1142, Blus and Connelly 1998, p. 23). Both methamidophos and dimethoate remain registered for use in the United States (Christiansen and Tate 2011, p. 125), but we found no further records of sage-grouse mortalities from their use. In 1950, rangelands treated with toxaphene and chlordane bait to control grasshoppers in Wyoming resulted in game bird mortality of 23.4 percent (Christiansen and Tate 2011, p. 125). Forty-five greater sage-grouse deaths were recorded, 11 of which were most likely related to the pesticide (Christiansen and Tate 2011, p. 125, and references therein). Greater sage-grouse who succumbed to vehicle collisions and mowing machines in the same area also were likely compromised from pesticide ingestion (Christiansen and Tate 2011, p. 125). Neither of these chemicals has been registered for grasshopper control since the early 1980s (Christiansen and Tate 2011, p. 125, and references therein) and thus are no longer a threat to Gunnison sage-grouse.

Infestations of Russian wheat aphids (*Diuraphis noxia*) have occurred in Gunnison sage-grouse occupied range in Colorado and Utah (GSRSC 2005, p. 132). Disulfoton, a systemic organophosphate extremely toxic to wildlife, was routinely applied to over a million acres of winter wheat crops to control the aphids during the late 1980s. We have no data indicating there were any adverse effects to Gunnison sage-grouse (GSRSC 2005, p. 132). More recently, an infestation of army cutworms *(Euxoa auxiliaries)* occurred in Gunnison sage-grouse habitat along the Utah-Colorado State line. Thousands of acres of winter wheat and alfalfa fields were sprayed with insecticides such as permethrin, a chemical that is toxic to wildlife, by private landowners to control them (GSRSC 2005, p. 132), but again, we have no data indicating any adverse effects to Gunnison sage-grouse.

Game birds that ingested sublethal levels of pesticides have been observed exhibiting abnormal behavior that may lead to a greater risk of predation (Dahlen and Haugen 1954, p. 477; McEwen and Brown 1966, p. 609; Blus *et al.* 1989, p. 1141). Wild sharp-tailed grouse poisoned by malathion and dieldrin exhibited depression, dullness, slowed reactions, irregular flight, and uncoordinated walking (McEwen and Brown 1966, p. 689). Although no research has explicitly studied the indirect levels of mortality from sublethal doses of pesticides (e.g., predation of impaired birds), it has been assumed to be the reason for mortality among some study birds (McEwen and Brown 1966 p. 609; Blus *et al.* 1989, p. 1142; Connelly and Blus 1991, p. 4). Both Post (1951, p. 383) and Blus *et al.* (1989, p. 1142) located depredated sage-grouse carcasses in areas that had been treated with insecticides. Exposure to these insecticides may have predisposed sage-grouse to predation. Sage-grouse mortalities also were documented in a study where they were exposed to strychnine bait used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16). While we do not have specific information of these effects occurring in Gunnison sage-grouse, the effects observed in greater sage-grouse can be expected if similar situations arise within Gunnison sage-grouse habitat.

Cropland spraying may affect populations that are not adjacent to agricultural areas, given the distances traveled by females with broods from nesting areas to late brood-rearing areas (Knick *et al.* 2011, p. 211). The actual footprint of this effect cannot be estimated, because the distances sage-grouse travel to get to irrigated and sprayed fields is unknown (Knick *et al.* 2011, p. 211). Similarly, actual mortalities from pesticides may be underestimated if sage-grouse disperse from agricultural areas after exposure.

Much of the research related to pesticides that had either lethal or sublethal effects on greater sage-grouse was conducted on pesticides that have been banned or have had their use further restricted for more than 20 years due to their toxic effects on the environment (e.g., dieldrin). We currently do not have any information to show that the banned pesticides are having negative impacts to sage-grouse populations through either illegal use or residues in the environment. For example, sage-grouse mortalities were documented in a study where they were exposed to strychnine bait used to control small mammals (Ward *et al.* 1942 as cited in Schroeder *et al.* 1999, p. 16). According to the U.S. Environmental Protection Agency (EPA), above-ground uses of strychnine were prohibited in 1988 and those uses remain temporarily cancelled today. We do not know when, or if, above-ground uses will be permitted to resume. Currently, strychnine is registered for use only below-ground as a bait application to control pocket gophers (*Thomomys* sp.; EPA 1996, p. 4). Therefore, the current legal use of strychnine baits is unlikely to present a significant exposure risk to sage-grouse. No information on illegal use, if it occurs, is available. We have no other information regarding mortalities or sublethal effects of strychnine or other banned pesticides on sage-grouse.

Although a reduction in insect population levels resulting from insecticide application can potentially affect nesting sage-grouse females and chicks (Willis *et al.* 1993, p. 40; Schroeder *et al.* 1999, p. 16), there is no information as to whether insecticides are impacting survivorship or productivity of the Gunnison sage-grouse.

Herbicide applications can kill sagebrush and forbs important as food sources for sage-grouse (Carr 1968 *in* Call and Maser 1985, p. 14). The greatest impact resulting from a reduction of either forbs or insect populations is to nesting females and chicks due to the loss of potential protein sources that are critical for successful egg production and chick nutrition (Johnson and Boyce 1991, p. 90; Schroeder *et al.* 1999, p. 16). A comparison of applied levels of

herbicides with toxicity studies of grouse, chickens, and other gamebirds (Carr 1968, *in* Call and Maser 1985, p. 15) concluded that herbicides applied at recommended rates should not result in sage-grouse poisonings.

Use of insecticides to control mosquitoes is infrequent and probably does not have detrimental effects on sage-grouse. Available insecticides that kill adult mosquitoes include synthetic pyrethroids such as permethrin, which are applied at very low concentrations and have very low vertebrate toxicity (Rose 2004). Organophosphates such as malathion have been used at very low rates to kill adult mosquitoes for decades, and are judged relatively safe for vertebrates (Rose 2004).

In summary, historically insecticides have been shown to result in direct mortality of individuals, and also can reduce the availability of food sources, which in turn could contribute to mortality of sage-grouse. Despite the potential effects of pesticides, we could find no information to indicate that the use of these chemicals, at current levels, negatively affects Gunnison sage-grouse population numbers. Schroeder *et al.*'s (1999, p. 16) literature review found that the loss of insects can have significant impacts on nesting females and chicks, but those impacts were not detailed. Many of the pesticides that have been shown to have an effect on sage-grouse have been banned in the United States for more than 20 years. We currently do not have any information to show that either the illegal use of banned pesticides or residues in the environment are presently having negative impacts to sage-grouse populations. While the reduction in insect availability via insecticide application has not been documented to affect overall population numbers in sage-grouse, it appears that insect reduction, because of its importance to chick production and survival, could be having as yet undetected negative impacts in populations with low population numbers. At present, however, there is no information available to indicate that either herbicide or insecticide applications pose a threat to the species.

Contaminants

Gunnison sage-grouse exposure to various types of environmental contaminants may potentially occur as a result of agricultural and rangeland management practices, mining, energy development and pipeline operations, and transportation of materials along highways and railroads.

We expect that the number of sage-grouse occurring in the immediate vicinity of wastewater pits associated with energy development would be small due to the small amount of energy development within the species' range, the typically intense human activity in these areas, the lack of cover around the pits, and the fact that sage-grouse do not require free standing water. Most bird mortalities recorded in association with wastewater pits are water-dependent species (e.g., waterfowl), whereas dead ground-dwelling birds (such as the sage-grouse) are rarely found at such sites (Domenici 2008, pers. comm.). However, if the wastewater pits are not appropriately screened, sage-grouse may have access to them and could ingest water and/or become oiled while pursuing insects. If these birds then return to sagebrush cover and die, their carcasses are unlikely to be found as only the pits are surveyed.

A few gas and oil pipelines occur within the San Miguel population. Exposure to oil or gas from pipeline spills or leaks could cause mortalities or morbidity to Gunnison sage-grouse. Similarly, given the network of highways and railroad lines that occur throughout the range of the Gunnison sage-grouse, there is some potential for exposure to contaminants resulting from spills or leaks of hazardous materials being conveyed along these transportation corridors. We found no documented occurrences of impacts to Gunnison sage-grouse from such spills, and we do not expect they are a significant source of mortality or threat to the species because these types of spills occur infrequently and may involve only a small area within the occupied range of the species.

Summary of Factor E

Although genetic consequences of low Gunnison sage-grouse population numbers have not been definitively detected to date, the results from Stiver *et al.* (2008, p. 479) suggest that six of the seven populations may have effective sizes low enough to induce inbreeding depression and all seven could be losing adaptive potential. While some of these consequences may be ameliorated by translocations, information indicates the long-term viability of Gunnison sage-grouse is compromised by this situation, particularly when combined with threats discussed in Factors A and D. We have, therefore, determined that genetics risks related to the small population size of Gunnison sage-grouse are a threat to the species.

While sage-grouse have evolved with drought, population numbers suggest that drought is at least correlated with, and potentially an underlying cause of, the declines. Although we cannot determine whether drought alone is a threat to the species, we suspect it is an indirect threat exacerbating other factors such as predation or habitat fragmentation. Based on the available information, insecticides are being used infrequently enough and in accordance with manufacturer labeling such that they are not adversely affecting populations of the Gunnison sage-grouse. The most likely impact of pesticides on Gunnison sage-grouse is the reduction of insect prey items. However, we could find no information to indicate that use of pesticides, in accordance with their label instructions, is a threat to Gunnison sage-grouse. We similarly do not have information indicating that contaminants, as described above, are a threat to the species.

Thus, based on the best scientific and commercial data available, we have concluded that other natural or manmade factors (genetics risks related to small population size, and indirectly, drought that exacerbates other factors) are a threat to the Gunnison sage-grouse persistence.

Cumulative Effects From Factors A Through E

Many of the threats described in this finding may cumulatively or synergistically impact Gunnison sage-grouse beyond the scope of each individual threat. For example, improper grazing management alone may only affect portions of Gunnison sage-grouse habitat. However, improper grazing combined with invasive plants, drought, and recreational activities may collectively result in substantial habitat loss, degradation, or fragmentation across large portions of the species' range. In turn, climate change may exacerbate those effects, further diminishing habitat and increasing the isolation of already declining populations, making them more susceptible to genetic drift, disease, or catastrophic events such as fire. Further, predation on Gunnison sage-grouse may increase as a result of the increase in human disturbance and development. Numerous threats are likely acting cumulatively to further increase the likelihood that the species will become extinct within the foreseeable future.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Gunnison sage-grouse. Section 3(6) of 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 defines a 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.'' As described in detail above, this species is currently at risk throughout all of its range due to ongoing threats of habitat destruction and modification (Factor A), predation (Factor C), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting its continued existence (Factor E).

Based on the best available scientific and commercial data, we have determined that the principal threat to Gunnison sage-grouse is habitat loss, degradation, and fragmentation due to residential, exurban, and commercial development and associated infrastructure such as roads and power lines. The human population is increasing throughout much of the range of Gunnison sage-grouse, and data indicate this trend will continue. With this growth, we expect an increase in human development, further contributing to loss and fragmentation of Gunnison sage-grouse habitats. Other threats to the species include improper grazing management; predation (often facilitated by human development or disturbance); genetic risks in the declining, smaller populations; and inadequate local, State, and Federal regulatory mechanisms (e.g., laws, regulations, zoning) to conserve the species. Other factors that may not individually threaten the continued existence of Gunnison sage-grouse but, collectively, have the potential to threaten the species, include invasive plants, fire, and climate change, and the interaction of these three factors; fences; renewable and non-renewable energy development; piñon-juniper encroachment; water development; disease;, drought; and recreation.

We consider the threats that the Gunnison sage-grouse faces to be high in severity because many of the threats (exurban development, roads, predation, improper grazing management, inadequacy of regulatory mechanisms, genetic issues) occur throughout all of the species' range. Based on an evaluation of biotic, abiotic, and anthropogenic factors, no strongholds are believed to exist for Gunnison sage-grouse (Wisdom *et al.* 2011, entire). All seven populations are experiencing habitat degradation and fragmentation due to exurban development, roads, powerlines, and improper grazing management. Available habitat is limited and fragmented to extent that it is increasing the probability that the species will become extinct within the foreseeable future.

Six of the seven populations of Gunnison sage-grouse have population sizes low enough to induce inbreeding depression, and all seven may be losing their adaptive potential (Stiver 2008, p. 479). Predation is exerting a strong influence on all populations, but especially the six smaller populations. Invasive weeds are likely to exert a strong influence on all populations in the future. Regulations that are in place at the local, State, or Federal level are not adequate to minimize the threat of habitat degradation and fragmentation resulting from exurban development and other factors identified as threats to the species. The existing regulatory mechanisms are not being appropriately implemented such that land use practices result in habitat conditions that adequately support the life-history needs of the species. Existing regulations are not effective at ameliorating the threats resulting from predation, genetic issues, or invasive weeds. Due to the impacts resulting from the issues described above and the current small population sizes and habitat areas, impacts from other stressors such as fences, recreation, grazing, powerlines, and drought/weather are likely acting cumulatively to further increase the likelihood that the species will become extinct within the foreseeable future.

We have information that the threats are identifiable and that the species is currently facing them throughout its range. These actual, identifiable threats include habitat degradation and fragmentation from exurban development and roads, inadequate regulatory mechanisms, genetic issues, predation, and improper grazing management. In addition, the interaction among climate change, invasive plants, and drought/weather are impacting the species negatively. In addition to their current existence, we expect these threats to continue and likely intensify in the future.

Gunnison sage-grouse currently occupy a small fraction of their historic range. Large patches of sagebrush vegetation are extremely limited in southwestern Colorado and southeastern Utah. Extant Gunnison sage-grouse populations occur within the last remaining areas that support large areas of suitable sagebrush. As described in detail in the above *Summary of Factors Affecting the Species,* the threats of human infrastructure (residential and commercial development, roads and trails, powerlines, improper grazing management, and fences), predation, and small population sizes currently exist (at varying degrees) throughout the range of Gunnison sage-grouse and thus are imminent threats. These threats are anticipated to increase throughout the range of the species. The components of human infrastructure, once present on the landscape, become virtually permanent features resulting in the reduction or elimination of proactive and effective management alternatives. We anticipate other potential threats such as widespread invasive species invasion and increased fire frequency to increase in the future and likely will act synergistically to become threats to Gunnison sage-grouse. We anticipate renewable energy development, particularly geothermal and wind energy development, to increase in some population areas.

Therefore, based on the best available scientific and commercial information, we propose to list the Gunnison sage-grouse as an endangered species throughout all of its range. The ability of all remaining populations and habitat areas to retain the attributes required for long-term sustainability of this landscape-scale species is highly diminished, causing the species to meet the definition of endangered. Endangered status reflects the vulnerability of this species to threat factors negatively affecting it and its extremely limited and restricted habitat. We also examined the Gunnison sage-grouse to analyze if any significant portion of its range may warrant a different status. However, because of its limited and curtailed range, and uniformity of the threats throughout its entire range, we find there are no significant portions of any of the species' range that may warrant a different determination of status.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective

measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Colorado and Utah would be eligible for Federal funds to implement management actions that promote the protection and recovery of the Gunnison sage-grouse. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Gunnison sage-grouse is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Bureau of Land Management, U.S. Forest Service, and National Park Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, 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 collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must 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.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Actions that would result in the loss of sagebrush overstory plant cover or height. Such activities could include, but are not limited to, the removal of native shrub vegetation by any means for any infrastructure construction project; direct conversion of sagebrush habitat to agricultural land use; habitat improvement or restoration projects involving mowing, brush-beating, Dixie harrowing, disking, plowing, or

prescribed burning; and fire suppression activities.

(3) Actions that would result in the loss or reduction in native herbaceous understory plant cover or height, and a reduction or loss of associated arthropod communities. Such activities could include, but are not limited to, livestock grazing, the application of herbicides or insecticides, prescribed burning and fire suppression activities; and seeding of nonnative plant species that would compete with native species for water, nutrients, and space.

(4) Actions that would result in Gunnison sage-grouse avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, fences, communication towers, buildings; motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, Denver Federal Center, P.O. Box 25486, Denver, Colorado 80225–0489 (telephone (303) 236–4256; facsimile (303) 236–0027).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed rule.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Western Colorado Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to 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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Sage-grouse, Gunnison'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''BIRDS'' 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							
*	*	*	*	*	*		*
Sage-grouse, Gunnison.	*Centrocercus minimus.*	U.S.A. (AZ, CO, NM, UT).	Entire	E		NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: December 21, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–31667 Filed 1–10–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Gunnison Sage-Grouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0111; 4500030114]

RIN 1018–AX71

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Gunnison sage-grouse (*Centrocercus minimus*) under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. The effect of this regulation is to designate critical habitat for the Gunnison sage-grouse under the Act. In total, approximately 689,675 hectares (ha) (1,704,227 acres (ac)) are being proposed for designation as critical habitat in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah.

DATES: We will accept comments received or postmarked on or before March 12, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by February 25, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R6–ES–2011–0111, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information).

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/coloradoES/, http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, and at the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. 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

Why we need to publish a rule. Elsewhere in today's **Federal Register**, we propose to list the Gunnison sage-grouse as an endangered species under the Endangered Species Act. Under the Act, critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes to designate critical habitat for the Gunnison sage-grouse.

- Based on our proposal to list the Gunnison sage-grouse as an endangered species, we are proposing critical habitat for the Gunnison sage-grouse under the Endangered Species Act. In total, approximately 689,675 hectares (ha) (1,704,227 acres (ac)) are being proposed for designation as critical habitat, in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah.

The basis for our action. The Act requires that the Service designate critical habitat at the time of listing to the extent prudent and determinable. We have determined that designation is prudent and critical habitat is determinable (see Background section below).

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

Information Requested

We intend to take any final action resulting from this proposed rule based on the best scientific and commercial data available and after consideration of economic, national security and other relevant impacts and will be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Gunnison sage-grouse habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing (or the present time) are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Gunnison sage-grouse and proposed critical habitat.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating any areas that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and particularly whether the benefits of potentially excluding any specific area outweigh the benefits of including that area as set out in section 4(b)(2) of the Act. For instance, should the proposed designation exclude properties currently enrolled in the Gunnison sage-grouse Candidate Conservation Agreement with Assurances, properties under conservation easement, or properties held by conservation organizations, and why?

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(8) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(2) of the Act directs that critical habitat designations be made based on the best scientific data available and after consideration of economic and other relevant impacts.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

Elsewhere in today's **Federal Register**, we propose to list the Gunnison sage-grouse as an endangered species under the Endangered Species Act. Please see that proposed listing rule for a complete history of previous Federal actions.

On September 9, 2011, the U.S. District Court for the District of Columbia approved a settlement agreement laying out a multi-year listing work plan for addressing candidate species, including the Gunnison sage-grouse. As part of this agreement, the Service agreed to publish a proposed rule in the **Federal Register** on whether to list Gunnison sage-grouse and designate critical habitat by September 30, 2012. On August 13, 2012, the U.S. District Court for the District of Columbia modified the settlement agreement to extend this original deadline by 3 months, to December 30, 2012. The deadline for the final rule did not change and remains September 30, 2013. The request for an extension was made to allow more time to complete the proposed rule and more opportunity to engage with State and local governments, landowner groups, and other entities to discuss the conservation needs of the species. Accordingly, elsewhere in today's **Federal Register**, we propose to list the Gunnison sage-grouse as an endangered species under the Endangered Species Act.

Background

For more information on Gunnison sage-grouse taxonomy, life history, habitat, and population descriptions and our proposal to list the species as an endangered species under the Act please, refer to the 12-month finding published September 28, 2010 (75 FR 59804) and the proposed rule to list the species as an endangered species that is published elsewhere in today's **Federal Register**.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such

designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements, (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type), are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area formerly occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its current range would be inadequate to ensure the conservation of the species.

Section 4(b) (2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available, as well as consideration of economic, national security and other relevant impacts. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may result in take of the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism according to the Factor B analysis in our proposed rule to list the Gunnison sage-grouse as endangered (published elsewhere in today's **Federal Register**), and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical

habitat is prudent for the Gunnison sage-grouse.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the species is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Gunnison sage-grouse.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for Gunnison sage-grouse from studies of this species' habitat, ecology, and life history as described above in the proposed listing rule and in greater detail in the 12-month finding published September 28, 2010 (75 FR 59804), and information presented below. We have determined that the following physical and biological features are essential for Gunnison sage-grouse:

Space for Individual and Population Growth and for Normal Behavior

Gunnison sage-grouse require large, interconnected expanses of sagebrush plant communities that contain healthy understory composed primarily of native, herbaceous vegetation (Patterson 1952, p. 9; Knick *et al.* 2003, p. 623; Connelly *et al.* 2004, pp. 4–15; Knick and Connelly 2011, entire; Pyke 2011, p. 532; Wisdom *et al.* 2011, entire). Gunnison sage-grouse may use a variety of habitats throughout their life cycle, such as riparian meadows, riparian areas with a shrub component, agricultural lands, and steppe dominated by native grasses and forbs. However, Gunnison sage-grouse are considered sagebrush obligates (Patterson 1952, p. 42; Braun *et al.* 1976, p. 168; Schroeder *et al.* 1999, pp. 4–5; Connelly *et al.* 2000a, pp. 970–972; Connelly *et al.* 2004, p. 4–1), and the use of non-sagebrush habitats by sage-grouse is dependent on the presence of sagebrush habitats in close proximity (Connelly *et al.* 2004, p. 4–18 and references therein).

Gunnison sage-grouse move seasonally among various habitat types driven by breeding activities, nest and brood-rearing site requirements, seasonal changes in the availability of food resources, and response to weather conditions. In the 2005 Gunnison sage-grouse Rangewide Conservation Plan (RCP), annual Gunnison sage-grouse habitat use was categorized into three seasons: (1) Breeding, (2) summer–late fall, and (3) winter (Gunnison Sage-grouse Rangewide Steering Committee (GSRSC 2005, pp. 27–31)). Sage-grouse exhibit strong site fidelity (loyalty to a particular area) to seasonal habitats, including breeding, nesting, brood-rearing, and wintering areas, even when a particular area may no longer be of value (Connelly *et al.* 2004, p. 3–1). Adult sage-grouse rarely switch inter-annual use among these seasonal habitats once they have been selected (Berry and Eng 1985, pp. 238–240; Fischer *et al.* 1993, p. 1039; Young 1994, pp. 42–43; Root 2002, p. 12; Holloran and Anderson 2005, p. 749), limiting the species' adaptability to habitat changes.

The pattern and scale of Gunnison sage-grouse annual movements, and the degree to which a given habitat patch can fulfill the species' annual habitat needs, are dependent on the arrangement and quality of habitats across the landscape. Habitat structure and quality vary spatially over the landscape; therefore, some areas may provide habitat for a single season, while other areas may provide habitat for one or more seasons (GSRSC 2005, pp. 25–26). In addition, plant community dynamics and disturbance also result in a temporal component of habitat variability. Rangewide, fine-scale habitat structure data on which to delineate seasonal habitats currently does not exist. A spatially explicit nest site selection model developed for the Gunnison Basin by Aldridge *et al.* (2011, pp. entire) predicted the location of the best Gunnison sage-grouse nesting habitat. The total area of the predicted best nesting habitat (containing greater than 90 percent of an independent sample of nest locations) amounted to approximately half of the study area (Aldridge *et al.* 2011, p. 7). However, this model does not predict Gunnison sage-grouse seasonal habitat needs outside of the nesting season.

Gunnison sage-grouse make relatively large movements on an annual basis. Maximum Gunnison sage-grouse annual movements in relation to lek capture have been reported as 18.5 km (11.5 mi) (GSRSC 2005, p. J–3), and 17.3 km (10.7 mi) (Saher 2011, pers. comm.), and individual Gunnison sage-grouse location points can be up to 27.9 km (17.3 mi) apart within a given year (Root 2002, pp. 14–15). Individual Gunnison sage-grouse have been documented to move more than 56.3 km (35 mi) to wintering areas in the Gunnison Basin in Colorado (Phillips 2011, pers. comm.). While it is likely that some areas encompassed within these movement boundaries are used only briefly as movement areas, the extent of these movements demonstrate the large-scale annual habitat requirements of the species.

Therefore, based on the species' year-round reliance on sagebrush and the various seasonal habitat requirements discussed above, we identify sagebrush plant communities of sufficient size and configuration to encompass all seasonal habitats, including areas used to move between seasonal habitats, for a given population of Gunnison sage-grouse to be a physical or biological feature essential to the conservation of this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food resources used by Gunnison sage-grouse vary throughout the year because of seasonal changes in food availability and specific dietary requirements of breeding hens and

chicks. The diet of Gunnison sage-grouse is composed of nearly 100 percent sagebrush in the winter, while forbs, insects, and sagebrush are important dietary components during the remainder of the year (Wallestad *et al.* 1975, p. 21; Barnett and Crawford 1994, p. 117; Schroeder *et al.* 1999, p. 5; Young *et al.* 2000, p. 452).

Pre-laying hens are particularly dependent on forbs and the insects supported by native herbaceous understories (Drut *et al.* 1994, pp. 173–175). The Gunnison sage-grouse hen pre-laying period is from approximately late-March to early April. Pre-laying habitats for sage-grouse hens need to provide a diversity of vegetation including forbs that are rich in calcium, phosphorous, and protein to meet the nutritional needs of females during the egg development period (Barnett and Crawford 1994, p. 117; Connelly *et al.* 2000a, p. 970). During the pre-laying period, female sage-grouse select forbs that generally have higher amounts of calcium and crude protein than sagebrush (Barnett and Crawford 1994, p. 117).

Forbs and insects are essential nutritional components for sage-grouse chicks (Klebenow and Gray 1968, pp. 81–83; Peterson 1970, pp. 149–151; Johnson and Boyce 1991, p. 90; Connelly *et al.* 2004, p. 3–3). During the first 3 weeks after hatching, insects are the primary food of chicks (Patterson 1952, p. 201; Klebenow and Gray 1968, p. 81; Peterson 1970, pp. 150–151; Johnson and Boyce 1990, pp. 90–91; Johnson and Boyce 1991, p. 92; Drut *et al.* 1994, p. 93; Pyle and Crawford 1996, p. 320; Fischer *et al.* 1996a, p. 194). Diets of 4- to 8-week-old greater sage-grouse chicks were found to have more plant material as the chicks matured (Peterson 1970, p. 151). Succulent forbs are predominant in the diet until chicks exceed 3 months of age, at which time sagebrush becomes a major dietary component (Klebenow 1969, pp. 665–656; Connelly and Markham 1983, pp. 171–173; Fischer *et al.* 1996b, p. 871; Schroeder *et al.* 1999, p. 5).

Decreased availability of forbs corresponded to a decrease in the number of chicks per hen and brood size (Barnett and Crawford 1994, p. 117). Gunnison sage-grouse population dynamics appear to be most sensitive to female reproductive success and chick survival (GSRSC 2005, p. G–13). Therefore, habitats that support sagebrush vegetation as well as a vegetative understory composed of native grasses and forbs are essential to key demographic rates.

In most areas within the range of Gunnison sage-grouse, the herbaceous understory component of sagebrush plant communities typically dries out as summer progresses into fall. Habitats used by Gunnison sage-grouse in summer through late-fall are typically more mesic than surrounding habitats during this time of year (GSRSC 2005, p. 30). These areas are used primarily for foraging because they provide reliable sources of green, herbaceous vegetation when this resource is seasonally limited on the landscape. Specifically, these areas include: Riparian communities, springs, seeps, mesic meadows, or the margins of irrigated hay meadows and alfalfa fields (GSRSC 2005, p. 30). However, seasonal foraging habitats typically receive use by Gunnison sage-grouse only if they are within 50 m (165 ft.) of surrounding sagebrush plant communities (CSGWG 1997, p. 13).

In winter, greater and Gunnison sage-grouse diet is almost exclusively sagebrush (Rasmussen and Griner 1938, p. 855; Batterson and Morse 1948, p. 20; Patterson 1952, pp. 197–198; Wallestad *et al.* 1975, pp. 628–629; Young *et al.* 2000, p. 452). Various species of sagebrush can be consumed by sage-grouse (Remington and Braun 1985, pp. 1056–1057; Welch *et al.* 1988, p. 276, 1991; Myers 1992, p. 55). Habitats used by Gunnison sage-grouse during winter typically consist of 15 to 30 percent sagebrush cover, similar to those used by greater sage-grouse (Connelly *et al.* 2000a, p. 972; Young *et al.* 2000, p. 451). However, Gunnison sage-grouse may also use areas with more deciduous, non-sagebrush shrubs during the winter (Young *et al.* 2000, p. 451). In all suitable winter habitats, the height of sagebrush must be tall enough so that leaves are still exposed when wintering areas are largely covered with snow.

Based on the information above, we identify sagebrush plant communities that contain herbaceous vegetation consisting of a diversity and abundance of forbs, insects, and grasses, that fulfill all Gunnison sage-grouse seasonal dietary requirements, to be a physical or biological feature essential to the conservation of this species. We also identify as such features non-sagebrush habitats located adjacent to sagebrush plant communities that are used by Gunnison sage-grouse for foraging during seasonally dry periods. These habitats are generally more mesic than surrounding habitat, and include wet meadows, riparian areas, and irrigated pastures.

Cover or Shelter

Predation is the most commonly identified cause of direct mortality for sage-grouse during all life stages, and Gunnison sage-grouse require sagebrush and herbaceous vegetation yearlong for escape and hiding cover (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; GSGRC 2005, p. 138; Connelly *et al.* 2011, p. 66). Major predators of adult sage-grouse include many species including golden eagles (*Aquila chrysaetos*), red foxes (*Vulpes fulva*), and bobcats (*Felis rufus*) (Hartzler 1974, pp. 532–536; Schroeder *et al.* 1999, pp. 10–11; Schroeder and Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen 2011, p. 97). Most raptor predation of sage-grouse is on juveniles and older age classes (GSRSC 2005, p. 135). Juvenile sage-grouse also are killed by common ravens (*Corvus corax*), badgers (*Taxidea taxus*), red foxes, coyotes (*Canis latrans*) and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows (*Corvus brachyrhyncos*) and magpies (*Pica* spp.), elk (*Cervus canadensis*) (Holloran and Anderson 2003, p. 309), and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425–426). Ground squirrels (*Spermophilus* spp.) also have been identified as nest predators (Patterson 1952, p. 107; Schroeder *et al.* 1999, p. 10; Schroder and Baydack 2001, p. 25), but recent data show that they are physically incapable of puncturing eggs (Holloran and Anderson 2003, p. 309; Coates *et al.* 2008, p. 426; Hagen 2011, p. 97). Young (1994, p. 37) found the most common predators of Gunnison sage-grouse eggs were weasels, coyotes, and corvids.

Nest predation appears to be related to the amount of herbaceous cover surrounding the nest (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1–2; DeLong *et al.* 1995, p. 90; Braun 1998; Coggins 1998, p. 30; Connelly *et al.* 2000b, p. 975; Schroeder and Baydack 2001, p. 25; Coates and Delehanty 2008, p. 636). Females actively select nest sites with the presence of big sagebrush and grass and forb cover (Connelly *et al.* 2000, p. 971), and nesting success of greater sage-grouse is positively correlated with these qualities (Schroeder and Baydack 2001, p. 25; Hagen *et al.* 2007, p. 46). Likewise, reduced herbaceous cover for young chicks can increase their rate of predation (Schroeder and Baydack 2001, p. 27), and high shrub canopy cover at nest sites was related to lower levels of predation by visual predators, such as the common raven (Coates 2007, p. 148). However, herbaceous cover may not be effective in deterring olfactory predators such as badgers (Coates 2007, p. 149).

Gunnison sage-grouse nearly exclusively use sagebrush plant communities during the winter season

for thermal cover and to meet nutritional needs. Sagebrush stand selection in winter is influenced by snow depth (Patterson 1952, pp. 188–189; Connelly 1982 as cited in Connelly *et al.* 2000a, p. 980) and in some areas, topography (Beck 1977, p. 22; Crawford *et al.* 2004, p. 5). Winter sagebrush use areas are associated with drainages, ridges, or southwest aspects with slopes less than 15 percent (Beck 1977, p. 22). Lower flat areas and shorter sagebrush along ridge tops provide roosting areas. In extreme winter conditions, greater sage-grouse will spend nights and portions of the day burrowed into ''snow burrows'' (Back *et al.* 1987, p. 488), and we expect Gunnison sage-grouse to exhibit the same behavior. Hupp and Braun (1989, p. 825) found that most Gunnison sage-grouse feeding activity in the winter occurred in drainages and on slopes with south or west aspects in the Gunnison Basin. During a severe winter in the Gunnison Basin in 1984, less than 10 percent of the sagebrush was exposed above the snow and available to sage-grouse (Hupp, 1987, pp. 45–46). In these conditions, the tall and vigorous sagebrush typical in drainages was an especially important food source.

Therefore, based on the information above, we identify sagebrush plant communities consisting of adequate shrub and herbaceous structure to provide year-round escape and hiding cover, as well as areas that provide concealment of nests and broods during the breeding season, and winter season thermal cover to be a physical or biological feature essential to the conservation of this species. Quantitative information on cover can be found in the Primary Constituent Elements for Gunnison Sage-Grouse section below.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Lek Sites—Lek sites (communal breeding areas) can be located on areas of bare soil, wind-swept ridges, exposed knolls, low sagebrush, meadows, and other relatively open sites with good visibility and low vegetation structure (Connelly *et al.* 1981, pp. 153–154; Gates 1985, pp. 219–221; Klott and Lindzey 1989, pp. 276–277; Connelly *et al.* 2004, p. 3–7 and references therein). In addition, leks are usually located on flat to gently sloping areas of less than 15 percent grade (Patterson 1952, p. 83; Giezentanner and Clark 1974, p. 218; Wallestad 1975, p. 17; Autenrieth 1981, p. 13). Leks are often surrounded by denser shrub-steppe cover, which is used for escape, and thermal and feeding cover. Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly *et al.* 2000a, p. 970). Lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder 1997, p. 939). However, adult male sage-grouse demonstrate strong yearly fidelity to lek sites (Patterson 1952, p. 91; Dalke 1963 *et al.,* pp. 817–818), and some Gunnison sage-grouse leks have been used since the 1950s (Rogers 1964, pp. 35–40).

Nesting Habitat—Gunnison sage-grouse typically select nest sites under sagebrush cover with some forb and grass cover (Young 1994, p. 38), and successful nests were found in higher shrub density and greater forb and grass cover than unsuccessful nests (Young 1994, p. 39). The understory of productive sage-grouse nesting areas contains native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Schroeder *et al.* 1999, p. 11; Connelly *et al.* 2000a, p. 971; Connelly *et al.* 2004, pp. 4–5—4–8). Shrub canopy and grass cover provide concealment for sage-grouse nests and young and are critical for reproductive success (Barnett and Crawford 1994, pp. 116–117; Gregg *et al.* 1994, pp. 164–165; DeLong *et al.* 1995, pp. 90–91; Connelly *et al.* 2004, p. 4–4). Few herbaceous plants are growing in April when nesting begins, so residual herbaceous cover from the previous growing season is critical for nest concealment in most areas (Connelly *et al.* 2000a, p. 977).

Nesting success for Gunnison sage-grouse is highest in areas where forb and grass covers are found below a sagebrush canopy cover of 15 to 30 percent (Young *et al.* 2000, p. 451). These numbers are comparable to those reported for the greater sage-grouse (Connelly *et al.* 2000a, p. 971). Nest success for greater sage-grouse is greatest where grass cover is present (Connelly *et al.* 2000a, p. 971). Because of the similarities between these two species, we believe that increased nest success in areas of forb and grass cover below the appropriate sagebrush canopy cover is likely the case for Gunnison sage-grouse as well.

Female Gunnison sage-grouse exhibit strong fidelity to nesting locations (Young 1994, p. 42; Lyon 2000, p. 20; Connelly *et al.* 2004, p. 4–5; Holloran and Anderson 2005, p. 747). The degree of fidelity to a specific nesting area appears to diminish if the female's first nest attempt in that area was unsuccessful (Young 1994, p. 42). However, movement to new nesting areas does not necessarily result in increased nesting success (Connelly *et al.* 2004, p. 3–6; Holloran and Anderson 2005, p. 748).

Brood-rearing Habitat—Early brood-rearing habitat is found close to nest sites (Connelly *et al.* 2000a, p. 971), although individual females with broods may move large distances (Connelly 1982, as cited in Connelly *et al.* 2000a, p. 971). Young (1994, pp. 41–42) found that Gunnison sage-grouse with broods used areas with lower slopes than nesting areas, high grass and forb cover, and relatively low sagebrush cover and density. Broods frequently used the edges of hay meadows, but were often flushed from areas found in interfaces of wet meadows and habitats providing more cover, such as sagebrush or willow-alder (*Salix-Alnus*). By late summer and into the early fall, the birds move from riparian areas to mesic sagebrush plant communities that continue to provide green forbs. During this period, Gunnison sage-grouse can be observed in atypical habitat such as agricultural fields (Commons 1997, pp. 79–81). However, broods in the Gunnison Basin typically do not use hay meadows further away than 50 m (165 ft) from the edge of adjacent sagebrush stands (CSGWG 1997, p. 13).

Therefore, based on the information above, we identify sagebrush plant communities with the appropriate shrub and herbaceous vegetation structure to meet all the needs for all Gunnison sage-grouse reproductive activities (including lekking, nesting, and brood-rearing) to be a physical or biological feature essential to the conservation of this species.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Gunnison sage-grouse historically occurred in southwestern Colorado, northwestern New Mexico, northeastern Arizona, and southeastern Utah (Schroeder *et al.* 2004, pp. 370–371). The maximum Gunnison sage-grouse historical (presettlement) range is estimated to have been approximately 5,534,805 ha (13,676,800 ac) (GSRSC 2005, p. 32); however, only a portion of the historical range would have been occupied at any one time. The current occupied range of Gunnison sage-grouse is approximately 379,464 ha (937,676 ac) in southwestern Colorado and southeastern Utah (CDOW 2009b, p. 1; GSRSC 2005, p. 81). The estimated 93 percent of sagebrush habitat within the presettlement range of the Gunnison sage-grouse had been lost prior to 1960. The majority of the remaining habitat is

highly fragmented, although to a lesser extent in the Gunnison Basin than in the remainder of the species' range.

The occupied sagebrush plant communities that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the Gunnison sage-grouse. The unoccupied sagebrush plant communities that are proposed for designation were all likely historically occupied (GSRSC 2005, pp. 32–33) and can allow for the expansion of the current geographic distribution of the species as well as facilitate movements among populations. The extremely limited extent of sagebrush habitat throughout the current range of the species, but especially in the six smaller populations (see the Background section of our proposed listing rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**), is a significant factor in causing us to propose areas beyond those that are currently occupied for critical habitat designation.

Primary Constituent Elements for Gunnison Sage-Grouse

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Gunnison sage-grouse in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

We only consider those areas as critical habitat if they meet the ''Landscape-scale Primary Constituent Element'' (PCE 1) because small, isolated patches of sagebrush do not support Gunnison sage-grouse. If an area meets the landscape scale requirement, then a particular site is considered critical habitat if it contains one or more of the ''Site-scale Primary Constituent Elements'' (PCEs 2–5).

For the ''Site-scale Primary Constituent Elements'' (PCEs 2–5), we adopt the values from the 2005 RCP (GSRSC 2005, Appendix H and references therein). The 2005 RCP provides structural habitat values developed using only Gunnison sage-grouse habitat use data from various Gunnison sage-grouse populations in all seasonal habitats (GSRSC 2005, p. H–2). Source data includes structural vegetation data collected in the breeding season (Young 1994, Apa 2004), summer-fall (Young 1994, Woods and Braun 1995, Commons 1997, Apa 2004), and winter (Hupp 1987). In addition, these structural habitat values are specific to the Colorado Plateau floristic province and reflect the understory structure and composition specific to the range of Gunnison sage-grouse (GSRSC 2005, p. H–2). As such, these values are based on the most current and comprehensive, rangewide assessment of Gunnison sage-grouse habitat structure. We consider an area critical habitat if its average vegetation values are within the values for the majority of structural categories for any given PCE (Tables 1 and 2).

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Gunnison sage-grouse are:

Landscape-Scale Primary Constituent Element

Primary Constituent Element 1—Areas with vegetation composed primarily of sagebrush plant communities (at least 25 percent of primarily sagebrush land cover within a 1.5-km (0.9-mi) radius of any given location), of sufficient size and configuration to encompass all seasonal habitats for a given population of Gunnison sage-grouse, and facilitate movements within and among populations.

Site-Scale Primary Constituent Elements

Primary Constituent Element 2—Breeding habitat composed of sagebrush plant communities with structural characteristics within the ranges described in Table 1, below. Habitat structure values are average values over a project area.

TABLE 1—GUNNISON SAGE-GROUSE STRUCTURAL GUIDELINES FOR BREEDING HABITAT.

Vegetation variable	Amount of occurrence in the habitat
Sagebrush Canopy Cover	10–25 percent
Non-sagebrush Canopy Cover.	5–15 percent
Total Shrub Canopy Cover	15–40 percent
Sagebrush Height	25–50 cm. (9.8–19.7 in).
Grass Cover	10–40 percent
Forb Cover	5–40 percent
Grass Height	10–15 cm. (3.9–5.9 in).
Forb Height	5–15 cm (2.0–5.9 in)

Primary Constituent Element 3—Summer-late fall habitat composed of sagebrush plant communities with structural characteristics within the ranges described in Table 2, below. Habitat structure values are average values over a project area.

TABLE 2—GUNNISON SAGE-GROUSE STRUCTURAL GUIDELINES FOR SUMMER-LATE FALL HABITAT.

Vegetation variable	Amount of occurrence in the habitat
Sagebrush Canopy Cover.	5–20 percent
Non-sagebrush Canopy Cover.	5–15 percent
Total Shrub Canopy Cover.	10–35 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–35 percent
Forb Cover	5–35 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	3–10 cm (1.2–3.9 in)

Primary Constituent Element 4—Winter habitat composed of sagebrush plant communities with sagebrush canopy cover between 30 to 40 percent and sagebrush height of 40 to 55 cm (15.8 to 21.7 in). These habitat structure values are average values over a project area.

Primary Constituent Element 5—Alternative, mesic habitats used primarily in the summer-late fall season.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. All areas proposed for designation as critical habitat as described below may require some level of management to address the current and future threats to the physical and biological features essential to the conservation of Gunnison sage-grouse. In all of the described units, special management

may be required to ensure that the habitat is able to provide for the biological needs of the species.

A detailed discussion of the current and foreseeable threats to Gunnison sage-grouse can found in the proposed listing rule to list the species as endangered, which is published elsewhere in today's **Federal Register**, in the section entitled *Summary of Factors Affecting the Species.* In general, the features essential to the conservation of Gunnison sage-grouse may require special management considerations or protection to reduce the following individual threats and their interactions: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators; improper grazing management, the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and other activities that result in the loss or degradation of sagebrush plant communities. The largest, overarching threat to Gunnison sage-grouse is habitat fragmentation. The aforementioned activities will require special management consideration not only for the direct effects of the activities on the birds' habitat and behavior, but also for their indirect effects and how they are cumulatively and individually increasing habitat fragmentation.

Special management considerations or protection may be required within areas we are proposing as critical habitat to address these threats. Based on our analysis of threats to Gunnison sage-grouse, management activities that could ameliorate these threats include, but are not limited to: Comprehensive land-use planning and implementation that prevents a net decrease in the extent and quality of Gunnison sage-grouse habitat through the prioritization and protection of habitats and monitoring; protection of lands by fee title acquisition or the establishment of permanent conservation easements; management of recreational use to minimize direct disturbance and habitat loss; invasive weed and invasive native plant species control activities; management of domestic and wild ungulate use so that overall habitat meets or exceeds Gunnison sage-grouse structural habitat guidelines; monitoring and management of predator communities; coordinated and monitored habitat restoration or improvement projects; and implementation of wild fire suppression, particularly in Wyoming big sagebrush plant associations. In some cases, continuing ongoing land management practices may be appropriate and beneficial for Gunnison sage-grouse. For instance, continued irrigation and maintenance of hay and alfalfa fields on private lands near sagebrush habitats may help provide or enhance brood-rearing, mesic habitats for Gunnison sage-grouse. The Service acknowledges the ongoing and proposed conservation efforts of all entities across the range of the Gunnison sage-grouse, such as the Sage Grouse Initiative that is led by the Natural Resources Conservation Service and incorporates many partners to implement conservation actions. The Service is conferencing with Federal agencies to insure a seamless continuation of conservation practices if the species is listed and critical habitat is designated.

Such special management activities may be required to protect the physical and biological features and support the conservation of the species by preventing or reducing the loss, degradation, and fragmentation of sagebrush landscapes. Additionally, management of critical habitat lands can increase the amount of suitable habitat and enhance connectivity among Gunnison sage-grouse populations through the restoration of areas that were previously composed of sagebrush plant communities. The limited extent of sagebrush habitats throughout the species' current range emphasizes the need for additional habitat for the species to be able to expand into, as well as adjust to changes in habitat availability that may result from climate change, along with habitat needed to survive and recover.

Criteria Used To Identify Proposed Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to propose critical habitat. We reviewed available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. As a result of this analysis we are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing (or at the current time), and areas that were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

We based our identification of lands that contain features essential to the conservation of Gunnison sage-grouse on polygons delineated and defined by Colorado Parks and Wildlife (CPW) and the Utah Division of Wildlife Resources (UDWR) the CPW and UDWR as part of the 2005 RCP Habitat Mapping project (GSRSC 2005, p. 54). Gunnison sage-grouse polygons mapped in the 2005 RCP were derived from a combination of telemetry locations, sightings of sage-grouse or sage-grouse sign, local biological expertise, GIS analysis, or other data sources (GSRSC 2005, p. 54; CDOW 2009e, p. 1). We consider polygons designated as ''occupied habitat'' (GSRSC 2005, p. 54) to be the area occupied by Gunnison sage-grouse at the time of the listing (or at the current time). No males have been observed since 2002 on the Sims Mesa lek, which is located in the Sims Mesa portion of the Cimarron-Cerro Summit-Sims Mesa population, (see the Background section of our proposed listing rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**), and it is likely that this subpopulation has been extirpated (CDOW 2009b, p. 43). However, this lek has been inactive for less than ten years and is not officially designated as historic according to CPW standards (CDOW 2009d, p. 7). Therefore, we consider this area to be currently occupied in this proposal.

The 2005 RCP also defined two other habitat categories, ''potential habitat,'' and ''vacant or unknown habitat'' (GSRSC 2005, p. 54). Potential habitat is defined as ''unoccupied habitats that could be suitable for occupation of sage-grouse if practical restoration were applied,'' and is most commonly former sagebrush areas overtaken by piñon-juniper woodlands. The vacant or unknown habitat category is defined as ''suitable habitat for sage-grouse that is separated (not contiguous) from occupied habitats that either (1) has not been adequately inventoried, or (2) has not had documentation of grouse presence in the past 10 years.'' These vacant or unknown areas include habitats that contain features essential for the conservation of the species and are currently considered suitable for use by Gunnison sage-grouse or areas where ecological site potential suggest that sagebrush plant associations could occur if practical restoration were applied. The latter situation is most commonly in areas where piñon-juniper

vegetation has expanded from presettlement distributions.

Because we lack the detailed habitat data throughout the range of the species, we used the ''potential'' and ''vacant or unknown'' habitat polygons as the first criteria for our determination of unoccupied areas that contain features essential for the conservation of Gunnison sage-grouse. We further refined our determination of which unoccupied areas should be designated as critical habitat based on: (1) Adjacency or proximity to currently occupied habitat; (2) ability to provide for connectivity between and within populations; and (3) size of area of vegetation composed primarily of sagebrush plant communities. We limited our consideration of unoccupied areas to those within the potential presettlement habitat of Gunnison sage-grouse as mapped by Schroeder *et al.* in 2004 and modified in Colorado in the 2005 RCP. We considered unoccupied areas as proposed critical habitat if they are located within approximately 18.5 km (11.5 mi) of occupied habitat based on typical sage-grouse movement distances (Connelly 2000, p. 978; GSRSC 2005, p. J–5) because these areas have the highest likelihood of receiving Gunnison sage-grouse use and potential for occupied habitat expansion. In addition, Knick and Hanser (2011, p. 404) believe that isolated patches of suitable habitats within 18 km (11.2 mi) could provide connectivity among populations. We lack information on how sage-grouse move through landscapes (Knick and Hanser 2011, p. 402). Therefore, we evaluated connectivity potential by visual identification of areas that support a high proportion of sagebrush or shrub cover located along the shortest path between occupied population areas and areas located between occupied subpopulations.

Sage-grouse population persistence or extirpation is associated with the amount of sagebrush habitat at large spatial scales (Knick and Connelly 2011, entire). Aldridge *et al.* (2008, pp. 989–990) reported that at least 25 percent sagebrush cover within a 30 km (18.6 mi) radius scale was needed for long-term sage-grouse persistence, whereas Wisdom *et al.* (2011, pp. 465–467) showed that areas with at least 27 percent sagebrush cover within a 18 km (11.2 mi) radius scale had a higher probability of population persistence. No particular spatial scale has been determined to best evaluate sage-grouse suitability. Therefore, we evaluated the ability of unoccupied areas to potentially provide for the landscape-scale habitat needs of Gunnison sage-grouse by identifying areas of large size with a high degree of sagebrush cover at several spatial scales. We used moving windows (ESRI ''Neighborhood analysis'' Tool) applied to sagebrush landcover types isolated from the SWReGAP land cover raster dataset (USGS 2004, entire). We visually assessed the amount of sagebrush at 54 km, 18 km, 5 km, and 1.5 km radii scales (33.6 mi, 11.2 mi, 3.1 mi, and 0.9 mi, respectively) to locate areas where the landscape is dominated by sagebrush land cover.

The application of a linear model presented in the 2005 RCP that analyzed the relationship between the mean high count of males on leks and the amount of available habitat of ''average quality'' in each Gunnison sage-grouse population (GSRSC 2005, p. 197) predicts a habitat area in excess of 100,000 acres is needed to support a population of 500 birds. In the absence of habitat loss, inbreeding depression, and disease, population viability modeling for Gunnison sage-grouse predicted that individual populations greater than 500 birds may be viable (have a low probability of extinction) over a 50-year time period (GSRSC 2005, p. 170). These data suggest that an individual habitat patch, or the cumulative area of two or more smaller habitat patches in close proximity, may need to be in excess of 40,469 ha (100,000 ac) to support a viable population of Gunnison sage-grouse. This model does not take into account the inherent variance in habitat structure and quality over the landscape, and detailed habitat structure and quality data are lacking. As a result we consider the estimated minimum habitat area to be an approximate value.

As described in more detail in the proposed listing rule for the Gunnison sage-grouse, which is published elsewhere in today's **Federal Register**, there are currently seven populations of this species: (1) Monticello-Dove Creek; (2) Piñon Mesa; (3) San Miguel Basin; (4) Cerro Summit-Cimarron-Sims Mesa; (5) Crawford; (6) Gunnison Basin; and (7) Poncha Pass. The currently occupied habitat area for four of these populations,the currently occupied habitat area for the Piñon Mesa, Cerro Summit-Cimarron-Sims Mesa, Crawford, and Poncha Pass populations, which range in size from 8,262 (ha) (20,415 ac) to 15,744 ha (38,904 ac), are thus smaller than the model's predicted minimum required area. The currently occupied habitat area in two other populations, the Monticello-Dove Creek and the San Miguel Basin populations is 45,275 ha (111,877 ac) and 41,022 ha (101,368 ac), respectively. These areas only slightly exceed the model predicted minimum required area. While correlative in nature, altogether, these data suggest that the currently occupied habitat area for four populations is insufficient for long-term population viability, and may be minimally adequate for two populations.

With the exception of the Gunnison Basin population area, proposed critical habitat units (CHUs) for Gunnison sage-grouse collectively contain relatively small, and in some cases, isolated, populations of the species. Thus, we believe all currently occupied areas, as well as some currently unoccupied areas, proposed as critical habitat are essential for the persistence and conservation of the Gunnison sage-grouse and help to meet the landscape-scale habitat criteria set forth above. The best available information indicates that, with proper protection and management, the proposed CHUs are sufficient to provide for the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other man-made structures because such lands lack physical and biological features necessary for Gunnison sage-grouse. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed sites. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

We are proposing for designation as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the species. We are also proposing lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of Gunnison sage-grouse.

Units were proposed for designation based on sufficient elements of physical

and biological features being present to support Gunnison sage-grouse life-history processes. All units individually contain all of the identified elements of physical and biological features, and each unit as a whole supports multiple life-history processes.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, on our Internet sites [*http://www.fws.gov/coloradoes/*], and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing seven units as critical habitat for Gunnison sage-grouse. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Gunnison sage-grouse. The seven units we propose as critical habitat correspond to the seven Gunnison sage-grouse populations, which include: (1) Monticello-Dove Creek, (2) Piñon Mesa (3) San Miguel Basin, (4) Cerro Summit-Cimarron-Sims Mesa, (5) Crawford, (6) Gunnison Basin, and (7) Poncha Pass. For the Cerro Summit-Cimarron-Sims Mesa, Crawford, and Poncha Pass Units, our designation includes all available habitat to the species. We consider approximately 55 percent of the area within the seven units as currently occupied and 45 percent as currently unoccupied. Table 3 shows the occupancy status of each individual unit. Table 4 shows the generalized ownership within each unit.

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TABLE 3. Size and current occupancy status of Gunnison sage-grouse proposed critical habitat units. [Area estimates reflect all land within critical habitat unit boundaries.]

Unit Name	Acres	Hectares	Percent of All Units	Occupied?	Acres	Hectares	Percent of Individual Unit	Percent of All Units
Monticello-Dove Creek	348,353	140,973	20.4	Yes	111,945	45,303	32.1	6.6
				No	236,408	95,671	67.9	13.9
Piñon Mesa	245,179	99,220	14.4	Yes	38,905	15,744	15.9	2.3
				No	206,274	83,476	84.1	12.1
San Miguel Basin	165,769	67,084	9.7	Yes	101,371	41,023	61.2	5.9
				No	64,398	26,061	38.8	3.8
Cerro Summit-Cimarron-Sims Mesa	62,708	25,377	3.7	Yes	37,161	15,038	59.3	2.2
				No	25,547	10,339	40.7	1.5
Crawford	97,123	39,304	5.7	Yes	35,015	14,170	36.1	2.1
				No	62,108	25,134	63.9	3.6
Gunnison Basin	736,802	298,173	43.2	Yes	592,952	239,959	80.5	34.8
				No	143,850	58,214	19.5	8.4
Poncha Pass	48,292	19,543	2.8	Yes	20,416	8,262	42.3	1.2
				No	27,877	11,281	57.7	1.6
Totals	1,704,227	689,675	100.0		1,704,227	689,675	100.0	100.0

Note: Area sizes may not sum due to rounding.

TABLE 4. Occupancy status and grouped ownership of Gunnison sage-grouse proposed critical habitat units. [Area estimates reflect all land within critical habitat unit boundaries.]

		Federal			State			City and County			Private		
Population	Occupied?	Acres	Hectares	Percent	Acres	Hectares	Percent	Acres	Hectares	Percent	Acres	Hectares	Percent
Monticello-	Yes	7,958	3,221	7.1	3,285	1,329	2.9				100,702	40,753	90.0
Dove	No	36,084	14,603	15.3	5	2	0.0				200,318	81,066	84.7
Piñon	Yes	11,622	4,703	29.9							27,283	11,041	70.1
Mesa	No	141,926	57,435	68.8	73	30	0.0				64,275	26,011	31.2
San	Yes	37,282	15,087	36.8	14,598	5,908	14.4				49,492	20,029	48.8
Miguel	No	18,555	7,509	28.8							45,843	18,552	71.2
Cerro	Yes	4,876	1,973	13.1	4,066	1,645	10.9				28,218	11,420	75.9
Summit-	No	5,430	2,198	21.3							20,117	8,141	78.7
Crawford	Yes	26,534	10,738	75.2							8,481	3,432	24.0
	No	17,557	7,105	28.7							44,552	18,029	72.1
Gunnison	Yes	399,829	161,805	67.4	14,541	5,885	2.5	52	21	0.0	178,531	72,249	30.1
Basin	No	86,823	35,136	60.4	414	167	0.3				56,614	22,911	39.4
Poncha	Yes	15,144	6,128	74.2	479	194	2.3				4,792	1,939	23.5
Pass	No	15,143	6,128	54.3	1,605	650	5.8				11,128	4,504	39.9
Totals		824,765	333,770	48.4	39,066	15,810	2.3	52	21	0.0	840,345	340,075	49.3

Note: Area sizes may not sum due to rounding.

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We present below a general description for all of the proposed units, followed by brief descriptions of each individual unit, and reasons why they meet the definition of critical habitat for Gunnison sage-grouse.

Unit Descriptions

All units were likely historically occupied by Gunnison sage-grouse. As discussed above, we believe that all lands proposed as critical habitat are essential to the conservation of the Gunnison sage-grouse for the following reasons:

(1) The loss of sagebrush habitats within the potential presettlement range of Gunnison sage-grouse is associated with a substantial reduction in the species range.

(2) Population estimates and population trends for six of seven Gunnison sage-grouse populations (with the exception of the Gunnison Basin population) are declining (CDOW 2010a, pp. 1–3). These populations are currently geographically isolated and may have an effective population size small enough to induce inbreeding depression (as discussed under Factor E of our proposed rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**) and loss of adaptive potential, with the assumption that these populations are exhibiting similar demography to the San Miguel population because we only have detailed demography information for this population (Stiver *et al.* 2008, p. 479).

(3) Existing small populations are at higher risk of extirpation due to stochastic events.

(4) Currently occupied habitat area for six of the seven populations (with the exception of the Gunnison Basin population) may be less than the minimum amount of habitat necessary for the long-term viability of each population.

Designation of critical habitat limited to the Gunnison sage-grouse's present range would be inadequate to ensure the conservation of the species. We are proposing areas historically occupied, but not known to be currently occupied, for the following reasons:

(1) Current population sizes of the six smaller Gunnison sage-grouse populations are at such low levels, they must increase in order to ensure long-term survival (GSRSC 2005, p. G–22). While the occupied portions of the proposed units provide habitat for current populations, currently unoccupied areas will provide habitat for population expansion either through natural means, or by reintroduction, thus reducing threats due to naturally occurring events.

(2) Population expansion either through natural means or by reintroduction into the units is necessary to increase the long-term viability and decrease the risk of extirpation of the populations through stochastic events, such as fires or drought, as the current, isolated populations are each at high risk of extirpation from such stochastic events (GSRSC 2005, p. G–22), particularly because of their small sizes and restricted ranges.

(3) Unoccupied portions of units decrease the geographic isolation of the current geographic distribution of the Gunnison sage-grouse, or *i.e.,* increase the connectivity between habitat that is known to be currently occupied.

(4) Unoccupied portions of units are in areas that were occupied in the near past and are located within the historical range of the species such that they will serve as corridors, or movement areas, between currently occupied sites. Most proposed unoccupied subunits lie within 18.5 km of an occupied area.

(5) All of the unoccupied portions of the proposed critical habitat units contain one or more of the primary constituent elements essential for the conservation of the Gunnison sage-grouse. We based this determination on information in the 2005 RCP (GSRSC 2005, p. 54).

Unit 1: Monticello—Dove Creek

Unit 1, the Monticello—Dove Creek Unit, consists of 140,973 ha (348,353 ac) of Federal, State, and private lands in San Juan County, Utah; and Montrose, San Miguel, and Dolores Counties, Colorado. Approximately 17,823 ha (44,043 ac) (12.6 percent) of the land area within the unit is managed by Federal agencies, 1,331 ha (3,290 ac) (0.9 percent) is owned by the State of Colorado and the State of Utah, and the remaining 301,019 ha (121,818 ac) (86.4 percent) is comprised of private lands. Within the Dove Creek, Colorado, portion of the unit, protected lands (via easement or landownership by a conservation organization) occur on 330 ha (815 ac) of private lands within the occupied portion of the unit (CPW 2011c, p. 11; CPW 2012b, p. 6), and no lands are included under the Gunnison sage-grouse CCAA. We consider 45,303 ha (111,945 ac) within this unit to be currently occupied (32.1 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Monticello—Dove Creek Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse, but these areas are interspersed within lands in agricultural production. Within the occupied portion of this Unit, approximately 23,220 ha (57,377 ac) or 51 percent of the area is currently in agricultural production (USGS 2004, entire). However, a significant portion of the agricultural lands within the Unit are enrolled in the CRP program and many CRP lands are used by Gunnison sage-grouse (Lupus *et al.* 2006, pp. 959–960; Ward 2007, p. 15).

Threats to the physical and biological features within the Monticello—Dove Creek Unit include, but are not limited to: A high degree of habitat loss, degradation, and fragmentation resulting from conversion to agriculture; oil and gas production and associated infrastructure; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats from development; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 95,671 ha (236,408 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse,

these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitats. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 2: Piñon Mesa

Unit 2, the Piñon Mesa Unit, consists of 99,220 ha (245,179 ac) of Federal, State, and private lands in Grand County, Utah; and Mesa County, Colorado. Approximately 62,139 ha (153,548 ac) (62.6 percent) of the land area within the unit is managed by Federal agencies, 30 ha (73 ac) (less than one percent) is owned by the State of Utah, and the remaining 37,052 ha (91,558 ac) (37.3 percent) is comprised of private lands. We consider 15,744 ha (38,905 ac) within this unit to be currently occupied (15.9 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Piñon Mesa Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 5,405 ha (13,355 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 6,828 ha (16,873 ac) are included under the Gunnison sage-grouse CCAA (CPW 2012b, p. 11). Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Piñon Mesa unit (USGS 2004, entire).

Threats to the physical and biological features within the Piñon Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 83,476 ha (206,274 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit. Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 3: San Miguel Basin

Unit 3, the San Miguel Basin Unit, consists of 67,084 ha (165,769 ac) of Federal, State, and local government-owned lands, and private lands in Montrose, San Miguel, and Ouray counties, Colorado. Approximately 22,597 ha (55,837 ac) (33.7 percent) of the land area within the unit is managed by Federal agencies, 5,908 ha (14,598 ac) (8.8 percent) is owned by the State of Colorado, and the remaining 38,580 ha (95,334 ac) (57.5 percent) is comprised of private lands. We consider 41,023 ha (101,371 ac) within this unit to be currently occupied (61.2 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the San Miguel Basin Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 2,698 ha (6,666 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 292 ha (722 ac) are included under the Gunnison sage-grouse CCAA. Approximately 15 percent of the occupied range in the San Miguel Basin is currently in agricultural production.

Threats to the physical and biological features within the San Miguel Basin Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; and oil and gas development and associated infrastructure, all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide

prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 26,061 ha (64,398 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 4: Cerro Summit—Cimarron—Sims Mesa

Unit 4, the Cerro Summit—Cimarron—Sims Mesa Unit, consists of 25,377 ha (62,708 ac) of Federal, State, and local government-owned lands, and private lands in Montrose, Ouray, and Gunnison Counties, Colorado. Approximately 4,171 ha (10,307 ac) (16.4 percent) of the land area within the unit is managed by Federal agencies, 1,645 ha (4,066 ac) (6.5 percent) is owned by the State of Colorado, and the remaining 19,561 ha (48,335 ac) (77.1 percent) is comprised of private lands. We consider 15,038 ha (37,161 ac) within this unit to be currently occupied (59.3 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Cerro Summit—Cimarron—Sims Mesa Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands within the unit, 1,395 ha (3,447 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6), and no lands are included under the Gunnison sage-grouse CCAA. In the Cerro Summit—Cimarron—Sims Mesa population, approximately 14 percent (5,133 ha (2,077 ac)) of the occupied range is currently in agricultural production (USGS 2004, entire).

Threats to the physical and biological features within the Cerro Summit—Cimarron—Sims Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 10,339 ha (25,547 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

We recognize that this proposed critical habitat unit is considerably smaller than the RCP modeled minimum habitat patch size required to support a viable Gunnison sage-grouse population. Nevertheless, this proposed critical habitat unit encompasses all existing and potential Gunnison sage-grouse habitat in the vicinity. As such, in the absence of natural immigration of Gunnison sage-grouse, the population within this critical habitat unit may need to be augmented through the translocation of birds from larger populations or the release of captive-produced birds.

Unit 5: Crawford

Unit 5, the Crawford Unit, consists of 39,304 ha (97,123 ac) of Federal, State,

and local government-owned lands, and private lands in Delta, Montrose, and Gunnison Counties, Colorado. Approximately 17,731 ha (43,814 ac) (45.1 percent) of the land area within the unit is managed by Federal agencies, 112 ha (277 ac) (0.3 percent) is jointly owned by the State of Colorado and the Federal Government, and the remaining 21,461 ha (53,032 ac) (54.6 percent) is comprised of private lands. We consider 14,170 ha (35,015 ac) within this unit to be currently occupied (36.1 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Crawford Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 414 ha (1,022 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6. In addition, approximately 1,068 ha (2,639 ac) are included under the Gunnison sage-grouse CCAA. Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Crawford Unit (USGS 2004, entire).

Threats to the physical and biological features within the Crawford Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 25,134 ha (62,108 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 6: Gunnison Basin

Unit 6, the Gunnison Basin Unit, consists of 298,173 ha (736,802 ac) of Federal, State, and local government-owned lands, and private lands in Gunnison, Hinsdale, Montrose, and Saguache Counties, Colorado. Approximately 196,625 ha (485,870 ac) (65.9 percent) of the land area within the unit is managed by Federal agencies, 6,052 ha (14,955 ac) (2.0 percent) is owned by the State of Colorado, 314 ha (777 ac) (less than one percent) is jointly owned by the State of Colorado and the Federal Government, 21 ha (52 ac) (less than one percent) is owned by Gunnison County and the City of Gunnison, and the remaining 95,160 ha (235,145 ac) (31.9 percent) is comprised of private lands. We consider 239,959 ha (592,952 ac) within this unit to be currently occupied (80.5 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54). The Gunnison Basin contains the largest expanse of sagebrush plant communities within the presettlement range of Gunnison sage-grouse.

The occupied portion of the Gunnison Basin Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 17,466 ha (43,160 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 5,012 ha (12,385 ac) are included under the Gunnison sage-grouse CCAA.

Threats to the physical and biological features within the Gunnison Basin Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: the rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These

unoccupied areas comprise approximately 58,214 ha (143,850 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, particularly with continued direct and functional habitat loss (see discussion under Factor A in the proposed listing rule for the species, which is published elsewhere in today's **Federal Register**), these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other populations and within the Gunnison Basin.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations. The maintenance and enhancement of interpopulation connectivity is particularly important for the Gunnison Basin because it is the largest population in the species range and is therefore the most likely source of dispersal of Gunnison sage-grouse to other populations.

Unit 7: Poncha Pass

Unit 7, the Poncha Pass Unit, consists of 19,543 ha (48,292 ac) of Federal, State, and local government owned lands, and private lands in Saguache and Chaffee Counties, Colorado. Approximately 12,257 ha (30,287 ac) (62.7 percent) of the land area within the unit is managed by Federal agencies, 844 ha (2,084 ac) (4.3 percent) is owned by the State of Colorado, and the remaining 6,443 ha (15,921 ac) (33.0 percent) is comprised of private lands. We consider 8,262 ha (20,416 ac) within this unit to be currently occupied (42.3 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Poncha Pass Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. No lands within the currently occupied lands in the unit are protected from development through permanent conservation easements or fee title ownership by conservation organizations, and no lands are included under the Gunnison sage-grouse CCAA (CPW 2011c, p. 11; CPW 2012b, p. 6). Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Poncha Pass (USGS 2004, entire).

Threats to the physical and biological features within the Poncha Pass Unit include: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 11,281 ha (27,877 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

We recognize that this proposed critical habitat unit is considerably smaller than the RCP modeled minimum habitat patch size required to support a viable Gunnison sage-grouse population. Nevertheless, this proposed critical habitat unit encompasses all existing and potential Gunnison sage-grouse habitat in the vicinity. As such, in the absence of natural immigration of Gunnison sage-grouse, the population within this critical habitat unit may need to be augmented through the translocation of birds from larger populations or the release of captive-produced birds.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other manmade structures because such lands lack physical and biological features necessary for Gunnison sage-grouse. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed sites. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

Likewise, due to past land uses, vegetation changes, or a number of other natural or manmade factors, some areas within the mapped proposed critical habitat may currently lack the site-specific physical and biological features (primary constituent elements) necessary to support Gunnison sage-grouse (see section, Primary Constituent Elements for Gunnison Sage-grouse). If critical habitat is designated, for actions involving lands that lack the primary constituent elements for Gunnison sage-grouse, section 7 consultation as it relates to critical habitat would not be required.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for Gunnison sage-grouse. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Gunnison sage-grouse. These activities include, but are not limited to:

(1) Actions that would result in the loss of sagebrush overstory plant cover or height. Such activities could include, but are not limited to, the removal of native shrub vegetation by any means for any infrastructure construction project; direct conversion to agricultural land use; habitat improvement or restoration projects involving mowing, brush-beating, Dixie harrowing, disking, plowing, or prescribed burning; and fire suppression activities. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of Gunnison sage-grouse.

(2) Actions that would result in the loss or reduction in native herbaceous understory plant cover or height, and a reduction or loss of associated arthropod communities. Such activities could include, but are not limited to, livestock grazing, the application of herbicides or insecticides, prescribed burning and fire suppression activities; and seeding of nonnative plant species that would compete with native species for water, nutrients, and space. These

activities could eliminate or reduce the quality of the habitat necessary for the growth and reproduction of Gunnison sage-grouse through a reduction in food quality and quantity, and increased exposure to predation.

(3) Actions that would result in Gunnison sage-grouse avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, fences, communication towers, and buildings; management of motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure. These activities could result in the direct and functional loss of habitat if Gunnison sage-grouse avoid or reduce use of otherwise suitable habitat in the vicinity of these structures or concentrated activity centers.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. All of the critical habitat united (CHUs) contain private lands. Federal lands with oil and gas leases, grazing permits, rights-of-way for utilities and telecommunications, and recreational uses are included in some units. Several State-owned parcels are included in some units where hunting, wildlife viewing, and other recreational activities occur. The economic analysis will estimate the economic impact of a potential designation of critical habitat on these activities.

During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that no lands within the proposed designation of critical habitat for Gunnison sage-grouse are owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not anticipate that he will exercise discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any management plans or conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We acknowledge and commend landowners who have made significant commitments to manage their lands in a manner that is compatible with the conservation of Gunnison sage-grouse. In this proposed rule, we are seeking input from the public, especially private landowners, as to whether or not the Secretary should exclude lands enrolled under the Gunnison sage-grouse CCAA,

lands under permanent conservation easements, or fee title properties with conservation measures applicable to Gunnison sage-grouse from the final critical habitat designation under section 4(b)(2) of the Act. The Service also acknowledges conservation efforts such as participation in the Sage Grouse Initiative that is led by the Natural Resources Conservation Service. (Please see the Information Requested section of this proposed rule for instructions on how to submit comments).

A decision as to whether to exclude these lands from the proposed designation will require consideration of several important factors. Enrollment in the CCAA can be withdrawn by the landowner at any time and most lands have been enrolled less than two years. Furthermore, CCAA enrollment eligibility will expire if a final listing determination is made for Gunnison sage-grouse. If the agreed-upon, voluntary land management practices within the conditions of the CCAA are met by the land owner, then the designation of critical habitat on these lands should not result in any additional regulatory requirements. For lands under conservation easement, we lack information to evaluate if conditions or practices incorporated into the easement conditions afford adequate protection to the physical or biological features of Gunnison sage-grouse. Also, because these lands are privately owned, absent a Federal nexus, the designation of critical habitat on these lands will incur no additional regulatory burden beyond the prohibitions of section 9(a)(2) of the Act.

In preparing this proposal, we have determined that there are currently no habitat conservation plans (HCPs) for the Gunnison sage-grouse, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Our draft economic analysis will be completed after this proposed rule is published. Therefore, we will defer our Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Energy Supply, Distribution, or Use—Executive Order 13211, Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), and Small Business Regulatory Enforcement Fairness Act (SBREFA), findings until after this analysis is done.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat

designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Gunnison sage-grouse occur in areas with oil and gas activity. These areas are primarily limited to the Monticello—Dove Creek and San Miguel populations. A portion of the Gunnison Basin Unit occurs in an area with high geothermal energy development potential. Well pads and their existing infrastructure are within proposed critical habitat units. On Federal lands, entities conducting oil and gas related activities as well as power companies would need to consult within areas designated as critical habitat. Although we do not believe the impacts resulting from this consultation requirement would rise to the level of significant, we will make our finding after the draft economic analysis has been completed. We will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because only a small percentage of the total land ownership falls on small government lands such as those owned by the City of Gunnison and Gunnison County. Therefore, a Small Government Agency Plan is not required. We do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Gunnison sage-grouse in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of critical habitat for Gunnison sage-grouse would

not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Colorado and Utah. The designation of critical habitat in areas currently occupied by the Gunnison sage-grouse may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).] However, when the range of the species includes States within the Tenth Circuit, such as that of the Gunnison sage-grouse, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation prior to making a final determination of critical habitat and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that were occupied by the Gunnison sage-grouse at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the Gunnison sage-grouse that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for the Gunnison sage-grouse on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Western Colorado Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to 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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Sage-grouse, Gunnison'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''BIRDS'' 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							
*	*	*	*	*	*		*
Sage-grouse, Gunnison.	*Centrocercus minimus.*	U.S.A. (AZ, CO, NM, UT).	Entire	E		17.95(b)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (b) by adding an entry for ''Gunnison Sage-Grouse (*Centrocercus minimus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Gunnison Sage-grouse (*Centrocercus minimus*)

(1) Critical habitat units are depicted for Grand and San Juan Counties, Utah, and Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties, Colorado, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of Gunnison sage-grouse consist of five components:

(i) *Landscape-scale Primary Constituent Element.* Primary Constituent Element 1—Areas with vegetation composed primarily of sagebrush plant communities (at least 25 percent of primarily sagebrush land cover within a 1.5-km (0.9-mi) radius of any given location), of sufficient size and configuration to encompass all seasonal habitats for a given population of Gunnison sage-grouse, and facilitate movements within and among populations.

(ii) *Site-scale Primary Constituent Elements.*

(A) Primary Constituent Element 2—Breeding habitat composed of sagebrush plant communities with structural characteristics within the ranges described in the following table. Habitat structure values are average values over a project area.

Vegetation variable	Amount in habitat
Sagebrush Canopy	10–25 percent
Non-sagebrush Canopy	5–15 percent
Total Shrub Canopy	15–40 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–40 percent
Forb Cover	5–40 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	5–15 cm (2.0–5.9 in)

(B) Primary Constituent Element 3—Summer-late fall habitat composed of sagebrush plant communities with structural characteristics within the ranges described in the following table. Habitat structure values are average values over a project area.

Vegetation variable	Amount in habitat
Sagebrush Canopy	5–20 percent
Non-sagebrush Canopy	5–15 percent
Total Shrub Canopy	10–35 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–35 percent
Forb Cover	5–35 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	3–10 cm (1.2–3.9 in)

(C) Primary Constituent Element 4—Winter habitat composed of sagebrush plant communities with sagebrush canopy cover between 30 to 40 percent and sagebrush height of 40 to 55 cm (15.8 to 21.7 in). These habitat structure values are average values over a project area.

(D) Primary Constituent Element 5—Alternative, mesic habitats used primarily in the summer-late fall season.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created from a number of geospatial data, including: Polygons generated as part of the Gunnison sage-grouse Rangewide Conservation Plan, Southwest Regional Gap Analysis Project (SWReGAP) land cover data, National Agriculture Imagery Program (NAIP) aerial images, and USGS 7.5 minute quadrangle maps. Critical habitat units were then mapped as shapefiles using Universal Transverse Mercator (UTM) Zone 13N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/coloradoes/*), *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) **Note:** Index map follows:

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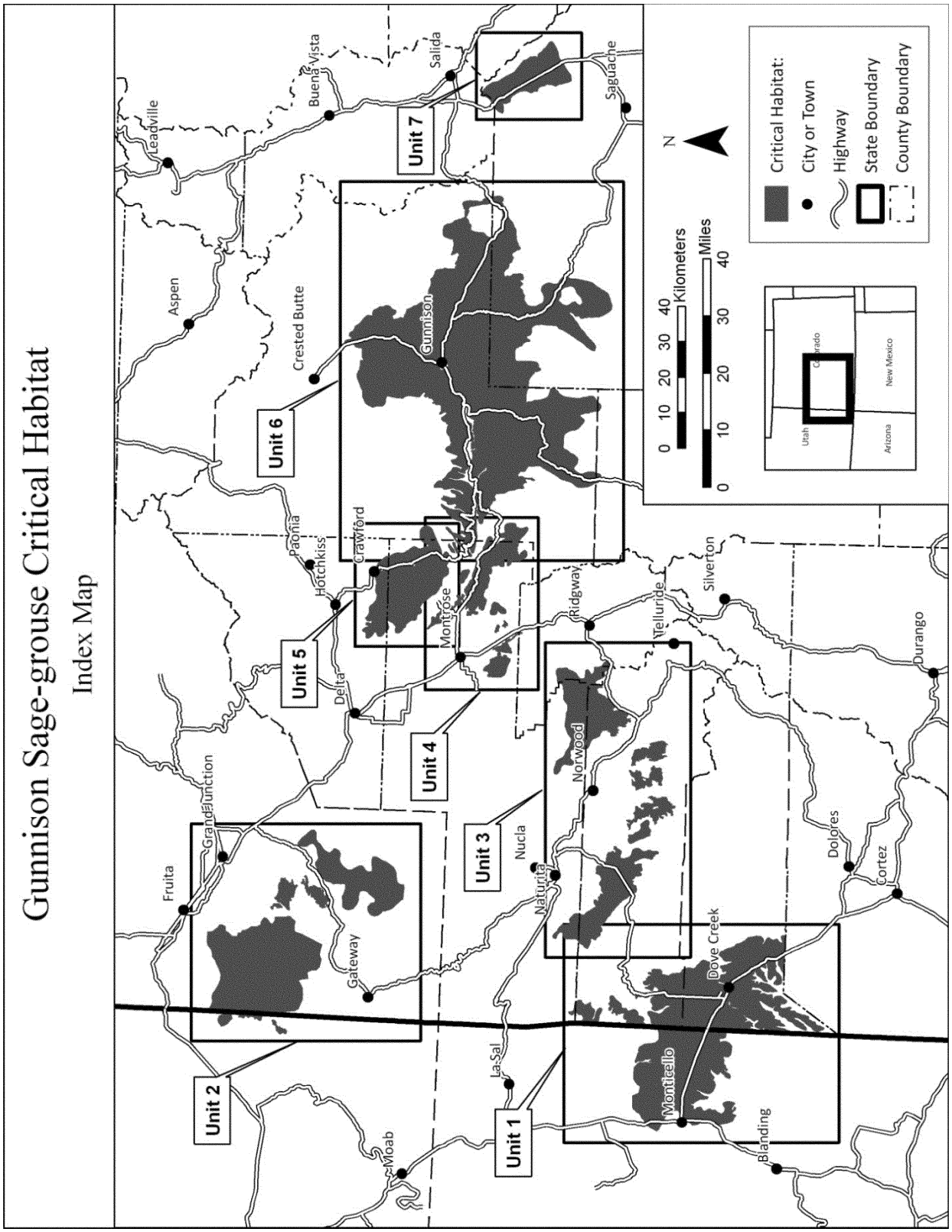
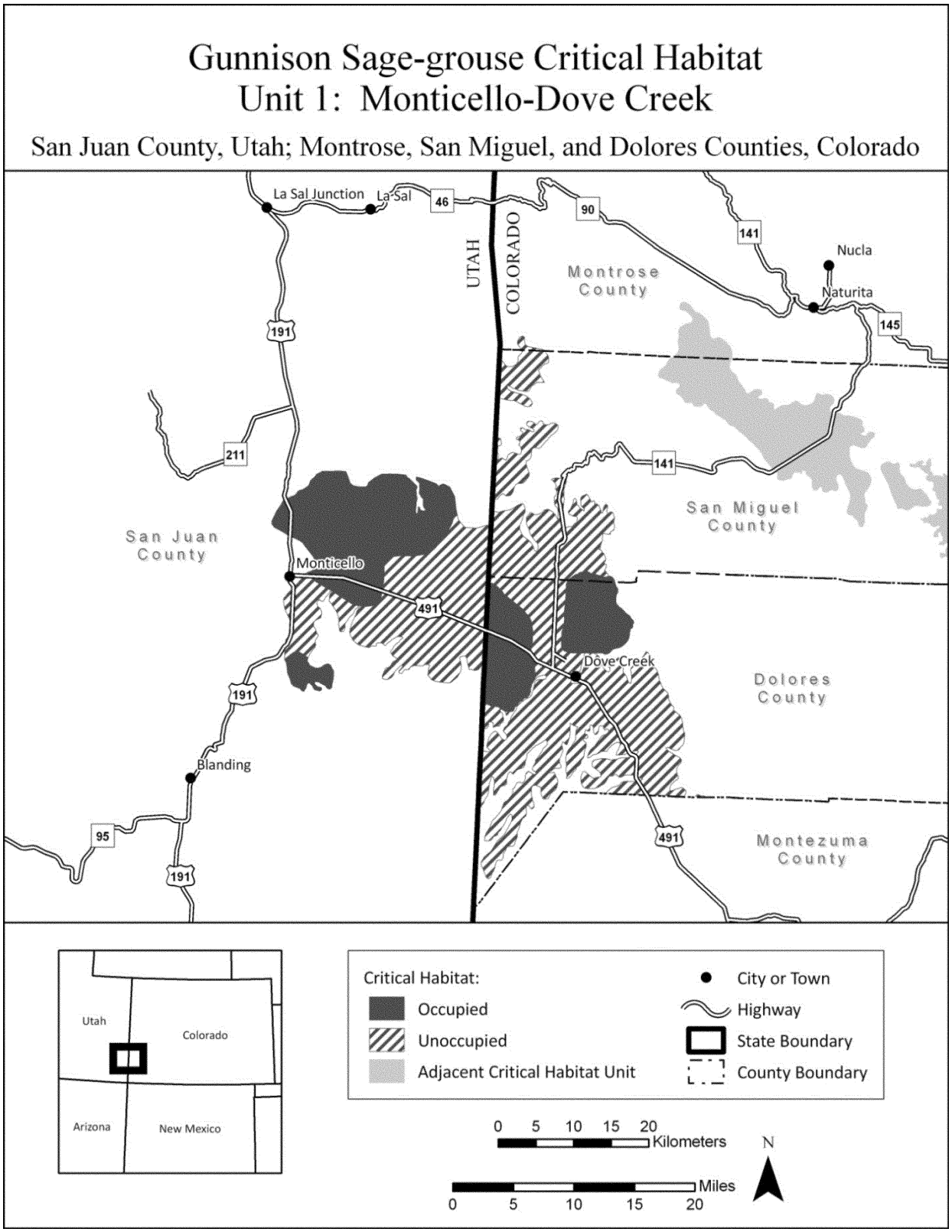


(6) Unit 1: Monticello—Dove Creek: San Juan County, Utah, and Montrose, San Miguel, and Dolores Counties, Colorado.

(i) *General Description:* 140,973 ha (348,353 ac); 20.4 percent of all critical habitat.

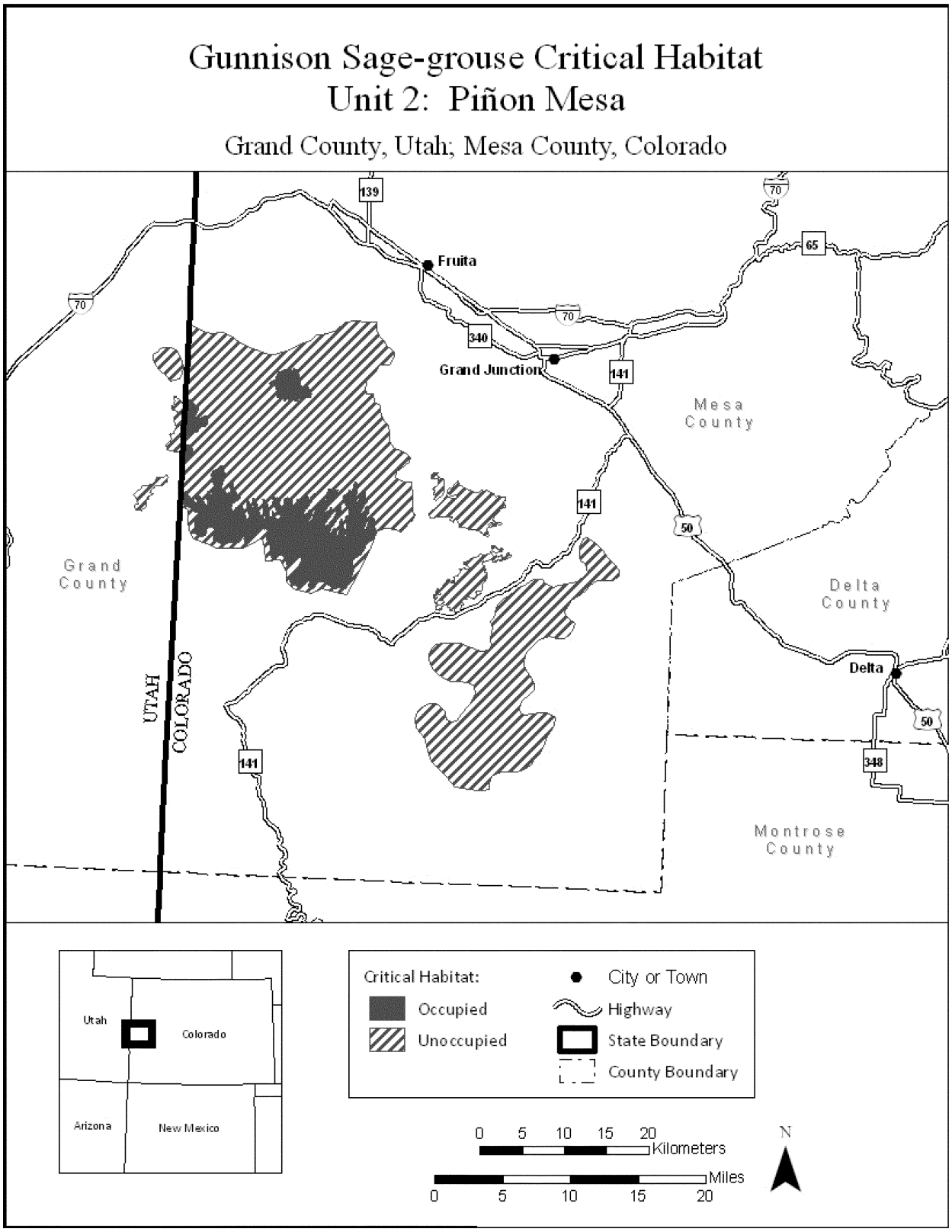
(ii) Map of Unit 1, Monticello—Dove Creek: San Juan County, Utah, and Montrose, San Miguel, and Dolores Counties, Colorado, follows:



(7) Unit 2: Piñon Mesa: Grand County, Utah, and Mesa County, Colorado.

(i) *General Description:* 99,220 ha (245,179 ac); 14.4 percent of all critical habitat.

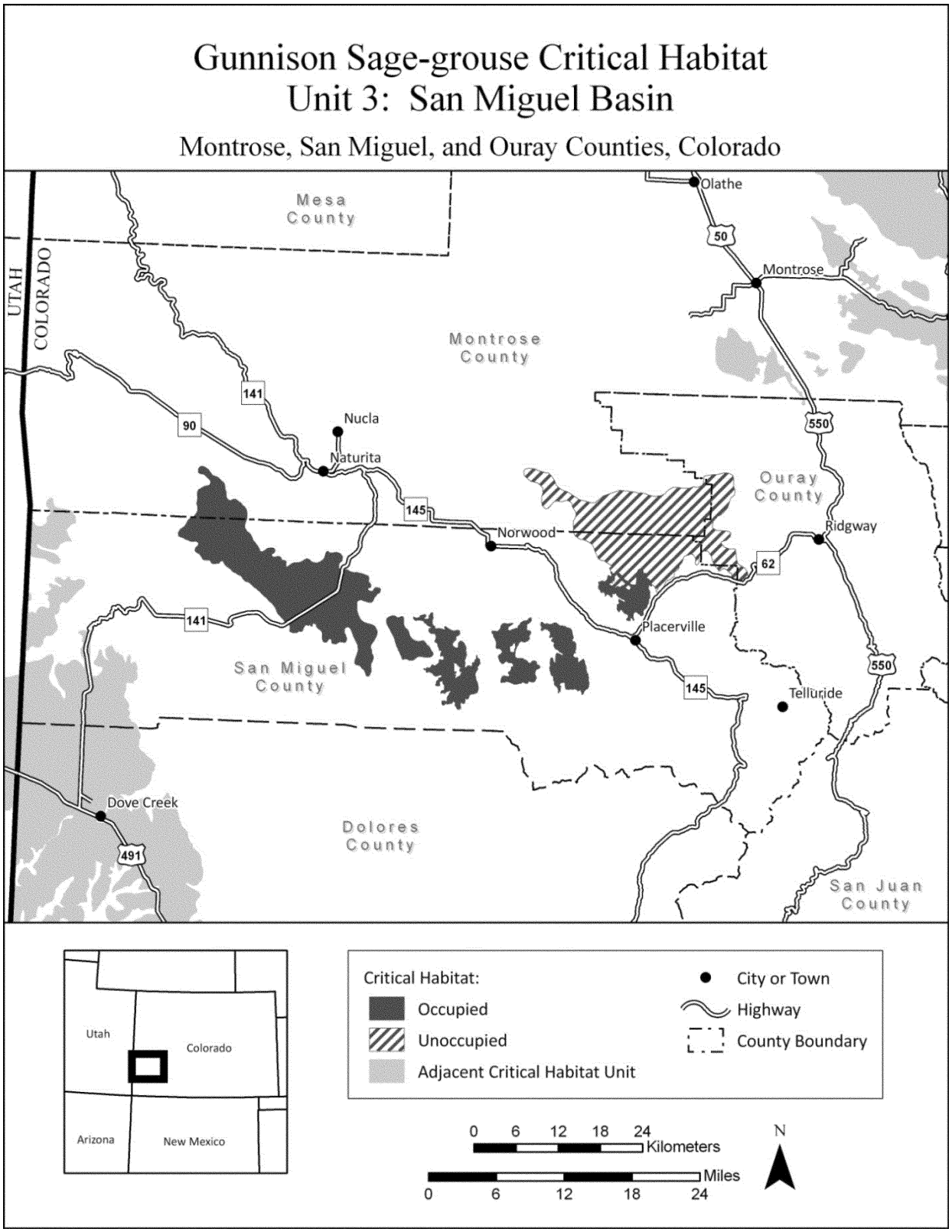
(ii) Map of Unit 2, Piñon Mesa: Grand County, Utah, and Mesa County, Colorado, follows:



(8) Unit 3: San Miguel Basin: Montrose, San Miguel, and Ouray Counties, Colorado.

(i) *General Description:* 67,084 ha (165,769 ac); 9.7 percent of all critical habitat.

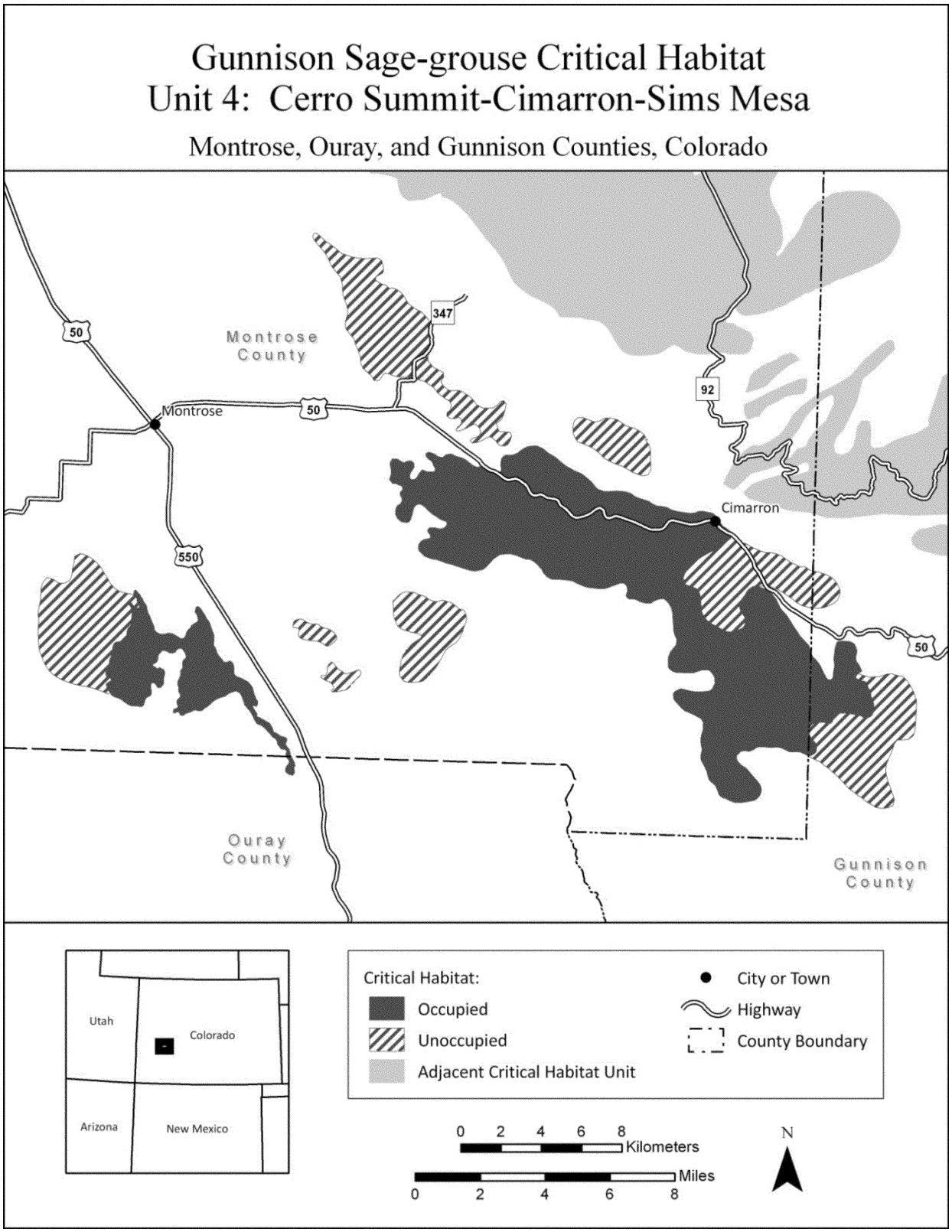
(ii) Map of Unit 3, San Miguel Basin: Montrose, San Miguel, and Ouray Counties, Colorado, follows:



(9) Unit 4: Cerro Summit-Cimarron-Sims Mesa: Montrose, Ouray, and Gunnison Counties, Colorado.

(i) *General Description:* 25,377 ha (62,708 ac); 3.7 percent of all critical habitat.

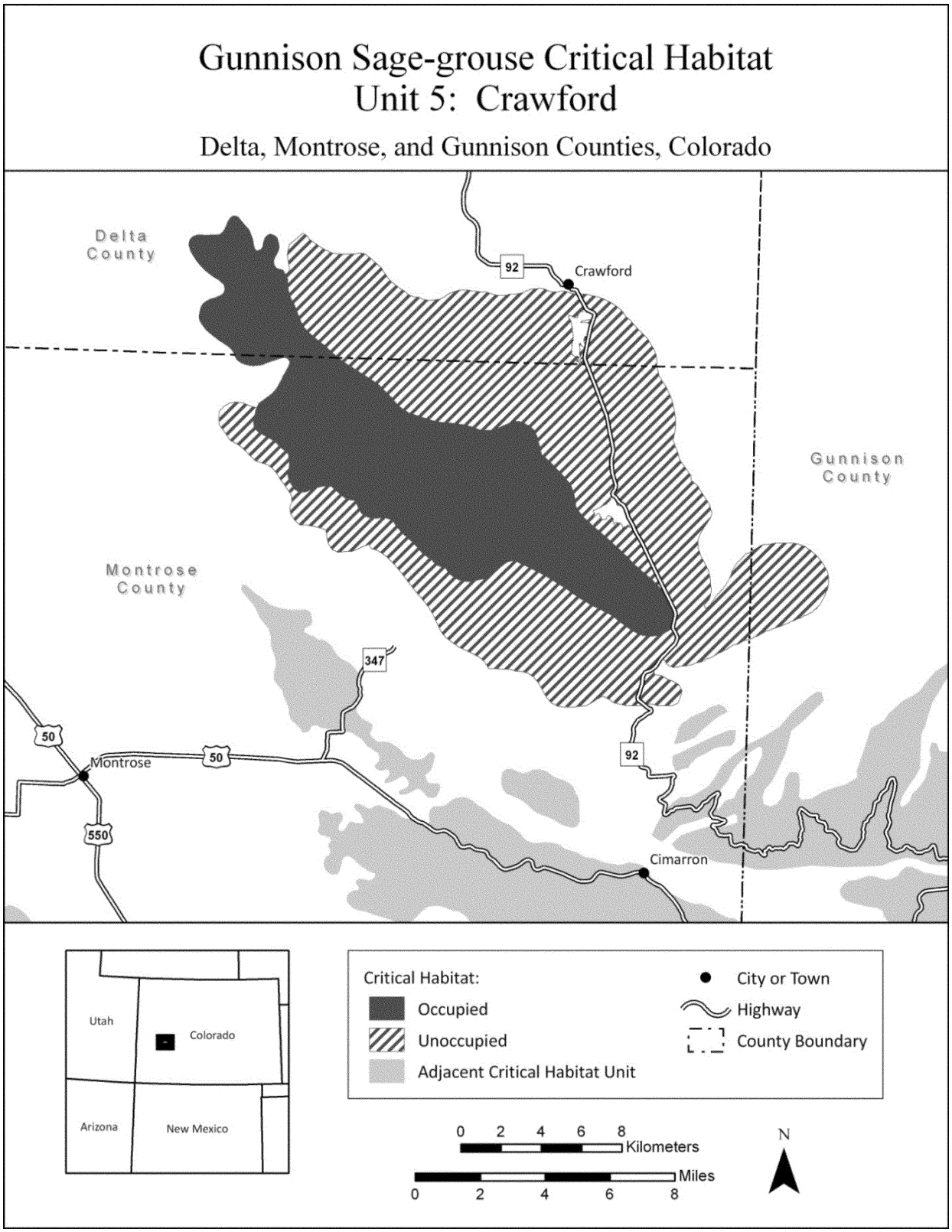
(ii) Map of Unit 4, Cerro Summit-Cimarron-Sims Mesa: Montrose, Ouray, and Gunnison Counties, Colorado, follows:



(10) Unit 5: Crawford: Delta, Montrose, and Gunnison Counties, Colorado.

(i) *General Description:* 39,304 ha (97,123 ac); 5.7 percent of all critical habitat.

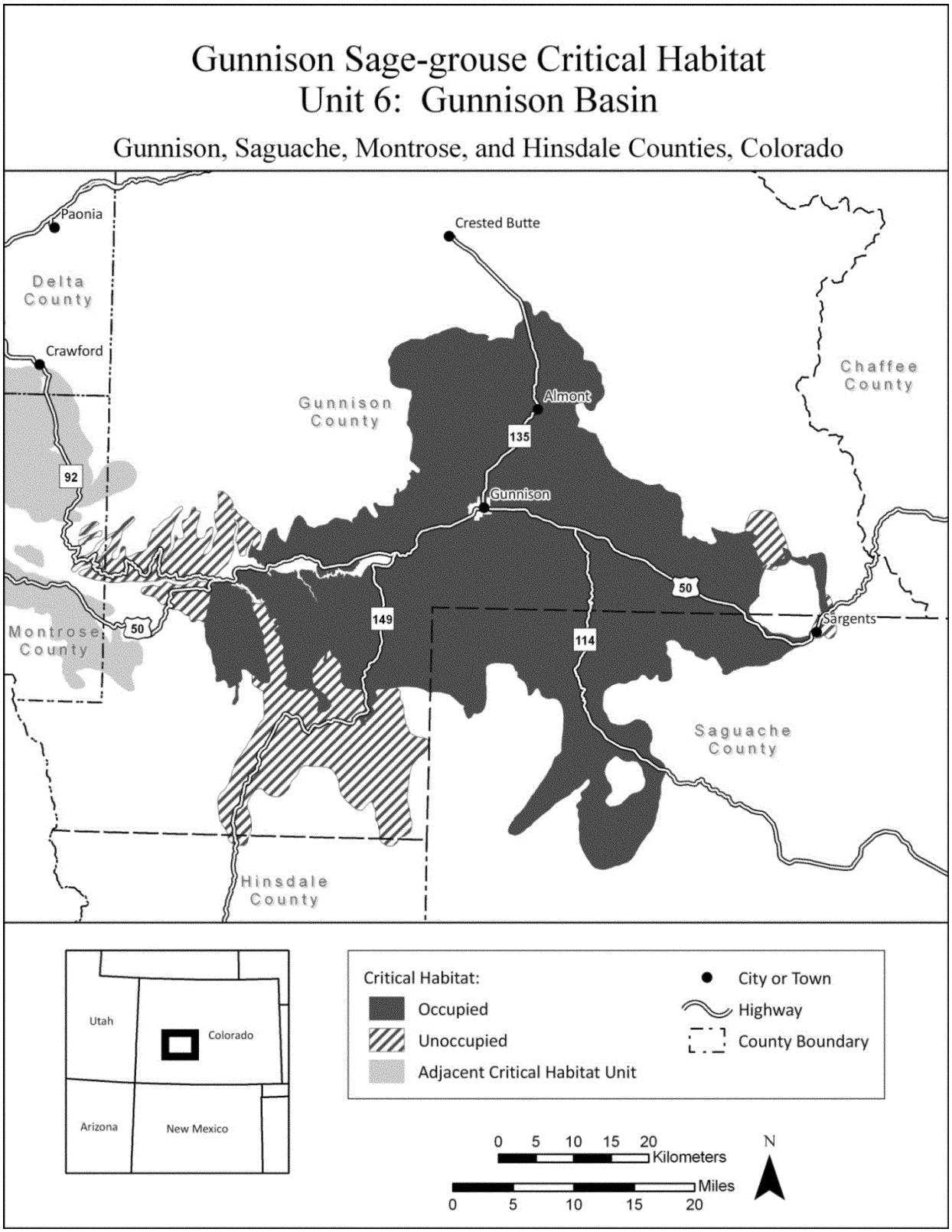
(ii) Map of Unit 5, Crawford: Delta, Montrose, and Gunnison Counties, Colorado, follows:



(11) Unit 6: Gunnison Basin: Gunnison, Saguache, Montrose, and Hinsdale Counties, Colorado.

(i) *General Description:* 298,173 ha (736,802 ac); 43.2 percent of all critical habitat.

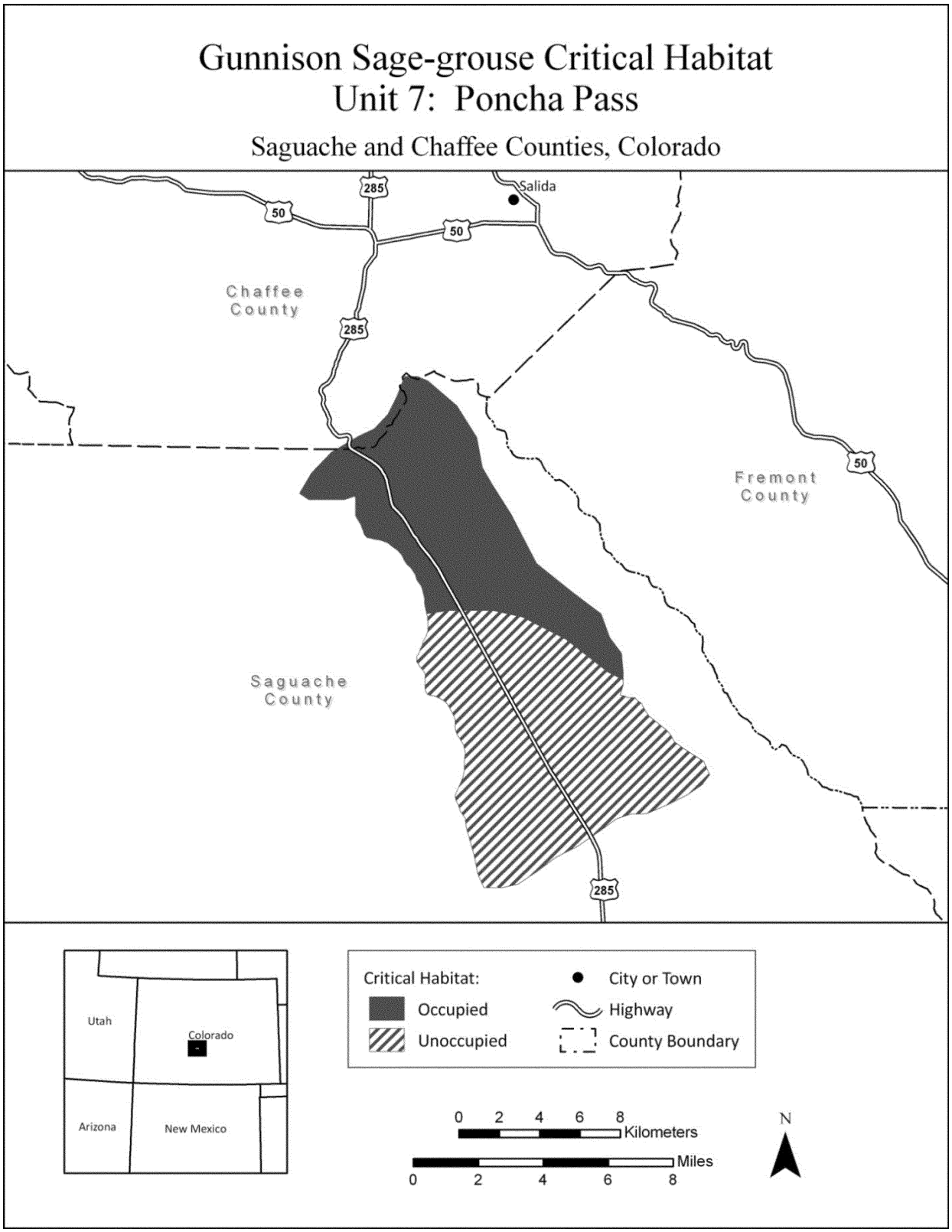
(ii) Map of Unit 6, Gunnison Basin: Gunnison, Saguache, Montrose, and Hinsdale Counties, Colorado, follows:



(12) Unit 7: Poncha Pass: Saguache and Chaffee Counties, Colorado.

(i) *General Description:* 19,543 ha (48,292 ac); 2.8 percent of all critical habitat.

(ii) Map of Unit 7, Poncha Pass: Saguache and Chaffee Counties, Colorado, follows:



* * * * *

Dated: December 13, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–31666 Filed 1–10–13; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Part 69

Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05–25; RM–10593; FCC 12–153]

Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues the process of reviewing its special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. The Report and Order initiates a comprehensive data collection and specifies the nature of the data to be collected and the scope of respondents. An initial version of the data collection is attached to the Report and Order as an appendix; the Report and Order delegates authority to the Commission's Wireline Competition Bureau to review and modify the collection to implement the requirements of the Report and Order.

DATES: Effective March 12, 2013. The information collection and recordkeeping requirements contained in section III and appendix A of the document are not effective until they are approved by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jamie Susskind, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or (202) 418–0484 (TTY), or via email at *Jamie.Susskind@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 05–25, RM–10593, FCC 12–153, adopted on December 11, 2012, and released on December 18, 2012. This summary should be read with its companion document, the Further Notice of Proposed Rulemaking (FNPRM) summary published elsewhere in this issue of the **Federal Register**. The summary is based on the public redacted version of the document, the full text of which is available electronically via the Electronic Comment Filing System at *http://fjallfoss.fcc.gov/ecfs/* or may be downloaded at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-153A1.pdf*. The full text of this document is also available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternate formats for persons with disabilities (*e.g.* Braille, large print, electronic files, audio format, etc.) or reasonable accommodations for filing comments (*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 (voice) or (202) 418–0432 (TTY).

I. Introduction

1. In the Report and Order and Further Notice of Proposed Rulemaking, we continue the process of reviewing our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. Specifically, we initiate a comprehensive data collection and seek comment on a proposal to use the data to evaluate competition in the market for special access services.

II. Background

A. Price Cap Regulation

2. In 1991, the Commission implemented a system of price cap regulation by which the largest incumbent LECs (often referred to today as price cap LECs) establish their interstate access charges. Price cap regulation is a form of incentive regulation that seeks to ''harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services.'' In contrast to rate-of-return regulation, which preceded price cap regulation and focuses on an incumbent LEC's costs and fixes the profits an incumbent LEC may earn based on those costs, price cap regulation focuses primarily on the prices that an incumbent LEC may charge. The access charges of price cap LECs originally were set at levels based on the rates that existed at the time the LECs entered the price cap regime. Increases in their rates have, however, been limited over the course of price cap regulation by the Price Cap Index (PCI) that is adjusted annually pursuant to formulae set forth in Part 61 of our rules.

3. The PCI is designed to limit the prices LECs charge for service. The PCI has three basic components: (1) A measure of inflation, *i.e.,* the Gross Domestic Product (chain weighted) Price Index (GDP–PI); (2) a productivity factor or ''X-Factor,'' which represents the amount by which LECs can be expected to outperform economy-wide productivity gains; and (3) adjustments to account for ''exogenous'' cost changes that are outside the LEC's control and not otherwise reflected in the PCI. The Commission's price cap formula permitted special access PCIs to increase by a measure of inflation, minus a productivity offset (the X-factor). The X-factor represented the amount by which LECs were expected to outperform economy-wide productivity gains.

B. Pricing Flexibility

4. Pursuant to the pro-competitive, deregulatory mandates of the 1996 Act, the Commission adopted the *Pricing Flexibility Order* in 1999 to ensure that the Commission's regulations did not unduly interfere with the operation of interstate access markets as competition developed. In that Order, the Commission developed competitive showing rules (also referred to as ''triggers'') intended to measure whether market conditions in a given Metropolitan Statistical Area would warrant various levels of regulatory relief. To make a competitive showing, the Commission held that price cap LECs would need to demonstrate

> either that (1) competitors unaffiliated with the incumbent LEC have established operational collocation arrangements in a certain percentage of the incumbent LEC's wire centers in an MSA, or (2) unaffiliated competitors have established operational collocation arrangements in wire centers accounting for a certain percentage of the incumbent LEC's revenues from the services in question in that MSA. In both cases, the incumbent also must show, with respect to each wire center, that at least one collocator is relying on transport facilities provided by a transport provider other than the incumbent LEC.

5. Under the rules, the Commission granted relief in two phases. Phase I relief, which required lower levels of collocation, gave price cap LECs the ability to lower their rates through contract tariffs and volume and term

discounts, but required that they maintain their generally available price cap-constrained tariff rates to ''protect[ ] those customers that lack competitive alternatives.'' Phase II relief, which required higher levels of collocation, permitted price cap LECs to raise or lower their rates throughout an area, unconstrained by price cap regulations included in the Commission's part 61 and part 69 rules.

C. The CALLS Order

6. In 2000, the Commission adopted the CALLS plan, a five-year interim, industry-proposed regime designed to move towards a more market-based approach to rate setting. The CALLS plan separated special access services into their own basket and applied a separate X-factor to that basket. The X-factor under the CALLS plan, unlike under prior price cap regimes, is not a productivity factor but ''a transitional mechanism * * * to lower rates for a specified time period for special access.'' The CALLS X-factor for special access was 3.0 percent in 2000, and increased to 6.5 percent for 2001, 2002, and 2003. For the final year of the CALLS plan (July 1, 2004–June 30, 2005), the special access X-factor was set equal to inflation. As the Commission has yet to replace the interim CALLS plan X-factor, price cap LECs' special access rates have remained frozen at 2003 levels (excluding any necessary exogenous cost adjustments).

D. AT&T's Petition for Rulemaking and 2005 Special Access NPRM

7. On October 15, 2002, AT&T Corp. filed a petition for rulemaking requesting that the Commission revoke the pricing flexibility rules and revisit the CALLS plan as it applies to special access services. AT&T contended both that the predictive judgment at the core of the *Pricing Flexibility Order* had not been confirmed by marketplace developments, and that BOC special access rates exceeded competitive levels and hence were unjust and unreasonable in violation of § 201 of the Communications Act. Because the predictive judgment had proven wrong, AT&T asserted, the Commission was compelled to revisit its pricing flexibility rules in a rulemaking proceeding. Price cap LECs countered that, among other things, their special access rates were reasonable and therefore lawful, that there was robust competition for special access services, that the collocation-based competitive showings were an accurate metric for competition, and that data relied upon by AT&T were unreliable in the context used by AT&T.

8. On January 31, 2005, the Commission released the *Special Access NPRM,* which initiated a broad examination of what regulatory framework to apply to price cap LECs' interstate special access services following the expiration of the CALLS plan, including whether to maintain or modify the Commission's pricing flexibility rules. Moreover, the NPRM sought to examine whether the available marketplace data supported maintaining, modifying, or repealing these rules. It also responded to AT&T's request for interim relief.

E. Recent Actions in the Proceeding

1. Competitive and Regulatory Developments

9. Numerous regulatory and competitive developments affected the special access market in the years following the release of the *Special Access NPRM.* In July 2007, the Commission sought comment in the record in light of subsequent industry consolidation, a Government Accountability Office (GAO) report on special access competition, and other competitive developments. Moreover, as a result of a series of forbearance proceedings, the scope of services affected by the *Special Access NPRM* narrowed considerably.

2. Analytical Framework

10. In November 2009, the Commission's Wireline Competition Bureau (Bureau) sought comment on the appropriate analytical framework for examining the issues that the *Special Access NPRM* raised. In July 2010, the Bureau held a staff workshop on the economics of special access to gather further input on the analytical framework issue.

3. Voluntary Data Requests

11. In October 2010, the Bureau issued a public notice inviting the public to submit data on the presence of competitive special access facilities to assist the Commission in evaluating the issues that the *Special Access NPRM* raised. In September 2011, the Bureau issued a second public notice requesting the submission of competition and pricing data.

4. Pricing Flexibility Suspension Order

12. On August 22, 2012, the Commission adopted an order that concluded that the special access pricing flexibility rules discussed above were not working as predicted and suspended the 90-day deadline for granting a petition for pricing flexibility based on those flawed rules.

III. Report and Order

13. In the Report and Order, we require providers and purchasers of special access service and certain other services to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market.

A. Scope

14. In this section, we identify the scope of the data collection, the entities that must respond to the data collection, and the geographic areas and time periods for which they must respond.

15. A preliminary note on terminology: For purposes of the Report and Order and consistent with Commission precedent, we do not include mass market Internet access services (*e.g.,* DSL or cable modem service) in our definition of special access. We use the term ''location'' to mean a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the end user is connected, but is not a ''node.'' We use the term ''node'' to mean an aggregation point, a branch point, or a point of interconnection on a provider's network, including a point of interconnection to other provider networks. ''End user'' means a business, institutional, or government entity that purchases dedicated service for its own purposes and does not resell such service. We use the term ''connection'' to mean a wired ''line'' or wireless ''channel'' that provides a dedicated communication path between an end user's location and the first node on a provider's network. Examples include LEC central offices, remote terminal locations, splice points (including, for example, at manholes), controlled environmental vaults, cable system headends, cable modem termination system (CMTS) locations, and facility hubs. We use the terms ''bandwidth'' and ''capacity'' interchangeably.

16. *Services Covered.* Traditionally, federal antitrust agencies have begun competitive analyses in a variety of contexts by defining relevant product and geographic markets. As noted in the Further Notice, however, these agencies have more recently noted that ''analysis need not start with market definition * * * although evaluation of competitive alternatives available to customers is always necessary at some point in the analysis.'' In particular, ''[e]vidence of competitive effects can inform market definition, just as market

definition can be informative regarding competitive effects.''

17. Taking these considerations into account, we collect information on the full array of traditional special access services, including DS1s and DS3s, and packet-based dedicated services such as Ethernet. Further, although there is little disagreement in the record as to the definition of special access services, and that as traditionally defined they do not include mass market Internet access services, there is some question as to whether the relevant product market should encompass not only special access services but other high-capacity data services targeted at enterprise customers. Some commenters have argued that best efforts broadband Internet access services—even when marketed to small- to medium-sized business customers—are not part of the relevant product market. These commenters note, among other things, that prices for best efforts services differ substantially from special access services for comparable bandwidth. Others have argued that best efforts services are often marketed with express comparisons to special access services, and therefore the Commission should collect data on both.

18. We need not resolve the market-definition issue here—for purposes of this data collection, we conclude it is best to simply take a broad approach. To ensure that we collect data on services that enterprise customers may view as substitutable, we define the scope of our data collection to include best efforts business broadband Internet access services, which we define as best efforts Internet access data services with a capacity equal to or greater than a DS1 connection that are marketed to enterprise customers (including small, medium, and large businesses, as well as existing special access customers). As described below, we structure the collection somewhat differently for best efforts and special access services to minimize the burden on submitters consistent with our data requirements and taking into consideration data that the Commission already has available to it.

19. We also note that we intend to collect data on intrastate special access services and special access services offered via a state-level tariff or state-approved contract. Doing so is necessary to ensure that we have a clear picture of all competition in the marketplace.

20. *Providers and purchasers that must respond.* In order to conduct a comprehensive analysis of the special access market, we will collect data from all providers and purchasers of special access services as well as some entities that provide best efforts business broadband Internet access services. By ''providers,'' we mean any entity subject to the Commission's jurisdiction under the Communications Act, as amended, that provides special access services or provides a connection that is capable of providing special access services. By ''purchasers,'' we mean any entity subject to the Commission's jurisdiction under the Communications Act, as amended, that purchases special access services.

21. To clarify our terminology, we note that some providers are ''competitive providers,'' by which we mean a competitive local exchange carrier (CLEC), interexchange carrier, cable operator, wireless provider or any other provider that is not an incumbent LEC operating within its incumbent service territory. We also note that a rate-of-return carrier, which is not subject to our pricing flexibility rules, shall not be considered a ''provider'' to the extent it provides special access within its rate-of-return service area. This exemption does not apply to services not regulated on a rate-of-return basis or provided outside a rate-of-return carrier's service area by itself or an affiliate.

22. We note concerns regarding the burden that this data collection will impose on small companies, and are mindful of the importance of seeking to reduce information collection burdens for small business concerns, and in particular those ''with fewer than 25 employees.'' Any effort to lessen the burdens of this information collection on small companies must be balanced against our goal of obtaining the most accurate and useful data possible. Competition in the provision of special access appears to occur at a very granular level—perhaps as low as the building/tower. A provider that owns 50 of its own channel terminations to end users may not be competitively significant within an area as large as an MSA, but could be a significant competitor within smaller areas, such as zip code areas. Therefore, we believe it necessary to obtain data from special access providers and purchasers of all sizes, but we shall not require entities with fewer than 15,000 customers and fewer than 1,500 business broadband customers to provide data regarding their best efforts business broadband Internet access services. As some commenters have urged us to do, this approach will incorporate data and information from nascent technologies, such as WISPs.

23. *Geographic scope.* With some exceptions, we will collect data on a nationwide basis to ensure the most comprehensive and accurate assessment of competition in markets for special access services subject to our pricing flexibility rules. Because the focus of this proceeding is on the regulation of special access services in price-cap territories, we will not require data from any provider with regard to its operations in any geographic area in which a rate-of-return carrier is the incumbent, as such carriers are not subject to the pricing flexibility rules. Moreover, we will not require a purchaser to produce data based on purchases it makes in those areas in which a rate-of-return carrier is the incumbent. If, however, a provider or purchaser prefers to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs, it may do so.

24. We considered whether we could reduce the burden of this data collection by collecting all of our data from a sample of locations (*e.g.,* business locations and wireless towers) and/or larger geographic areas. However, we decline to adopt a sampling approach because we believe that the process of identifying and collecting a representative sample would be unlikely to substantially reduce provider burdens, and could significantly lengthen the data collection process. With respect to a sample of geographic regions, it is very difficult to design a representative sample without coming close to covering the entire country—a fact that minimizes the likelihood that a geographic sample would actually reduce the burden on respondents. Further, respondents likely would be required to search multiple databases and compare the results of those searches to determine which of their customer locations were in the selected geographies, resulting in substantial setup costs. Finally, even where a respondent need only consult a single database, it typically would have to engage in essentially the same, or greater (to account for the geographic sample), amount of coding to ''pull'' a sample of records as it would if it pulled all records.

25. A methodology based on sampling specific locations suffers from the same database and coding issues as geographic sampling, and further would likely lengthen the data collection process by a significant margin. Although the most recent data we have are several years old, they suggest that competitive providers may serve a relatively small proportion of all locations that have special access. As a result, a random sample from all locations would need to be very large—

perhaps approaching a census—to obtain sufficient data on competitive providers. Alternatively, we could require all respondents to identify all the relevant locations so that a smaller sample could be drawn from that census in a scientific way. That approach likely would lengthen the data collection process because it would require two collections to be conducted sequentially: First a census of served locations from which a sample could be drawn, and then a subsequent issuing of questions about locations in the sample. It would also fail to significantly reduce the overall burden for several reasons. First, the burden of producing the census would be similar to, though perhaps lower than, the burden of producing the information identified above. Second, because of the need to tie sampled locations to the relevant databases, the effort to respond to questions about a sample of locations would, for many respondents, raise, or at least not reduce, their burden. Third, while the costs in burden saved through sampling are likely to be relatively small, the statistical error of any conclusions based on a sample could be significantly higher than conclusions based on a census.

26. We do choose to sample for the narrower purpose of seeking to understand the evolution of competitive provider buildout of a connection to a specific end user's location. Such an analysis requires facilities deployment data over a long period of time, which would be burdensome for many providers to produce for their entire networks. By collecting this data in a representative sample of geographic areas, it is possible to minimize the burden on providers while providing accurate and useful data on this narrow aspect of providers' behavior. The decision to sample for this narrow purpose does not suffer from the same issues discussed above. First, the sample can be significantly smaller than would be necessary for a more general analysis. Second, the sample will be drawn from the universe of locations identified in the course of the larger data collection; this sequential collection is unlikely to materially impact our ability to undertake the proposed analysis. Finally, the information to be produced from the sample is limited to facilities deployment data.

27. *Temporal scope.* We will collect the majority of the data for calendar years 2010 and 2012. We find that collecting data on these issues for two calendar years appropriately balances the need for time series data with the burden of producing data for multiple years. We choose calendar year 2012 because it is the most recent calendar year for which data will be available once Paperwork Reduction Act approval is obtained for the information collection adopted in this order. And by collecting 2012 data, the Commission will obtain the most up-to-date data available while still providing respondents a reasonable time to gather and submit their data. We choose calendar year 2010 because, while we recognize that it likely is more burdensome to produce 2010 data than 2011 data, a two year period between observations is more likely to include changes in the relevant variables than a one year period. We also recognize that our second voluntary data request sought data for 2010, which will mean those providers who responded to that request will be able to rely on their past efforts in responding to some elements of this collection.

28. We will collect two years' worth of data for market structure, price, and demand (*i.e.,* observed sales and purchases). This allows for an analysis that controls for factors that may vary widely across geographic areas, but not within a given geographic area (*e.g.,* entry factors such as building codes or soil quality). For example, if we observe differences in deployment between different geographies, these may be due to differences in factors such as building codes, climate, or soil quality. Controlling for these can be challenging. However, these kinds of variables do not typically change significantly over a few years. In contrast, observing differences in deployment that emerge over a few years within the same geographic region permits an analysis that controls for such factors. Conversely, if we have only one year's worth of data, we will be less able to associate particular factors with levels of deployment.

29. Most importantly, collecting a time series of data will help us assess potential competition. One way to assess potential competition is by obtaining structural, pricing, and demand data over a two-year period to observe and better understand how and why competition has evolved over time and, therefore, where potential competition exists. Our proposal to collect historical data, which could be used to predict potential competition, is consistent with Commission precedent, as well as that of the U.S. antitrust agencies.

B. Nature of Data To Be Collected

30. The data, information, and documents required to conduct a robust analysis of special access competition fall into five general categories: Market structure, pricing, demand (*i.e.,* observed sales and purchases), terms and conditions, and competition and pricing decisions. In this section, we describe the nature of the data to be collected. Further, we include in Appendix C an initial version of the data collection that incorporates the data, information, and documents we describe below. We direct the Bureau to review and modify this collection, consistent with the authority delegated in section III.D below, to implement the requirements of this Report and Order.

31. *Market structure data.* We intend to assess the market structure for special access market(s). By this, we mean that we intend to examine comprehensive data on the situs and type of facilities capable of providing special access, by sold and potential capacity and ownership, and the proximity of such facilities to sources of demand. Specifically, we require each provider to submit data and information for connections that are owned by the provider, leased under an indefeasible right of use (IRU), or, for competitive providers, obtained from an incumbent LEC as an unbundled network element (UNE) to provide a dedicated service, including, but not limited to:

- Locations to which the provider has sold a connection to an end user or a provider;
- Information on the nature of the location and the nature of the connection serving that location, including:
  - The situs of the location and whether the location is a building, other free-standing site, cell site on a building, or free-standing cell site;
  - Whether the connection is fiber, wireless (and if wireless, the provisioned bandwidth of the channel), or some other medium; and
  - The provisioned bandwidth of each type of connection.

32. We require incumbent LEC providers to submit data concerning the number, nature, and situs of UNEs sold.

33. We require competitive providers to submit detailed information related to non-price factors that may impact where special access providers build facilities or expand their network via UNEs. For example, providers may choose to expand their facilities in areas where they have already made significant facilities investments, like near their headquarters or a point of interconnection, to take advantage of cost efficiencies. We therefore require respondents to provide detailed information about such non-price factors. In addition, we require competitive providers to provide us with any business rules they use to

determine whether to build a connection to a location.

34. In addition, we require competitive providers to submit the history of their facilities deployment in a sample of locations served by a competitive provider. Each competitive provider will report the date on which it provided a connection to each of its locations within the sample and locations proximate to the locations in the sample, including when and where it relied upon UNEs to establish a connection. The locations selected will include areas in which no pricing flexibility has been granted, as well as Phase I and/or Phase II pricing flexibility areas. These detailed data on the evolution of competitive provider networks will help us understand how competitive facilities are deployed over time and whether the presence of competitive facilities in fact provides a threat of competitive entry in nearby or adjacent areas.

35. We require competitive providers to provide detailed collocation situs information. We also require competitive providers to submit maps of the routes followed by fiber that they own or lease subject to an IRU, of nodes that interconnect with third party networks, and of connections from their networks to locations. These maps will indicate where competitive providers can provide, or could potentially provide, special access services. Among other things, such maps will identify points of interconnection between competitive providers of special access services and incumbent LEC facilities.

36. *Price data.* We require price data to characterize competition in the market for special access services. Such data will allow comparisons of different providers' prices, after controlling, where necessary, for differences in cost-causing factors, and can allow the consideration of the effect of market structure on price. Price data include, but are not limited to:

- The quantities sold and prices charged for special access services, by circuit element;
  - ○ As reflected in billing data;
  - ○ Including, where applicable and necessary, but not limited to, identifiers for the nature of the service, such as:
    - ▪ Universal Service Order Code (USOC) or comparable code;
    - ▪ Circuit and/or mileage end-points;
    - ▪ Quantities relevant for billing (such as bandwidth and mileage);
    - ▪ Term, volume, or revenue commitments relevant to billing; and
    - ▪ Adjustments, rebates, or true-ups provided or received over time.

The Bureau collected similar data on a voluntary basis in the *Special Access Facilities Data Public Notice.*

37. To understand this pricing information, we must also take into account the regulatory environment. For competitive providers, we already know the regulatory environment—they are unregulated with respect to price at the federal level. In contrast, the Commission regulates the prices incumbent LECs charge through a variety of methods: rate-of-return regulation, price-cap regulation, and Phases I and II of pricing flexibility. We therefore require incumbent LECs to list the form of price regulation that applies to their interstate special access services on a wire-center-by-wire-center basis.

38. *Demand data (i.e., observed sales and purchases).* Demand data are a key input into any statistical analysis of how price varies with competition. Competitors generally are attracted to areas of high demand density because such areas provide opportunities to enjoy economies of scale and scope. Consequently, an understanding of the relationship between prices for observed sales and purchases and competitive entry will facilitate an assessment of market power. In addition, the record indicates that competition in the provision of special access appears to occur at a very granular level—perhaps as low as the building/tower or a floor of a building. We therefore need to understand observed sales or purchases of special access at the most granular level possible, because, among other things, sold or purchased volumes and volume density are a key driver of special access costs and an important determinant of the likelihood of potential entry. We therefore will collect, including but not limited to, data that identify:

- The bandwidth of the special access services sold or purchased;
- The location(s) being served;
- The nature of the demand (*e.g.,* provider, end user, other);
- The locations of mobile wireless providers' cell sites and connections to those cell sites;
- Total expenditures on special access services by purchasers; and
- Revenues earned from the sales of special access.

39. *Terms and conditions data and information.* The record reflects questions about whether the terms and conditions associated with the sale of special access services may inhibit a buyer's ability to switch to other providers, which in turn may inhibit facilities-based entry into special access markets. We therefore will collect, from providers and purchasers of special access services, data and information that includes but is not limited to:

- Generally available plans for tariffed special access services that offer discounts, circuit portability, or other competitively relevant benefits;
- The business rationale for those plans;
- The extent of special access sales and purchases made that are and are not subject to discounts, circuit portability, or other benefits;
- How such plans work with each other, and in conjunction with contract-based tariffs and other forms of contracts that govern the sale and pricing of special access services;
- Customer information associated with such plans and contract-based tariffs (*e.g.,* the number of customers subscribed to an individual plan or contract-based tariff);
- How discounts, circuit portability, and other competitively relevant benefits for sales of special access services by competitive providers differ from those of the incumbent LEC providers;
- Contract-based tariffs;
- Provider policies and internal procedures governing deployment, disconnection, upgrades, and switching providers;
- The impact certain terms and conditions may have on a purchaser's ability to reduce purchases from its existing provider, switch providers, or purchase unregulated services;
- Generally available tariffs, contract-based tariffs, and other forms of contracts that govern the sale and pricing of special access services and services that are sold (or priced) in connection with special access services; and
- A description of the customers targeted by providers (*e.g.,* size, geographic scope, type) and the promotional and advertising strategies for winning or retaining such customers.

40. *Competition and pricing decision data, information and documents.* We require providers of special access to submit data, information and/or documents related to competition and pricing decisions for special access services, including selected competitive provider responses to Requests for Proposals (RFPs).

41. Specifically, we require each competitive provider to identify the five most recent RFPs for which it was selected as the winning bidder to provide each of the following: (i) Best effort business broadband Internet access services, (ii) special access services, and, to the extent different from (i) or (ii), and (iii) some other form of high-capacity data services to

business customers. We also require each competitive provider to identify the five largest (by number of connections) RFPs for which it submitted an unsuccessful competitive bid between 2010 and 2012 for each of (i) best effort business broadband Internet access services, (ii) special access services, and, to the extent different from (i) or (ii), and (iii) some other form of high-capacity data services to business customers. For each RFP identified, the competitive provider shall provide a description of the RFP, the area covered, the price offered, as well as other competitively relevant information regarding RFPs specified by the Bureau.

42. Parties contend that advertising and marketing relating to special access, regardless of whether a competitive provider has actually built out facilities to a particular location, may impact pricing and deployment decisions. Accordingly, we require competitive providers of special access to submit data, maps, information, marketing materials, and/or documents identifying those geographic areas where they advertised or marketed special access services over existing facilities, via leased facilities, or by building out new facilities as of December 31, 2010 and December 31, 2012, or planned to advertise or market such services within twenty four months following those dates.

43. Another useful category of information may be documents showing the internal analyses undertaken by providers in 2010 or thereafter to evaluate, *inter alia,* competitive market shares, changes in competition, changes in the costs of supplying services, whether to respond to RFPs, and identified rate increases and decreases. We decline at this time to require all providers to submit that information given the burden of identifying and producing such documents. Instead, we shall take a two-stage approach with these internal documents. Specifically, we delegate authority to the Bureau to require a provider to submit such documents if the Bureau finds in an order that (a) a provider's responses to the business-rules questions are incomplete or insufficient for analysis, (b) a competitive provider's responses to the history-of-deployment questions are incomplete or insufficient for analysis, or (c) the data collected for a particular geographic area are incomplete or insufficient for analysis.

44. *Best Efforts Business Broadband Internet Access Services.* As noted above, we define the scope of our data collection to include best efforts business broadband Internet access services. Because the record indicates that entities that provide best efforts business broadband Internet access services generally deliver those services throughout their footprint over the same network facilities they use to deliver mass market broadband Internet access, we need not collect this data at the same level of granularity as location and facilities data for special access. Data showing whether an entity is providing best efforts business broadband Internet access service at, for example, the census block level would not diminish the rigor of our analysis, but would significantly reduce the burden of producing the necessary data. Indeed, many entities already submit data in connection with the State Broadband Initiative (SBI) Grant Program as to where they offer best efforts broadband Internet access services at the census block level.

45. Further, we already have information on enterprise subscriptions to broadband Internet access services through our Form 477 collection. In their biannual Form 477 filings, facilities-based providers of fixed-location Internet access connections (which include providers equipping UNEs, special access lines, or other leased facilities) submit information, by census tract (areas roughly the size of zip codes), on all Internet access connections (greater than 200 kbps) to end users, including businesses. They also identify the percentage of connections within each census tract that is residential.

46. We therefore require, subject to the exception set forth in paragraph 22 above, entities that submitted data in connection with the SBI Grant Program and offer best efforts business broadband Internet access services to identify, on a granular but not location-by-location basis (ideally, at the census block level), the geographic areas in which they offer those services. The Bureau may accept such entities' certification that the data they have submitted in connection with the SBI Grant Program accurately and completely identify the areas in which they offer best efforts business broadband Internet access services and exclude those areas where they do not offer such services. We further require such entities to submit a price list for the best efforts business broadband Internet access services that they offered within their footprint. Such price list should identify the list prices for the best efforts business broadband Internet access services they offered, whether there was any price variation within their service footprint, and, if so, the nature of such variation. This information, taken together with the Form 477 data and the data we will collect on UNEs that could be used to provide these services, will allow us to analyze of the availability of, demand for, and pricing of best efforts business broadband Internet access services.

47. *Additional Data Not Collected.* We recognize that the collection we adopt today does not include every type of data that is available. Commenters suggest we ask for a broad array of competition data and information. Others have recommended obtaining information about providers' past lateral construction projects, future upgrade or expansion plans and additional information on competitive bidding. We agree that some such information may be qualitatively useful, and, for example, have required the production of data on competitive provider RFP responses and future plans to inform our analysis. We must, however, balance the administrative burdens with the potential benefits of a broader collection, and believe that this Report and Order will allow us to collect data and information sufficient for our purposes while minimizing, to the extent possible, the burden we impose on industry.

48. Further, we agree with commenters who argue that to understand the impact of competition in special access, it is important to grasp the effects of potential, as well as actual, competition. To this end we are requiring the production of information that will illuminate those factors that affect providers' decisions to expand existing networks, *e.g.,* the non-price factors that may impact where special access providers build new facilities, business rules for deployment, a sample of historical deployment, points of collocation, fiber network maps, availability and use of UNEs, internal analysis of pricing decisions, a selected set of responses to RFPs, and internal competitive analysis.

C. Statutory Authority

49. Several provisions of the Communications Act and the Telecommunications Act give the Commission authority to adopt this data collection. Under section 218 of the Communications Act, we may ''obtain from [common] carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.'' As such, section 218 empowers us to collect data from

incumbent LECs, competitive LECs, CMRS providers, and other common carriers whether they provide or purchase special access service or other relevant services.

50. Section 201 requires that interstate special access service rates, terms, and conditions be just and reasonable, section 202 prohibits unjust or unreasonable discrimination in the provision of interstate special access services, and section 706 of the Telecommunications Act requires that we ''encourage the deployment of advanced telecommunications capability * * * by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.'' The Communications Act in turn provides us authority to carry out these duties—all of which will be aided by today's data collection—in section 4(i), which empowers the Commission to ''perform any and all acts * * * and issue such orders * * * as may be necessary in the execution of [our] functions,'' and section 201(b), which authorizes the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions'' of the Communications Act. These authorities, along with our subject matter jurisdiction over ''interstate and foreign commerce in communication by wire and radio,'' allow us to extend the data collection beyond common carriers to include other market participants that provide interstate communication by wire or radio. We note that there is widespread accord in the record on the Commission's authority to require the collection of the data and information it needs to inform our future actions.

51. We note that parties have had extensive notice and opportunity to comment on the need for and scope of this data collection. In the *2005 Special Access NPRM,* the Commission sought comment regarding evidence of marketplace competitiveness and pricing for special access services, including the data and information to perform those analyses. In a subsequent Public Notice, the Commission sought additional data and to otherwise refresh the record of the *Special Access NPRM* in light of subsequent developments, including the release of a GAO report that, among other things, contended that the Commission needed additional data to evaluate the special access marketplace. In the resulting record of the proceeding, various parties advocated that the Commission undertake a data collection to obtain the data necessary to appropriately perform these analyses. Citing such filings, the Bureau sought comment on an analytical framework necessary to resolve the issues raised in the *Special Access NPRM,* including whether the record contained sufficient information to perform such analyses and, if not, what additional data the Commission should collect, and from whom. Most recently, in the *Special Access Pricing Flexibility Suspension Order,* the Commission stated that a data collection order would be forthcoming. In short, we have provided notice regarding this comprehensive data collection that has given ample opportunity for public participation and met any requirements of the Administrative Procedure Act.

D. Role of the Wireline Competition Bureau

52. The data collection we adopt today is set forth in Appendix A of the Report and Order. Given the complexities associated with ensuring that the specific questions asked meet the Commission's needs as expressed in this Report and Order, navigating the Paperwork Reduction Act process, and actually collecting, cleaning, and analyzing the data, we delegate limited authority to the Bureau to: (a) Draft instructions to the data collection and modify the data collection based on public feedback; (b) amend the data collection based on feedback received through the PRA process; (c) make corrections to the data collection to ensure it reflects the Commission's needs as expressed in this Report and Order; and (d) issue Bureau-level orders and Public Notices specifying the production of specific types of data, specifying a collection mechanism (including necessary forms or formats), and setting deadlines for response to ensure that data collections are complied with in a timely manner, and (e) take other such actions as are necessary to implement this Report and Order. All such actions must be consistent with the terms of the Report and Order.

53. Our goal is to ensure a comprehensive and detailed data collection. Accordingly, we direct the Bureau to engage in outreach with the provider and purchaser communities to ensure that all providers and purchasers are aware of this comprehensive data collection and the penalties for non-response. We encourage the Bureau to reach out to trade associations that represent small providers to inform them of their obligations to participate in the data collection effort and to ensure that we have maximum participation. In addition, to reduce the burden of this data collection, we direct the Bureau to facilitate whenever possible the conversion of street addresses to geocoded coordinates for small providers and purchasers.

E. Data Retention

54. Respondents are required to retain any data, documents, documentation, or other information prepared for, or in connection with, their responses to these data reporting requirements for a period of three years or until the Commission issues a notice relieving respondents of this retention requirement upon the exhaustion of any appeals of a final order adopted in this proceeding.

F. Penalties for False Statements and Non-Response

55. Respondents are required to certify that all statements of fact, data and information submitted to the Commission are true and correct to the best of their knowledge. False statements or misrepresentations to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code. Respondents are reminded that failure to comply with these data reporting requirements may subject them to monetary forfeitures of up to $150,000 for each violation or each day of a continuing violation, up to a maximum of $1,500,000 for any single act or failure to act that is a continuing violation.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

56. This document contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA, 44 U.S.C. 3507. Prior to submission to OMB, the Commission will publish a notice in the **Federal Register** seeking public comment on the information collection requirement. In addition, that notice will also seek comment on how the Commission might ''further reduce the 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). The information collection contained in this Report and Order will not go into effect until OMB approves the collection and the Commission has published a notice in the **Federal**

Register announcing the effective date of the information collection.

B. Congressional Review Act

57. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

58. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis concerning the possible impact of the *Report and Order* on small entities.

59. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility analyses (IRFAs) were incorporated in the *Special Access NPRM* for this proceeding. The Commission sought written public comment on the proposals in the *Special Access NPRM,* including comment on the IRFA. Comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Order

60. In 2005, the Commission initiated this proceeding as a broad examination of what regulatory framework to apply to price cap local exchange carriers' (LECs) interstate special access services following the expiration of the CALLS plan, including whether to maintain or modify the Commission's pricing flexibility rules. Moreover, the NPRM sought to examine whether the available marketplace data supported maintaining, modifying, or repealing these rules. In the Report and Order, the Commission continues the process of reviewing our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. Specifically, the Commission initiates a comprehensive data collection and seek comment on a proposal to use the data to evaluate competition in the market for special access services.

61. In the Report and Order, we require providers and purchasers of special access service and certain other services—including best efforts business broadband Internet access services— as well as entities that provide certain other services, to submit data, information and documents to allow the Commission to conduct a comprehensive evaluation of competition in the special access market. The data, information, and documents required fall into five general categories: market structure; pricing; demand (*i.e.,* observed sales and purchases), terms and conditions; and competition and pricing decisions. We will collect the majority of the data for calendar years 2010 and 2012.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

62. The Office of Advocacy of the U.S. Small Business Administration (SBA) filed reply comments to the *Notice of Proposed Rulemaking* and the Initial Regulatory Flexibility Act Analysis (IRFA). The SBA asserts that the Commission's IRFA did not consider the effect of new special access rules on small competitive carriers and urged the Commission to do so. SBA contended that because the Commission's 2005 Triennial Review Remand Order (TRRO) required both large and small competitive carriers to purchase special access services instead of UNEs in many metropolitan markets, the Commission should consider the impact that changes in special access prices would have on small competitive carriers. SBA suggested a number of potential alternatives to special access pricing regulation that it asserted might minimize the impact on small competitive carriers. No other comments were filed in response to the IRFA.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

63. 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.

64. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

65. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

66. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

67. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

68. We have included small incumbent LECs in this present RFA analysis. As noted above, 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.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

69. *Competitive Local Exchange Carriers (competitive LECs), 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. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

70. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

71. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

72. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

73. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

74. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

75. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

76. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according

to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

77. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

78. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

79. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

80. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

81. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size

standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

82. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

83. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

84. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

85. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

86. *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'')). 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. 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. 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. The Commission has adopted three levels of bidding credits for BRS: (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) is eligible to 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) is eligible to 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) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

87. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions.

Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. 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.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

88. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

89. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

90. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

91. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

92. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

93. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how

many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

94. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

95. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

96. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

97. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

98. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

99. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

100. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Report and Order.

101. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a

small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

102. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities, that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

103. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

104. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

105. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

106. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses.'' The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

107. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

108. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

109. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the

majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

110. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

111. *Cable and Other Program Distribution.* Since 2007, these 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.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

112. *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 rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

113. *Cable System Operators.* The Act 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 less 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.'' 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. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small 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, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

114. *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. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. 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. 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.

115. *Internet Service Providers.* Since 2007, these 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.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

116. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the

Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

117. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

118. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

119. The data, information and document collection required by this Report and Order falls into five general categories: market structure, pricing, demand (*i.e.,* observed sales and purchases), terms and conditions, and competition and pricing decisions.

120. Market structure data consists of, among other things, the situs and type of facilities owned by a provider (or leased subject to an indefeasible right of use) capable of providing special access, by sold and potential capacity and ownership, and the proximity of such facilities to sources of demand. We also require incumbent LEC providers to submit data concerning the number, nature, and situs of UNEs sold. In addition, we also require additional market structure data from competitive providers, such as detailed information related to non-price factors that may impact where special access providers build facilities or expand their network via UNEs and the history of their facility deployments in a sample of locations they serve.

121. Pricing data includes the quantities sold and prices charged for special access services, by circuit element, and information regarding the regulatory environment for incumbent LECs.

122. Demand data includes, among other things, data that identify the bandwidth of the special access services sold or purchased, the locations being served, and other material facts, such as where those purchases occur (*e.g.,* buildings, cell towers) and the nature of the purchaser (*e.g.,* provider or end user).

123. Terms and conditions data and information include, but are not limited to, information regarding contracts or generally available plans for special access services that offer discounts, circuit portability, or other competitively relevant benefits, and whether the terms and conditions associated with those offerings may inhibit a buyer's ability to switch to other providers, which in turn may inhibit facilities-based entry into special access markets.

124. Competition and pricing data, information and documents include, but are not limited to, those materials related to requests for proposals, advertising and marketing materials, and in very limited circumstances, pricing decision documents.

125. Best efforts business broadband Internet access services include, but are not limited to, data showing where a provider or entity provides such services, as well as price lists.

126. Questions related to terms and conditions, competition and pricing decisions will span a variety of timeframes specific to the issue addressed. The majority of the market structure, pricing and demand data will be collected for a two-year period. This period of time allows the analysis to control for factors that may vary substantially across geographic areas, but not within a given geographic area.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

127. The RFA requires an agency to describe any significant alternatives that it has considered in reaching 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 or reporting requirements under the rule for 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.

128. Entities required to respond to this data request include all providers and purchasers of special access services as well as some entities that provide best efforts business broadband Internet access services. By ''providers,'' we mean any entity subject to the Commission's jurisdiction under the Communications Act, as amended, that provides special access services or provides a connection that is capable of providing special access services. By ''purchasers,'' we mean any entity subject to the Commission's jurisdiction under the Communications Act, as amended, that purchases special access services. Providers and purchasers may include price cap regulated incumbent LECs, competitive LECs, interexchange carriers, cable operators, and companies that provide fixed wireless communications services. Some entities that fall under the Commission's jurisdiction and provide best efforts broadband Internet access services, but fall outside our definitions of ''provider'' and ''purchaser,'' are also required to respond.

129. Because the focus of this proceeding is on the regulation of special access services in price-cap territories, a rate-of-return carrier, which is not subject to our pricing flexibility rules, shall not be considered a ''provider'' to the extent it provides

special access within its rate-of-return service area. Likewise, we will not require data from any provider with regard to its operations in any geographic area in which a rate-of-return carrier is the incumbent. Moreover, we will not require a purchaser to produce data based on purchases it makes in those areas in which a rate-of-return carrier is the incumbent. If, however, a provider or purchaser prefers to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs, it may do so.

130. Small business concerns were considered when determining the nature of the data to be collected, and identified data, information, and document requirements were modified to reduce burdens on small businesses where possible. The Wireline Competition Bureau previously issued two voluntary data requests in this proceeding. These voluntary requests allowed each potential respondent to make its own determination concerning participation. The responses to the voluntary data requests provided the Commission the means and opportunity to assess which data elements are most important to its ability to assess the special access market, and to eliminate or revise those questions that otherwise yield less valuable information. The voluntary data requests also allowed the Commission to carefully assess the need to obtain data from all providers and purchasers of special access services and certain other services—including small businesses—to conduct a comprehensive analysis of the special access market.

131. In order to conduct a comprehensive analysis of the special access market, the Commission will collect data from all providers and purchasers of special access services as well as some entities that provide best efforts business broadband Internet access services. The Commission notes concerns regarding the burden that this data collection will impose on small companies, and is mindful of the importance of seeking to reduce information collection burdens for small business concerns, and in particular those ''with fewer than 25 employees.'' Competition in the provision of special access, however, appears to occur at a very granular level—perhaps as low as the building/tower. Accordingly, the Commission finds it necessary to obtain data from special access providers and purchasers of all sizes.

132. We structured the collection somewhat differently for best efforts and special access services to minimize the burden on submitters consistent with our data requirements and taking into consideration data that the Commission already has available to it. Because the record indicates that entities that provide best efforts business broadband Internet access services generally deliver those services throughout their footprint over the same network facilities they use to deliver mass market broadband Internet access, we need not collect this data at the same level of granularity as location and facilities data for special access. We also do not require entities with fewer than 15,000 customers and fewer than 1,500 business broadband customers to provide data regarding their best efforts business broadband Internet access services. Commenters assert that those entities incur the greatest burden when producing data for the State Broadband Initiative broadband mapping effort.

133. Other modifications made by the Commission include: allowing a provider or purchaser to provide data for all areas without distinguishing between areas served by price cap LECs and rate-of-return LECs; applying sampling methods where possible; limiting the market structure, pricing and demand data collection to a two-year period; and tailoring the timeframes for the terms and conditions, competition and pricing questions to the specific issue addressed. In addition, the Commission chose to limit the production of documents showing the internal analyses undertaken by providers in 2010 or thereafter to evaluate, *inter alia,* competitive market shares, changes in competition, changes in the costs of supplying services, whether to respond to RFPs, and identified rate increases and decreases to circumstances where the Wireline Competition Bureau determines the initial data collection was incomplete or insufficient for analysis.

134. We note that this Report and Order does not change special access pricing regulation. We therefore do not consider the potential alternatives to special access pricing regulation that SBA asserted might minimize the impact on small competitive carriers.

6. 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 and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

D. Ex Parte Presentations

135. The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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 § 1.1206(b). In proceedings governed by § 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.

V. Mandatory Data Collection

I. Definitions

The following definitions apply for purposes of this collection only. They are not intended to set or modify precedent outside the context of this collection.

Affiliated Company means a company, partnership, corporation, limited liability company, or other business entity that is affiliated with a *Provider.* An entity and a *Provider* are

affiliated if one of them, or an entity that controls one of them, directly or indirectly holds a greater than 25 percent ownership interest in, or controls, the other one.

Best Efforts Business Broadband Internet Access Service means a best efforts Internet access data service with a capacity equal to or greater than a *DS1* connection that is marketed to enterprise customers (including small, medium, and large businesses). For purposes of this data collection, *Best Efforts Business Broadband Internet Access Services* do not include mobile wireless services, as that term is used in the *15th Annual Mobile Wireless Competition Report.*

Circuit-Based Dedicated Service (CBDS) means a *Dedicated Service* that is circuit-based. Examples of *CBDS* include *DS1* and *DS3* services and Synchronous Optical Networking (SONET)/Optical Carrier N (OCN) services, including point-to-point and ring services.

Collocation is an offering by an *ILEC* whereby a requesting *Competitive Provider's* transmission equipment is located, for a tariffed charge, at the *ILEC's* central office. It refers to the term as used pursuant to 47 CFR 69.701 *et seq.* of the Commission's rules for purposes of applying for a grant of *Phase I* or *Phase II Pricing Flexibility* from the Commission. The definition of *Collocation* excludes *Competitive Providers* that collocate in carrier hotels.

Competitive Provider means a competitive local exchange carrier (CLEC), interexchange carrier, cable operator, wireless provider or any other entity that is subject to the Commission's jurisdiction under the Communications Act of 1934, as amended, and either provides a *Dedicated Service* or provides a *Connection* over which a *Dedicated Service* could be provided. A *Competitive Provider* does not include an *ILEC* operating within its incumbent service territory.

Connection means a wired ''line'' or wireless ''channel'' that provides a dedicated communication path between an *End User's Location* and the first *Node* on a *Provider's* network. Multiple dedicated communication paths serving one or more *End Users* at the same *Location* should be counted as a single *Connection.* A *Connection* may be a *UNE,* including an *Unbundled Copper Loop.* A *Connection* must have the capability of being used to provide one or more *Dedicated Services;* however, a *Connection* can be used to provide other services as well. For example, a dedicated communication path that is currently being used to provide a mass market broadband service but has the capability to provide a *Dedicated Service* is considered a *Connection* for the purpose of this data collection.

Contract-Based Tariff means a *Tariff,* other than a *Tariff Plan,* that is based on a service contract entered into between a customer and an *ILEC* which has obtained permission to offer contract-based tariff services pursuant to 47 CFR 69.701 *et seq.* of the Commission's pricing flexibility rules or a comparable tariffed intrastate service contract between a customer and an *ILEC.*

Dedicated Service transports data between two or more designated points, *e.g.,* between an *End User's* premises and a point-of-presence, between the central office of a local exchange carrier (LEC) and a point-of-presence, or between two *End User* premises, at a rate of at least 1.5 megabytes per second (Mbps) with prescribed performance requirements that include bandwidth-, latency-, or error-rate guarantees or other parameters that define delivery under a *Tariff* or in a service-level agreement. *Dedicated Service* includes, but is not limited to, *CBDS* and *PBDS.* For the purpose of this data collection, *Dedicated Service* does not include ''best effort'' services, *e.g.,* mass market broadband services such as DSL and cable modem broadband access.

Disconnection means the process by which a *Provider,* per a customer request, terminates billing on one or more of a customer's *Dedicated Service* circuits.

DS1 and *DS3,* except where specified, refer to DS1s and DS3s that are not *UNEs. DS1s* and *DS3s* are *Dedicated Services.*

End User means a business, institutional, or government entity that purchases *Dedicated Service* for its own purposes and does not resell such service. A mobile wireless service provider is considered an *End User* when it purchases *Dedicated Service* to make connections within its own network, *e.g.,* backhaul to a cell site.

End User Channel Termination means, as defined in 47 CFR 69.703(a)(2), a dedicated channel connecting a LEC end office and a customer premises, offered for purposes of carrying special access traffic.

Incumbent Local Exchange Carrier (ILEC) means, for the purpose of this data collection, a LEC that provides a *Dedicated Service* in study areas where it is subject to price cap regulation under sections 61.41–61.49 of the Commission's rules, 47 CFR 64.41–61.49.

Indefeasible Right of Use (IRU) means an indefeasible long-term leasehold interest that gives the grantee the right to exclusively use specified strands of fiber or allocated bandwidth to provide a service as determined by the grantee. An *IRU* confers on the grantee substantially all of the risks and rewards of ownership for the estimated economic life of the asset. *IRUs* typically include the following elements: (i) Payment of a substantial fee up front to enter into the *IRU* contract; (ii) a minimum total duration of 10 years; (iii) conveyance of tax obligations commensurate with the risks and rewards of ownership to the grantee (*e.g.* as opposed to the lesser tax burdens associated with other forms of leases); (iv) terms for payment to the grantor for ancillary services, such as maintenance fees; (v) all additional rights and interests necessary to enable the *IRU* to be used by the grantee in the manner agreed to; and (vi) no unreasonable limit on the right of the grantee to use the asset as it wishes (*e.g.,* the grantee shall be permitted to splice into the *IRU* fiber, though such splice points must be mutually agreed upon by grantor and the grantee of the *IRU*).

Location means a building, other man-made structure, a cell site on a building, a free-standing cell site, or a cell site on some other man-made structure where the *End User* is connected. A *Node* is not a *Location.* For the purposes of this data collection, cell sites are to be treated as *Locations* and not as *Nodes.*

Metropolitan Statistical Area (MSA) is a geographic area as defined by 47 CFR 22.909(a), 69.703(b).

Node is an aggregation point, a branch point, or a point of interconnection on a *Provider's* network, including a point of interconnection to other *Provider* networks. Examples include LEC central offices, remote terminal locations, splice points (including, for example, at manholes), controlled environmental vaults, cable system headends, cable modem termination system (CMTS) locations, and facility hubs.

Non-MSA is the portion of an *ILEC's* study area that falls outside the boundaries of an *MSA.*

Non-Rate Benefit means a benefit to the customer other than a discount on the *One Month Term Only Rate, e.g.,* a credit towards penalties or non-recurring charges or the ability to move circuits without incurring a penalty.

One Month Term Only Rate means, for purposes of this data collection, the non-discounted monthly recurring tariffed rate for *DS1, DS3* and/or *PBDS* services.

Packet-Based Dedicated Service (PBDS) means a *Dedicated Service* that is packet-based. Examples of *PBDS* include Multi-Protocol Label Switched

(MPLS) services; permanent virtual circuits, virtual private lines and similar services provided using ATM, Frame Relay and other packet technologies; (Gigabit) Ethernet Services and Metro Ethernet Virtual Connections; and Virtual Private Networks (VPN).

Phase I Pricing Flexibility means regulatory relief for the pricing of *End User Channel Terminations* pursuant to 47 CFR 69.711(b), 69.727(a) of the Commission's rules.

Phase II Pricing Flexibility means regulatory relief for the pricing of *End User Channel Terminations* pursuant to 47 CFR 69.711(c), 69.727(b) of the Commission's rules.

Prior Purchase-Based Commitment means a type of *Volume Commitment* where the commitment is based on either:

(i) a certain percentage or number of the customer's purchased in-service circuits or lines as measured at the time of making the *Volume Commitment* or measured during a period of time prior to making the *Volume Commitment, e.g.,* based on the customer's billing records for the current month or prior month(s); or

(ii) a certain percentage of *Revenues* generated by the customer's purchases as measured at the time of making the *Volume Commitment* or during a period of time prior to making the *Volume Commitment.*

Providers collectively refers to both *ILECs* and *Competitive Providers.*

Purchasers means *Competitive Providers* and *End Users* that are subject to the Commission's jurisdiction under the Communications Act of 1934, as amended, and purchase *Dedicated Service.*

Revenues means intrastate and interstate billed amounts without any allowance for uncollectibles, commissions or settlements. *Revenues* do not include billed amounts that are subsequently discounted by the *Provider, e.g.,* customer rebates.

Tariff means an intrastate or interstate schedule of rates and regulations filed by common carriers.

Tariff Plan means a *Tariff,* other than a *Contract-Based Tariff,* that provides a customer with either a discount from any *One Month Term Only Rate* for the purchase of *DS1* and/or *DS3* services or a *Non-Rate Benefit* that could be applied to these services.

Term Commitment means a commitment to purchase a *Dedicated Service* for a period of time, greater than a month, in exchange for a circuit-specific discount and/or a *Non-Rate Benefit.*

Transport Service means dedicated transport and includes the services set forth in 47 CFR 69.709(a)(1)–(3).

Transport Provider means a *Provider* that supplies *Transport Service.*

Unbundled Copper Loop means a copper wire local loop provided by *ILECs* to requesting telecommunications carriers on a non-discriminatory basis pursuant to 47 CFR 51.319(a)(1) that can be used by a *Competitive Provider* to provide a *Dedicated Service, e.g.,* Ethernet over Copper. An *Unbundled Copper Loop* is typically a 2- or 4-wire loop that the *ILEC* has conditioned to remove intervening equipment such as bridge taps, load coils, repeaters, low pass filters, range extenders, etc. between the *End User's Location* and the serving wire center to allow for the provision of advanced digital services by a *Competitive Provider.* These loops are commonly referred to as dry copper, bare copper, or xDSL-compatible loops. An *Unbundled Copper Loop* is a type of *UNE.*

Unbundled Network Element (UNE) means a local loop provided by an *ILEC* to a requesting telecommunications carrier on a non-discriminatory basis pursuant to 47 CFR 51.319(a).

Upgrade means that a customer transitions one or more circuits to a higher capacity circuit.

Volume Commitment means a commitment to purchase a specified volume, *e.g.,* a certain number of circuits or *Revenues,* to receive a discount on *Dedicated Services* and/or a *Non-Rate Benefit.*

II. Mandatory Data Collection Questions

A. *Competitive Providers* must respond to the following questions:

1. Are you an *Affiliated Company*?

☐ Yes

☐ No

a. If so, identify the *Provider(s)* with whom you have an affiliation (name/FRN).

2. Do you (i) own a *Connection;* (ii) lease a *Connection* from another entity under an *IRU* agreement; or (iii) obtain a *Connection* as a *UNE* from an *ILEC* to provide a *Dedicated Service*?

☐ Yes

☐ No

a. If yes, are any of these *Connections* to a *Location* within an area subject to price cap regulation or within an area where the Commission has granted *Phase I* or *Phase II Pricing Flexibility*?

☐ Yes

☐ No

If you answered ''no'' to question II.A.2 or II.A.2.a, then you are not required to respond to the remaining questions in II.A or the questions in II.D.

Facilities Information

3. Provide the number of *Locations* to which you provided a *Connection* as of December 31, 2010 and as of December 31, 2012 where your company:

a. Owns the *Connection;*

b. Leases the *Connection* from another entity under an *IRU* agreement; or

c. Obtains the *Connection* as a *UNE* from an *ILEC* to provide a *Dedicated Service:*

i. In total;

ii. In the form of *DS1s;*

iii. As a *DS3;* or

iv. As an *Unbundled Copper Loop.*

4. Provide the information requested below for each *Location* as of December 31, 2010 and as of December 31, 2012 to which your company provided a *Connection* that you: (i) own; (ii) lease from another entity under an *IRU* agreement; or (iii) obtained as a *UNE* from an *ILEC* to provide a *Dedicated Service.*

a. A unique ID for the *Location;*

b. The actual situs address for the *Location* (*i.e.,* land where the building or cell site is located);

c. The geocode for the *Location* (*i.e.,* latitude and longitude);

d. The *Location* type (*e.g.,* building, other man-made structure, cell site in or on a building, free-standing cell site, or a cell site on some other man-made structure like a water tower, billboard, etc.);

e. Whether the *Connection* provided to the location uses facilities leased from another entity under an *IRU* or obtained as a *DS1/DS3 UNE* or *Unbundled Copper Loop,* and in each case, the name of the lessor of the majority of the fiber strands and/or copper loop;

f. Whether any of the *Connections* to the location are provided using fiber;

g. The total sold bandwidth of all *Connections* provided by you to the *Location* in Mbps;

h. The total bandwidth to the *Location* sold directly by you to an *End User;*

i. The total sold fixed wireless bandwidth provided by you to the *Location;* and

j. The total bandwidth sold by you to any cell sites at the *Location.*

5. Provide a map of the routes that constitute your network that are followed by fiber that you (a) own or (b) lease pursuant to an *IRU* agreement, excluding routes followed by fiber that you own or lease pursuant to an *IRU* agreement connecting your network to *End User Locations.* The map must include the locations of all *Nodes* on your network used to interconnect with third party networks, and the year that

each *Node* went live. Also, provide a separate map of the routes followed by fiber that you (a) own or (b) lease pursuant to an *IRU* agreement that connect your network to *End User Locations.*

6. We will provide you with a selected list of the *Locations* you reported in response to question II.A.4. For each identified *Location,* state the month and year that you first provided a *Connection* to that *Location,* whether you originally supplied the *Location* over a *UNE,* and if so, when (if at all) you switched to using a *Connection* that you own or lease as an *IRU.* If the *Location* was first served by your *Connection* on or before January 2008, and the date the *Location* was first served is unknown, then enter 00/0000.

7. For each *ILEC* wire center where your company is collocated, provide the actual situs address, the geocode, and the CLLI code.

8. Explain your business rule(s) used to determine whether to build a *Connection* to a particular *Location.* Provide underlying assumptions.

a. List those geographic areas in which you have built the most *Connections* to *End Users* and explain why, in your view, your business rule has been most successful in those areas.

b. Explain how, if at all, business density is incorporated into your business rule, and if so, how you measure business density.

9. Provide the following information:

a. The current situs address of your U.S. headquarters (*i.e.,* the address of the land where the headquarters is located);

b. The year that this site became your headquarters;

c. Year established and situs address for any prior U.S. headquarters' location for your company, going as far back as 1995, if different from the headquarters' location listed in response to question II.A.9.a;

d. The name of any *Affiliated Company* that owned, or leased under an *IRU* agreement, *Connections* to five or more *Locations* in any *MSA* at the time you became affiliated with the *Affiliated Company,* going as far back as 1995.

e. For each *Affiliated Company* listed in response to question II.A.9.d, provide:

i. The situs address for each *Affiliated Company's* U.S. headquarters at the time of affiliation;

ii. The year that the *Affiliated Company* established the situs address listed in response to question II.A.9.e.i for its U.S. headquarters; and

iii. The year established and situs address for any prior U.S. headquarters' location designated by the *Affiliated Company,* going as far back as 1995, if different from the headquarters' location listed in response to question II.A.9.e.i.

10. Provide data, maps, information, marketing materials, and/or documents identifying those geographic areas where you, or an *Affiliated Company,* advertised or marketed *Dedicated Service* over existing facilities, via leased facilities, or by building out new facilities as of December 31, 2010 and as of December 31, 2012, or planned to advertise or market such services within twenty-four months of those dates.

11. Identify the five most recent Requests for Proposals (RFPs) for which you were selected as the winning bidder to provide each of the following: (a) *Dedicated Services;* (b) *Best Efforts Business Broadband Internet Access Services;* and, to the extent different from (a) or (b), (c) some other form of high-capacity data services to business customers. In addition, identify the five largest RFPs (by number of connections) for which you submitted an unsuccessful competitive bid between 2010 and 2012 for each of (a) *Dedicated Services;* (b) *Best Efforts Business Broadband Internet Access Services;* and, to the extent different from (a) or (b), (c) some other form of high-capacity data services to business customers. For each RFP identified, provide a description of the RFP, the area covered, the price offered, and other competitively relevant information. Lastly, identify the business rules you rely upon to determine whether to submit a bid in response to an RFP.

Billing Information

12. For all *Dedicated Services* provided using transmission paths that you (i) own; (ii) lease from another entity under an *IRU* agreement; or (iii) obtain as a *UNE* from an *ILEC* to provide a *Dedicated Service,* submit the following information by rate element by circuit billed for each month from January 1 to December 31 for the years 2010 and 2012.

a. The closing date of the monthly billing cycle in dd/mm/yyyy format;

b. The six-digit 499–A Filer ID of the customer, where applicable, or other unique ID if customer does not have a 499–A Filer ID;

c. The *Location* ID from question II.A.4.a that can be used to link the circuit rate elements to the terminating *Location* of the circuit (where applicable);

d. The circuit ID common to all elements purchased in common for a particular circuit;

e. The type of circuit (*PBDS,* or *DS1* or *DS3,* etc.) and its bandwidth;

f. A unique billing code for the rate element (*see* question II.A.14);

g. The number of units billed for this rate element (note that the bandwidth of the circuit must not be entered here);

h. The dollar amount of non-recurring charges billed for the first unit of this rate element;

i. The dollar amount of non-recurring charges billed for additional units of this rate element (if different from the amount billed for the initial unit);

j. The monthly recurring dollar charge for the first unit of the rate element billed;

k. The monthly recurring dollar charge for additional units (if different from the amount billed for the initial unit);

l. The total monthly dollar amount billed for the rate element billed in the month;

m. The *Term Commitment* associated with this circuit in months;

n. Indicate whether this rate element is associated with a circuit that contributes to a *Volume Commitment;*

o. Indicate whether the circuit element is owned by you or leased by you as an *IRU* but not as a *UNE;* and

p. The adjustment ID (or multiple adjustment IDs) linking this rate element to the unique out-of-cycle billing adjustments in question II.A.13.a (below) if applicable.

13. For each adjustment, rebate, or true-up for billed *Dedicated Services,* provide the information requested below.

a. A unique ID number for the billing adjustment, rebate, or true-up (*see* question II.A.12.p above);

b. The beginning date of the time period covered by the adjustment or true-up;

c. The ending date of the time period covered by the adjustment or true-up;

d. The scope of the billing adjustment, *i.e.,* whether the adjustment applies to a single rate element on a single circuit, more than one rate element on a single circuit, more than one rate element across multiple circuits, or an overall adjustment that applies to every rate element on every circuit purchased by the customer;

e. The dollar amount of the adjustment or true-up; and

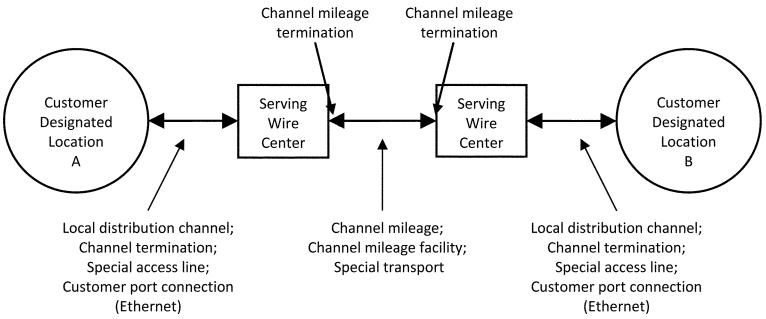
f. A brief description of the billing adjustment, rebate or true-up, *e.g.,* term discount, revenue target rebate, etc.

14. For each unique billing code, please provide the following information below.

a. The billing code for the rate element;

b. Select the phrase that best describes the rate element from the list. Names of some common rate elements are shown

on the generalized circuit diagram below:



i. Channel mileage facility, channel mileage, interoffice channel mileage, special transport (a transmission path between two serving wire centers associated with customer designated locations; a serving wire center and an international or service area boundary point; a serving wire center and a hub, or similar type of connection);

ii. Channel mileage termination, special transport termination (the termination of channel mileage facility or similar transmission path);

iii. Channel termination, local distribution channel, special access line, customer port connection (Ethernet) (a transmission path between a customer designated location and the associated wire center);

iv. Clear channel capability (not shown) (an arrangement which allows a customer to transport, for example, 1.536 Mbps of information on a 1.544 Mbps line rate with no constraint on the quantity or sequence of one and zero bits);

v. Cross-connection (not shown) (semi-permanent switching between facilities, sometimes combined with multiplexing/demultiplexing);

vi. Multiplexing (not shown) (channelizing a facility into individual services requiring a Lower capacity or bandwidth); and

vii. Class of service and/or committed information rate (not shown) (for Ethernet, the performance characteristics of the network and bandwidth available for a customer port connection).

c. If none of the possible entries describes the rate element, enter a short description.

Revenues, Terms and Conditions

15. What were your *Revenues* from the sale of *CBDS* in 2010 and 2012? For each year, report *Revenues* in total, separately by *DS1, DS3,* and other *CBDS* sales, and separately by customer category, *i.e.,* sales to *Providers* and *End Users.*

16. What were your *Revenues* from the sale of *PBDS* in 2010 and 2012? For each year, report *Revenues* in total, separately by customer category, *i.e.,* sales to *Providers* and *End Users,* and separately by bandwidth for the following categories:

a. less than or equal to 1.5 Mbps;

b. greater than 1.5, but less than or equal to 50 Mbps;

c. greater than 50, but less than or equal to 100 Mbps;

d. greater than 100, but less than or equal to 1 Gbps; and

e. greater than 1 Gbps.

17. What percentage of your *Revenues* from the sale of *DS1, DS3,* and *PBDS* services in 2012 were generated from an agreement or *Tariff* that contains a *Prior Purchase-Based Commitment*?

18. If you offer *Dedicated Services* pursuant to an agreement or *Tariff* that contains either a *Prior Purchase-Based Commitment* or a *Non-Rate Benefit,* then explain how, if at all, those sales are distinguishable from similarly structured *ILEC* sales of *DS1s, DS3s,* and/or *PBDS.*

19. Provide the business justification for the *Term or Volume Commitments* associated with any *Tariff* or agreement you offer for the sale of *Dedicated Services.*

B. *ILECs* must respond to the following questions:

1. Are you an *Affiliated Company*?

☐ Yes

☐ No

a. If so, identify the *Provider(s)* with whom you have an affiliation (name/FRN).

Facilities Information

2. Provide the number of *Locations* to which you provided a *Connection* in your company study areas as of December 31, 2010 and as of December 31, 2012 where your company:

a. owns the *Connection;*

b. leases the *Connection* from another entity under an *IRU* agreement; or

c. sells the *Connection* as a *UNE:*

i. in total;

ii. in the form of *DS1s;*

iii. as a *DS3;* or

iv. as an *Unbundled Copper Loop.*

3. Provide the information requested below for each *Location* to which your company provided, as of December 31, 2010 and as of December 31, 2012, a *Connection* that you (i) own or (ii) you lease from another entity under an *IRU* agreement:

a. A unique ID for the *Location;*

b. The actual situs address for the *Location* (*i.e.,* land where the building or cell site is located);

c. The geocode for the *Location* (*i.e.,* latitude and longitude);

d. The *Location* type (*e.g.,* building, other man-made structure, cell site in or on a building, free-standing cell site, or a cell site on some other man-made structure like a water tower, billboard, etc.);

e. Whether any of the *Connections* to the *Location* are provided using fiber;

f. The total sold bandwidth of all *Connections* provided by you to the *Location* in Mbps (exclude connections sold without a specified bandwidth, *e.g., Unbundled Copper Loops*);

g. The total number of *Unbundled Copper Loops* sold by you to the *Location;*

h. The total bandwidth to the *Location* sold by you as *UNEs* in the form of *DS1*s and/or *DS3*s;

i. The total bandwidth to the *Location* sold directly by you to an *End User;*

j. The total sold fixed wireless bandwidth provided by you to the *Location;* and

k. The total bandwidth sold by you to any cell sites at the *Location.*

Billing Information

4. For all *Dedicated Services* provided using transmission paths that you (i) own or (ii) lease from another entity under an *IRU* agreement and for *Unbundled Copper Loops* that you own and provision, submit the following information by rate element by circuit

billed for each month from January 1 to December 31 for the years 2010 and 2012.

a. The closing date of the monthly billing cycle in dd/mm/yyyy format;

b. The six-digit 499A Filer ID of the customer, where applicable, or other unique ID if customer does not have a 499A Filer ID;

c. The *Location* ID from question II.B.3.a that can be used to link the circuit rate elements to the terminating *Location* of the circuit (where applicable);

d. The circuit ID common to all elements purchased in common for a particular circuit;

e. The type of circuit, (*DS1* sold as a *UNE, DS3* sold as a *UNE, Unbundled Copper Loop, PBDS,* non-*UNE DS1s* or *DS3s,* etc.) and the bandwidth of the circuit;

f. The serving wire center/mileage rating point Common Language Location Identification (CLLI) of one end of the circuit (MRP1);

g. The serving wire center/mileage rating point CLLI of the other end of the circuit (MRP2);

h. The latitude of MRP1 to 5 decimal places;

i. The longitude of MRP1 to 5 decimal places;

j. The latitude of MRP2 to 5 decimal places;

k. The longitude of MRP2 to 5 decimal places;

l. End of the circuit (1-MRP1 or 2-MRP2) associated with this rate element;

m. The billing code for the rate element (*see* question II.B.6);

n. The density pricing zone for the rate element;

o. The number of units billed for this rate element (note that the bandwidth of the circuit must not be entered here);

p. The dollar amount of non-recurring charges billed for the first unit of this rate element;

q. The dollar amount of non-recurring charges billed for additional units of this rate element (if different from the amount billed for the initial unit);

r. The monthly recurring dollar charge for the first unit of the rate element billed;

s. The monthly recurring dollar charge for additional units (if different from the amount billed for the initial unit);

t. The total monthly dollar amount billed for the rate element;

u. The *Term Commitment* associated with this circuit in months;

v. Indicate whether this rate element is associated with a circuit that contributes to a *Volume Commitment;*

w. Indicate whether this rate element is associated with a circuit that contributes to a revenue commitment in a *Tariff Plan;*

x. Indicate whether this rate element was purchased pursuant to a *Contract-Based Tariff;*

y. Indicate whether the circuit element is owned by you or leased by you as an *IRU;*

z. The adjustment ID (or multiple adjustment IDs) linking this rate element to the unique out-of-cycle billing adjustments in question II.B.5.a (below) if applicable; and

aa. If the rate element is sold under a *Tariff,* list the *Tariff* name.

5. For each adjustment, rebate, or true-up for billed *Dedicated Services,* provide the information requested below.

a. A unique ID for the billing adjustment or true-up (*see* question II.B.4.z above);

b. A unique ID number for the contract or *Tariff* from which the adjustment originates;

c. The beginning date of the time period covered by the adjustment or true-up;

d. The ending date of the time period covered by the adjustment or true-up;

e. The scope of the billing adjustment, *i.e.,* whether the adjustment applies to a single rate element on a single circuit, more than one rate element on a single circuit, more than one rate element across multiple circuits, or an overall adjustment that applies to every rate element on every circuit purchased by the customer;

f. The dollar amount of the adjustment or true-up;

g. Whether the adjustment is associated with a *Term Commitment,* and if so, the length of the term specified in the contract necessary to achieve the rebate;

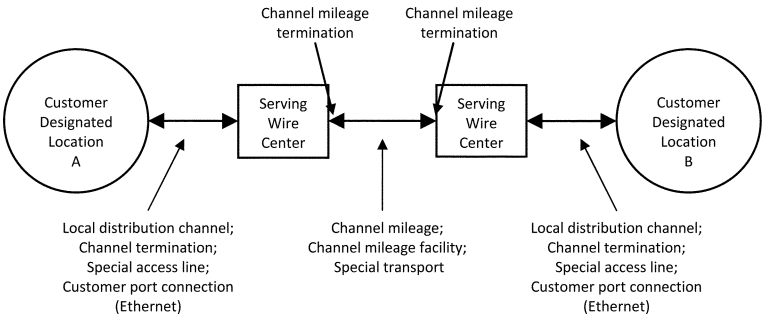
h. Whether the adjustment is associated with a *Volume Commitment,* and if so, the number of circuits and/or dollar amount specified in the contract necessary to achieve the rebate; and

i. If the adjustment is for some other reason, a brief description of the reason for the adjustment.

6. For each unique billing code, please provide the following information below.

a. The billing code for the rate element;

b. The phrase that best describes the rate element from the list. Names of some common rate elements are shown on the generalized circuit diagram below:



i. Channel mileage facility, channel mileage, interoffice channel mileage, special transport (a transmission path between two serving wire centers associated with customer designated locations; a serving wire center and an international or service area boundary point; a serving wire center and a hub, or similar type of connection);

ii. Channel mileage termination, special transport termination (the termination of channel mileage facility or similar transmission path);

iii. Channel termination, local distribution channel, special access line, customer port connection (Ethernet) (a transmission path between a customer designated location and the associated wire center);

iv. Clear channel capability (not shown) (an arrangement which allows a customer to transport, for example, 1.536 Mbps of information on a 1.544

Mbps line rate with no constraint on the quantity or sequence of one and zero bits);

v. Cross-connection (not shown) (semi-permanent switching between facilities, sometimes combined with multiplexing/demultiplexing);

vi. Multiplexing (not shown) (channelizing a facility into individual services requiring a Lower capacity or bandwidth); and

vii. Class of service and/or committed information rate (not shown) (for Ethernet, the performance characteristics of the network and bandwidth available for a customer port connection).

c. If none of the possible entries describes the rate element, enter a short description.

7. List the CLLI code for each one of your wire centers that was subject to price cap regulation as of December 31, 2010 and as of December 31, 2012, *i.e.,* those wire centers in your incumbent territory where the Commission had not granted you pricing flexibility. For those *MSAs* and *Non-MSAs* where the Commission granted you *Phase I* or *Phase II Pricing Flexibility* as of December 31, 2010 and as of December 31, 2012, list the CLLI codes for the wire centers associated with each *MSA* and *Non-MSA* for each year, the name of the relevant *MSA* and *Non-MSA* for each year, and the level of pricing flexibility granted for the *MSA* and *Non-MSA, i.e., Phase I* and/or *Phase II Pricing Flexibility.*

Revenues, Terms and Conditions Information

8. What were your *Revenues* from the sale of *CBDS* services in 2010 and 2012? For each year, report *Revenues* in total, separately by *DS1, DS3,* and other *CBDS* sales, and separately by customer category, *i.e.,* sales to *Competitive Providers* and *End Users.*

9. What were your *Revenues* from the sale of *PBDS* services in 2010 and 2012? For each year, report *Revenues* in total, separately by customer category, *i.e.,* sales to *Competitive Providers* and *End Users,* and separately by bandwidth for the following categories:

a. Less than or equal to 1.5 Mbps;

b. Greater than 1.5, but less than or equal to 50 Mbps;

c. Greater than 50, but less than or equal to 100 Mbps;

d. Greater than 100, but less than or equal to 1 gigabyte per second (Gbps); and

e. Greater than 1 Gbps.

10. What were your *Revenues* from the *One Month Term Only Rat*e charged for *DS1, DS3,* and/or *PBDS* services in 2010 and 2012? For each year, report *Revenues* in total, separately by *DS1, DS3,* and *PBDS* sales as applicable, and separately by customer category, *i.e.,* sales to *Competitive Providers* and *End Users.*

11. How many customers were purchasing *DS1, DS3,* and/or *PBDS* services pursuant to your *One Month Term Only Rates* as of December 31, 2012? Report customer numbers in total, separately for *DS1, DS3,* and *PBDS* services as applicable, and separately by customer category, *i.e.,* the number of *DS1, DS3,* and *PBDS* service customers that were *Competitive Providers* and *End Users.*

12. Separately list all available *Tariff Plans* and *Contract-Based Tariffs* that can be applied to the purchase of *DS1, DS3* and/or *PBDS* services and provide the information requested below for each plan.

a. This plan is a:

☐ *Tariff Plan*

☐ *Contract-Based Tariff* (select one)

b. Plan name:

c. *Tariff* and Section Number(s):

d. This plan contains:

☐ *Term Commitment(s)*

☐ *Volume Commitment(s)*

☐ *Non-Rate Benefit* option(s) (select all that apply)

e. If the plan contains options for *Non-Rate Benefits,* explain of the available *Non-Rate Benefits.*

f. This plan can be applied to the purchase of:

☐ *DS1* services

☐ *DS3* services

☐ *PBDS*

☐ Other (select all that apply)

g. In what geographic areas is this plan available, *e.g.,* nationwide, a particular region of the country, certain states, certain *MSAs,* a particular study area?

h. To receive a discount or *Non-Rate Benefit* under this plan, must the customer make a *Prior Purchase-Based Commitment*?

☐ Yes

☐ No

i. Do purchases of *DS1* or *DS3* services in areas outside of your price cap study area(s) (*e.g.,* purchases from an *Affiliated Company* that is a CLEC) count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment*)

j. Do *DS1* or *DS3* purchases in areas where you are subject to price cap regulation and where pricing flexibility has not been granted count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment*)

k. Do non-tariffed *PBDS* purchases by the customer count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐

No ☐ N/A (no *Volume Commitment*)

l. Do purchases by the customer for services other than *DS1s, DS3s,* and *PBDS* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment*)

m. Is the discount or *Non-Rate Benefit* available under this plan conditioned on the customer limiting its purchase of *UNEs, e.g.,* customer must keep its purchase of *UNEs* below a certain percentage of the customer's total spend?

☐ Yes

☐ No

n. What were your *Revenues* from the provision of *DS1, DS3,* and/or *PBDS* services under this plan in 2010 and in 2012? For each year, report *Revenues* in total, separately by *DS1, DS3,* and *PBDS* sales as applicable, and separately by customer category, *i.e.,* sales to *Competitive Providers* and *End Users.*

o. What percentage of the *Revenues* reported above in response to question II.B.12.n for 2010 and 2012 were generated and also reported as *Revenues* under a separately identified *Tariff Plan* or *Contract-Based Tariff*?

p. What percentage of the *Revenues* generated by this plan in 2012 resulted from a *Term Commitment* of five or more years?

q. What is the business justification for any *Term* or *Volume Commitments* associated with this plan?

r. How many customers were subscribed to this plan as of December 31, 2012? Report customer numbers in total, separately for *DS1, DS3,* and *PBDS* services as applicable, and separately by customer category, *i.e.,* the number of *DS1, DS3,* and/or *PBDS* customers that were *Competitive Providers* and *End Users.*

s. Of those customers subscribed as of December 31, 2012, how many in 2012 failed to meet any *Volume Commitment* or *Term Commitment* required to retain a discount or *Non-Rate Benefit* they originally agreed to when entering into this plan?

13. Do you have any non-tariffed agreement with an *End User* or *Competitive Provider* that, directly or

indirectly, provides a discount or a *Non-Rate Benefit* on the purchase of tariffed *DS1s, DS3s,* and/or *PBDS,* restricts the ability of the *End User* or *Competitive Provider* to obtain *UNEs,* or negatively affects the ability of the *End User* or *Competitive Provider* to purchase *Dedicated Services*?

☐ Yes

☐ No

a. If so, identify each agreement below, including the parties to the agreements, the effective date, and a summary of the relevant provisions.

C. Entities that provide *Best Efforts Business Broadband Internet Access Services* must respond to the following questions:

1. Do you have fewer than 15,000 customers and fewer than 1,500 business broadband customers?

☐ Yes

☐ No

2. If you answered ''no'' to question II.C.1, then answer the following questions:

a. Did you submit data in connection with the State Broadband Initiative (SBI) Grant Program for 2010?

☐ Yes

☐ No

b. Did you submit data in connection with the SBI Grant Program for 2012?

☐ Yes

☐ No

If you answered ''no'' to questions II.C.1.a and II.C.1.b, then you do not need to answer any further questions in this section.

c. Did the data you submitted in connection with the SBI Grant Program in 2010 accurately and completely identify the areas in which you offered *Best Efforts Business Broadband Internet Access Services* and exclude those areas where you did not offer such services as of December 31, 2010?

☐ Yes

☐ No

i. If yes, then provide the list of prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block submitted in connection with the SBI Grant Program as of December 31, 2010. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

ii. If no, then provide a list of all the census blocks in which you were providing *Best Efforts Business Broadband Internet Access Services* as of December 31, 2010, and a list of the prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block as of December 31, 2010. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

d. Did the data you submitted in connection with the SBI Grant Program in 2012 accurately and completely identify the areas in which you offered *Best Efforts Business Broadband Internet Access Services* and exclude those areas where you did not offer such services as of December 31, 2012?

☐ Yes

☐ No

i. If yes, then provide the list of prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block submitted in connection with the SBI Grant Program as of December 31, 2012. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

ii. If no, then provide a list of all the census blocks in which you were providing *Best Efforts Business Broadband Internet Access Services* as of December 31, 2012, and a list of the prices for those *Best Efforts Business Broadband Internet Access Services* that you were marketing in each census block as of December 31, 2012. If there is a price variation within your service footprint, indicate which prices are associated with which census blocks.

D. All *Providers* must respond to the following questions:

1. Describe your company's short term and long-range promotional and advertising strategies and objectives for winning new—or retaining current—customers for *Dedicated Services.* In your description, please describe the size (*e.g.,* companies with 500 employees or less, etc.), geographic scope (*e.g.,* national, southeast, Chicago, etc.), and type of customers your company targets or plans to target through these strategies.

2. Identify where your company's policies are recorded on the following *Dedicated Service*-related processes: (a) Initiation of service; (b) service *Upgrades;* and (c) service *Disconnections.* For instance, identify where your company records recurring and non-recurring charges associated with the processes listed above. If recorded in a *Tariff,* provide the specific *Tariff* section(s). If these policies are recorded in documents other than *Tariffs,* list those documents and state whether they are publicly available. If they are publicly available, explain how to find them. For documents that are not publicly available, state whether they are conveyed to customers orally or in writing.

3. Explain the procedures your company follows when a customer continues to purchase *End-user Channel Terminations* from your company but requests to change *Transport Providers* from your company to another *Provider.* In addition, answer the following questions regarding your process:

a. Where are your procedures that govern these changes recorded? Provide the relevant *Tariff* number and section(s), if applicable, or identify which documents other than *Tariffs* contain these procedures. For documents that are not publicly available, state whether they are conveyed to customers orally or in writing.

b. In 2012, what was the average length of time that it took your company to complete the process of connecting *End User Channel Terminations* to a new *Transport Provider*?

c. Can purchasers negotiate timelines on a case-by-case basis?

d. Do any of your company's policies, whether contained in *Tariffs* or other documents, limit the maximum number of circuits that can be connected to a new *Transport Provider* per day, per week, or per month? If yes, what is that number and what is the business rationale for this requirement?

e. How does connecting to a new *Transport Provider* impact the rate a customer pays for the *End User Channel Terminations* the customer continues to purchase from your company?

f. While the change in *Transport Providers* is pending completion and before there is a *Disconnection* in the *Transport Service* provided by your company, are there instances where the customer must pay a higher rate for the *Transport Service* provided by your company? If so, then detail those circumstances and what rates would apply before and after the request is made. For example, if the customer's contract expires or is terminated while a request to connect to a new *Transport Provider* is pending, would the customer pay a *One Month Term Only Rate* until there is a *Disconnection* in the *Transport Service* provided by your company?

E. *Purchasers* that are mobile wireless service providers must respond to the following questions:

1. How many cell sites do you have on your network?

2. Provide the information requested below for each cell site on your network as of December 31, 2010 and as of December 31, 2012.

a. A unique ID for the cell site;

b. The actual situs address of the cell site (*i.e.,* land where the cell site is located) if the cell site is located in or on a building;

c. The geocode for the cell site (*i.e.,* latitude and longitude);

d. The CLLI code of the incumbent LEC wire center that serves the cell site, where applicable;

e. Whether the cell site is in or on a building, is a free-standing cell site, or is on some other type of man-made structure, *e.g.,* a water tower, billboard, etc.;

f. If the cell site is served by a *CBDS,* indicate the equivalent number of *DS1s* used;

g. If the cell site is served by a *PBDS,* indicate the bandwidth of the circuit in Mbps;

h. If the cell site is served by a wireless *Connection,* indicate the bandwidth of the circuit in Mbps;

i. The name of the *Provider(s)* that supplies your *Connection* to the cell site; and

j. If you self-provide a *Connection* to the cell site, the provisioned bandwidth of that self-provided *Connection.*

F. All *Purchasers* must respond to the following questions:

Expenditures Information

1. What is the principal nature of your business, *e.g.,* are you a CLEC, cable system operator, fixed wireless service provider, wireless Internet service provider, terrestrial or satellite mobile wireless service provider, interconnected VoIP service provider, etc.?

2. What were your expenditures, *i.e.,* dollar volume of purchases, on *Dedicated Services* for 2010 and 2012? For each year, report expenditures in total, separately for *CBDS* and *PBDS* purchases, and separately for purchases from *ILECs* and *Competitive Providers.*

3. Provide your company's expenditures, *i.e.,* dollar volume of purchases, for *DS1s, DS3s,* and/or *PBDS* purchased from *ILECs* pursuant to a *Tariff* in 2010 and in 2012. For each of the following categories, report expenditures for each year in total and separately for *DS1s, DS3s* and *PBDS:*

a. All *DS1s, DS3s,* and *PBDS;*

b. *DS1s, DS3s,* and *PBDS* purchased at *One Month Term Only Rates;*

c. *DS1s, DS3s,* and *PBDS* purchased under *Tariff Plans;*

d. *DS1s, DS3s,* and *PBDS* purchased under *Contract-Based Tariffs;*

e. *DS1s, DS3s,* and *PBDS* purchased under *Tariff Plans* that contained a *Term Commitment* but not a *Volume Commitment;*

f. *DS1s, DS3s,* and *PBDS* purchased under *Tariff Plans* that contained a *Prior Purchase-Based Commitment;*

i. Of the total (and for the separate *DS1, DS3,* and *PBDS* totals where applicable), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

For purposes of calculating the percentages described above, an example would be a *Tariff Plan* that requires a purchase of 20 *DS1s* and 10 *DS3* and generates expenditures of $2,000 for calendar-year 2012. If those same circuits were purchased at *One Month Term Only Rates* of $100 per *DS1* and $200 per *DS3,* then total expenditures would instead be $4,000. Since the *Tariff Plan* under this scenario generated 50% of the expenditures that would be generated from *One Month Term Only Rates,* the discount would be 50%.

g. *DS1s, DS3s,* and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Term Commitment* but not a *Volume Commitment;* and

h. *DS1s, DS3s,* and *PBDS* purchased under *Contract-Based Tariffs* that contained a *Prior Purchased-Based Commitment;*

i. Of the total (and for the separate *DS1* and *DS3* totals if available), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

An example of how to calculate this percentage can be found at question II.F.3.f.i.

4. What were your expenditures, *i.e.,* dollar volume of purchases, on *DS1s, DS3,* and/or *PBDS* purchased from *Competitive Providers* pursuant to a *Tariff* in 2010 and in 2012? Report expenditures in total and separately for *DS1s, DS3s* and *PBDS,* as applicable, for the following categories for each year:

a. All *DS1s, DS3s,* and *PBDS;*

b. *DS1s, DS3s,* and *PBDS* purchased at *One Month Term Only Rates;*

c. *DS1s, DS3s,* and *PBDS* purchased under *Tariffs* that contained a *Term Commitment* but not a *Volume Commitment;*

d. *DS1s, DS3s,* and *PBDS* purchased under *Tariffs* that contained a *Prior Purchase-Based Commitment;*

i. Of the total (and for the separate *DS1, DS3,* and *PBDS* totals where applicable), indicate the average discount from the *One Month Term Only Rate* incorporated in the expenditures.

An example of how to calculate this percentage can be found at questionII.F.3.f.i.

5. What were your expenditures, *i.e.,* dollar volume of purchases, on *DS1s, DS3s,* and/or *PBDS* purchased from *ILECs* and *Competitive Providers* pursuant to an agreement (not a *Tariff*) in 2010 and in 2012? Report expenditures in total, separately for purchases from *ILECs* and*Competitive Providers,* and separately for *DS1s, DS3s* and *PBDS,* as applicable, for the followingcategories for each year:

a. All *DS1s, DS3s,* and *PBDS;*

b. *DS1s, DS3s,* and *PBDS* purchased at a non-discounted rate;

c. *DS1s, DS3s,* and *PBDS* purchased under a non-tariffed agreement that contained a *Term Commitment* but not a *Volume Commitment;*

d. *DS1s, DS3s,* and *PBDS* purchased under a non-tariffed agreement that contained a *Prior Purchase-Based Commitment;*

i. Of the total (and for the separate *DS1, DS3,* and *PBDS* totals where applicable), indicate the average discount from the non-discounted rate incorporated in the expenditures.

An example of how to calculate this percentage can be found at question II.F.3.f.i.

6. What were your expenditures, *i.e.,* dollar volume of purchases, on *PBDS* purchased under a *Tariff* in 2010 and in 2012?

a. Separately for purchases from *ILECs* and *Competitive Providers* for the following service bandwidth categories:

i. less than or equal to 1.5 Mbps;

ii. greater than 1.5, but less than or equal to 50 Mbps;

iii. greater than 50, but less than or equal to 100 Mbps;

iv. greater than 100, but less than or equal to 1 Gbps; or

v. greater than 1 Gbps.

7. What were your expenditures, *i.e.,* dollar volume of purchases, on non-tariffed *PBDS* in 2010 and in 2012?

a. Separately for purchases from *ILECs* and *Competitive Providers* for the following service bandwidth categories:

i. less than or equal to 1.5 Mbps;

ii. greater than 1.5, but less than or equal to 50 Mbps;

iii. greater than 50, but less than or equal to 100 Mbps;

iv. greater than 100, but less than or equal to 1 Gbps; or

v. greater than 1 Gbps.

Terms and Conditions Information

8. Explain whether the terms and conditions of any contract to which you are a party for the purchase of *Dedicated Services* or the policies of any of your *Providers* constrain your ability to:

a. Decrease your purchases from your current *Provider(s);*

b. Purchase services from another *Provider* currently operating in the geographic areas in which you purchase services;

c. Purchase non-tariffed services, such as Ethernet services, from your current

Provider of tariffed *DS1, DS3,* and/or *PBDS* services or from other *Providers* operating in the geographic areas in which you purchase tariffed services;

d. Contract with companies that are considering entering the geographic areas in which you purchase tariffed services;

e. Move circuits, for example, moving your *DS1* and/or *DS3 End-User Channel Terminations* to connect to another *Transport Provider;* or

f. Obtain *Dedicated Services.*

Relevant terms and conditions, among others, may include: (a) Early termination penalties; (b) shortfall provisions; (c) overlapping/supplemental discounts plans with different termination dates; (d) requirements to include all services, including new facilities, under a *Tariff Plan* or *Contract-Based Tariff;* or (e) requiring purchases in multiple geographic areas to obtain maximum discounts.

In your answer, highlight contracts with particularly onerous constraints by comparison with more typical contract provisions. Also, at a minimum, list: (a) The *Provider* and indicate whether the *Provider* is an *ILEC* or a *Competitive Provider;* (b) a description of the term or condition; (c) the geographic area in which the tariffed services are provided; (d) the name of the vendor providing the tariffed service; and (e) the specific *Tariff* number(s) and section(s), or if the policy at issue is recorded in documents other than *Tariffs,* list those documents and how you obtained them.

If you allege that a term, condition, or *Provider's* policy negatively affects your ability to obtain *Dedicated Services,* state whether you have brought a complaint to the Commission, a state commission or court about this issue and the outcome. If you have not brought a complaint, explain why not.

9. Explain your experience with changing *Transport Providers* between January 1, 2010 and December 31, 2012, describing whether and how it has impacted your ability to purchase *Dedicated Services.* Where appropriate, identify the *Provider(s)* in your responses below.

a. How many times did you change *Transport Providers* while keeping your *End User Channel Terminations* with an *ILEC* or *Competitive Provider*? An estimate of the number of circuits moved to a new *Transport Provider,* or the number of such changes requested for each year, is sufficient.

b. What was the length of time, on average, it took for the *ILEC* or *Competitive Provider* to complete the process of connecting your last-mile *End-user Channel Terminations* to another *Transport Provider*? An estimate is sufficient.

c. Were you given the opportunity to negotiate time lines on a case-by-case basis?

d. How did connecting to a new *Transport Provider* impact the rate you paid for the *End User Channel Terminations* you continued to purchase from the *ILEC* or *Competitive Provider*?

e. Did connecting to a new *Transport Provider* typically impact the rate you continued to pay for *Transport Service* from the incumbent *Provider* while the change in *Transport Providers* remained pending? If so, what was the average percentage change in rates? Did you ever pay a *One Month Term Only Rate* during that time?

10. Describe any circumstances since January 1, 2010, in which you have purchased circuits pursuant to a *Tariff,* solely for the purpose of meeting a *Volume Commitment* required for a discount or *Non-Rate Benefit* from your *Provider* (*i.e.,* you did not utilize the circuits). In your description, provide at least one example, which at a minimum, lists:

a. The geographic area (*e.g., MSA* or *Non-MSA)* in which you purchased the unnecessary circuits;

b. The name of the *Provider* providing the circuits at issue;

c. A description of the *Volume Commitment;*

d. The *Tariff* and section number(s), if applicable, of the specific terms and conditions described;

e. A comparison of the dollar amount of the unnecessary circuit(s) purchased versus the dollar amount of penalties your company would have had to pay had it not purchased and/or maintained the circuit(s), and a description of how that comparison was calculated.

11. For each year for the past five years, state the number of times and in what geographic area(s) you have switched from one *Provider* of *Dedicated Services* to another.

12. Explain the circumstances since January 1, 2010 under which you have paid *One Month Term Only Rates* for *DS1, DS3,* and/or *PBDS* services and the impact, if any, it had on your business and your customers. In your response, indicate any general rules you follow, if any, concerning the maximum number of circuits and maximum amount of time you will pay at *One Month Term Only Rates,* and your business rationale for any such rules.

13. Separately list all available *Tariffs* under which your company purchases *DS1s, DS3s,* and/or *PBDS* and provide the information requested below for each plan.

a. This plan is a:

☐ *Tariff Plan*

☐ *Contract-Based Tariff* (select one)

b. Plan name:

c. *Provider* name:

d. *Tariff* and Section Number(s):

e. *Tariff* type:

☐ Interstate

☐ Intrastate

f. This plan contains:

☐ *Term Commitment(s)*

☐ *Volume Commitment(s)*

☐ *Non-Rate Benefit* option(s) (select all that apply)

g. If the plan contains *Non-Rate Benefits,* identify the *Non-Rate Benefits* that were relevant to your decision to purchase services under this plan.

h. This plan can be applied to the purchase of:

☐ *DS1* services

☐ *DS3* services

☐ *PBDS*

☐ Other (select all that apply)

i. In what geographic areas do you purchase *DS1s, DS3s,* and/or *PBDS* under this plan, *e.g.,* nationwide, a particular region of the country, certain states, certain *MSAs,* a particular study area?

j. To receive a discount or *Non-Rate Benefit* under this plan, does your company make a *Prior Purchase-Based Commitment*?

☐ Yes

☐ No

k. If this is an *ILEC* plan, do *DS1* or *DS3* purchases your company makes outside the study area(s) of the *ILEC* (*e.g.,* purchases from an *Affiliated Company* of the *ILEC* that is providing out-of-region service as a CLEC) count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment,* not an *ILEC* plan)

i. If you answered yes, in what geographic areas outside the study area(s) of the *ILEC,* do you purchase these *DS1s* and/or *DS3s*?

ii. Of the geographic areas identified, in which of those areas would your company have purchased from a different *Provider,* if at all, had it not been for the discounts or *Non-Rate Benefits* received under this plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

l. If this is an *ILEC* plan, do *DS1* and/or *DS3* purchases your company makes from the *ILEC* in price cap areas where the Commission has not granted the *ILEC* pricing flexibility count towards meeting any *Volume Commitment* to

receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment,* not an *ILEC* plan)

i. If you answered yes, then identify the price cap areas where you purchase *DS1s* and/or *DS3s* that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

m. If this is an *ILEC* plan, do *DS1* and/or *DS3* purchases your company makes from the *ILEC* in areas where the Commission has granted either *Phase I* or *Phase II Pricing Flexibility* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment,* not an *ILEC* plan)

i. If you answered yes, in what geographic areas subject to pricing flexibility do you purchase *DS1s* and/or *DS3s* that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

ii. Of the geographic areas identified, in which of those areas would your company have purchased from a different *Provider,* if at all, had it not been for the requirements of the *Tariff Plan*? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

n. If this is an *ILEC* plan, do non-tariffed *PBDS* purchases you make from this *ILEC* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment,* not an *ILEC* plan)

i. If you answered yes, in what geographic areas do you purchase non-tariffed *PBDS* that counts towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan.

ii. Of the geographic areas identified, in which of those areas would your company have purchased *PBDS* from a different *Provider,* if at all, had it not been for the requirements of the plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

o. If this is an *ILEC* plan, do purchases you make for services other than *DS1s, DS3s,* and *PBDS* from this *ILEC* count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan?

☐ Yes

☐ No

☐ N/A (no *Volume Commitment,* not an *ILEC* plan)

i. If you answered yes, identify the other services purchased and the geographic areas where you purchase these services that count towards meeting any *Volume Commitment* to receive a discount or *Non-Rate Benefit* under this plan.

ii. Of the geographic areas identified, in which of those areas would your company have purchased those other services from a different *Provider,* had it not been for the requirements of the plan? In your response, indicate whether the *Provider* that you would have purchased from has *Connections* serving that geographic area.

p. Is the discount or *Non-Rate Benefit* available under this plan conditioned on the customer limiting its purchase of *UNEs, e.g.,* the customer must keep its purchase of *UNEs* below a certain percentage of the customer's total spend? If yes, then provide additional details about the condition.

14. Do you have any non-tariffed agreement with an *ILEC* that, directly or indirectly, provides a discount or a *Non-Rate Benefit* on the purchase of tariffed *DS1, DS3,* and/or *PBDS* services, restricts your ability to obtain *UNEs,* or negatively affects your ability to purchase *Dedicated Services*?

☐ Yes

☐ No

a. If so, identify each agreement below, including the parties to the agreement, the effective date, and a summary of the relevant provisions.

G. Non-*Providers* and Non-*Purchasers* instructed to respond to this data collection must respond to the following:

1. If you must respond to this data collection because you filed the FCC Form 477 in 2012 to report the provision of ''broadband connections to end user locations'' but are not (a) a *Provider* or a *Purchaser* as defined in this data collection or (b) an entity that provides *Best Efforts Business Broadband Internet Access Services,* then indicate as such below and complete the certification accompanying this data collection.

☐ I am not a *Provider.*

☐ I am not a *Purchaser.*

☐ I do not provide *Best Efforts Business Broadband Internet Access Services.*

(select all that apply)

Certification

I have examined the response and certify that, to the best of my knowledge, all statements of fact, data, and information contained therein are true and correct.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

* Respondents are reminded that failure to comply with these data reporting requirements may subject them to monetary forfeitures of up to $150,000 for each violation or each day of a continuing violation, up to a maximum of $1,500,000 for any single act or failure to act that is a continuing violation. False statements or misrepresentations to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code.

VI. Ordering Clauses

136. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 5, 201–205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, the Report and Order, with all attachments, is *adopted* March 12, 2013, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rule(s), and except as specified in paragraph 137.

137. *It is further ordered* that we delegate authority to the Wireline Competition Bureau to implement a data collection in accordance with the terms of this Report and Order, and that this delegation of authority is effective upon adoption, *see* 47 U.S.C. 155(c).

138. *It is further ordered* that the data collection shall become effective upon announcement in the **Federal Register** of Office of Management and Budget approval and an effective date of the requirements.

139. *It is further ordered* that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

140. *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.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–00278 Filed 1–10–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05–25; RM–10593; FCC 12–153]

Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking To Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on: A market analysis that the Commission intends to undertake in the coming months to assist in evaluating competition in the market for special access services; possible changes to the Commission's pricing flexibility rules after the Commission conducts its market analysis; and the reasonableness of terms and conditions offered by incumbent LECs in the special access market.

DATES: Comments for sections IV.A and IV.C are due on or before February 11, 2013. Reply comments for sections IV.A and IV.C are due on or before March 12, 2013. Comments for section IV.B are due on or before August 19, 2013. Reply comments for section IV.B are due on or before September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Jamie Susskind, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520 or (202) 418–0484 (TTY), or via email at *Jamie.Susskind@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 05–25, RM–10593, FCC 12–153, adopted on December 11, 2012, and released on December 18, 2012. This summary should be read with its companion document, the Report and Order summary published elsewhere in this issue of the **Federal Register**. The summary is based on the public redacted version of the document, the full text of which is available electronically via the Electronic Comment Filing System at *http://fjallfoss.fcc.gov/ecfs/* or may be downloaded at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-153A1.pdf.* The full text of this document is also available for public inspection during regular business hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request alternate formats for persons with disabilities (*e.g.* Braille, large print, electronic files, audio format, etc.) or reasonable accommodations for filing comments (*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 (voice) or (202) 418–0432 (TTY).

I. Further Notice of Proposed Rulemaking

1. We now commence a process to more effectively determine where relief from special access regulation is appropriate and otherwise update our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to services used by businesses across the country. In Section I.A, below, we propose and seek comment on a market analysis that we intend to undertake in the coming months to assist the Commission in evaluating whether the pricing flexibility rules result in just and reasonable special access rates and what regulatory changes may be needed. We anticipate that the analysis will be a one-time assessment of the competitive conditions in the special access market; however, we do not foreclose the possibility that further analyses may be needed in the future.

2. Our proposed market analysis is only one step in our process. Once the data are collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility. In section I.B below, we seek comment on how the special access pricing flexibility rules might change after we conduct our market analysis. We also seek comment on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace. Finally, we seek in section I.C data and information on the terms and conditions offered by incumbent LECs for special access services to facilitate our understanding of competition in the special access market and our ability to craft rules that properly address the state of the marketplace.

A. Approach To Analyzing Special Access

1. Background

3. In the *Analytical Framework Public Notice,* the Bureau sought comment on a methodology that could be employed to evaluate the efficacy of the special access regulatory regime. The Bureau requested that parties propose an analytic framework capable of assessing whether the Commission's price cap and pricing flexibility rules ensure just and reasonable rates, as well as just and reasonable terms and conditions in special access tariffs and contracts. The Bureau noted that once the Commission adopted

> an analytical approach enabling a systematic determination of whether or not the current regulation of special access services is ensuring rates, terms, and conditions that are just and reasonable as required by the Act, [the Commission] c[ould] determine what, if any, specific problems there are with the current regime and formulate specific solutions as necessary.

4. The Bureau subsequently held a staff workshop to gather further input on the analytic framework proposals raised in the record and any associated data collection that would be required to implement such proposals. In response to the *Analytical Framework Public Notice,* as well as through the staff workshop, commenters set forth several proposals for an analytic framework that the Commission could implement to evaluate the current special access rules.

2. Proposals in the Record

5. Several parties recommend that the Commission adopt a market power analytic framework in lieu of the *Pricing Flexibility Order's* competitive showing rules. In the past, the Commission has defined market power as the power to control price. The U.S. antitrust agencies have also expanded their definition of market power to include the ability to ''reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.'' A market power analysis commonly evaluates separately ''competition for distinct services, for example differentiating among the various retail services purchased by residential and small, medium, and large business customers, and the various wholesale services purchased by other carriers'' in a distinct geographic area. A market power analysis also typically involves the consideration of providers' market shares, supply and demand elasticity, and carriers' cost structures, size, and access to resources.

6. Commenters voicing support for adoption of a market power framework state that it will ensure that, going forward, the Commission's evaluation of competition for special access is a comprehensive, economically sound, and data-driven means of understanding where and what kinds of regulatory relief are justified. Other commenters raise concerns about a market power framework, stating, for example, that the questions at the heart of a traditional market power analysis used in transaction review, such as how to define markets or analyze demand and supply responsiveness, have been made irrelevant by competition; that such an approach is not an administratively workable way to address individual petitions for pricing flexibility; that it is impractical to determine whether a firm has market power where baseline prices are regulated; and that a market power framework is inconsistent with the Commission's goals for the deregulation of telecommunications services.

7. Another analytic framework proposed in the record involves comparing actual purchase prices for special access to specific benchmarks, such as rates for reasonably similar services (*e.g.,* rates for UNEs, retail broadband services such as DSL or cable modem service, or rates in price cap areas as compared to pricing flexibility areas), the costs associated with providing special access services (*e.g.,* forward-looking costs), or rate-of-return estimates (*e.g.,* ARMIS rates-of-return). Commenters assert that where special access prices are higher than such benchmarks, the Commission should find that the competitive showings adopted in the *Pricing Flexibility Order* are insufficient to ensure just and reasonable rates. Incumbent LECs, on the other hand, assert that the proposed benchmarks are neither necessary—because special access rates have already been ''set'' by the competitive marketplace—nor do they provide a reasonable proxy for special access rates. Such carriers do, however, state that the Commission may be better positioned to develop its own cost benchmark after collecting data on special access prices and the presence of competition in specific geographic markets.

8. Some commenters recommend that the Commission adopt a framework that would facilitate deregulating quickly in anticipation of future competition. For example, AT&T recommends that, rather than perform a more granular analysis of individual petitions for pricing flexibility, the Commission extend blanket Phase I relief to all special access services, fully de-regulate OCn and packet-based services, and extend Phase II relief to areas where the existing competitive showing requirements do not fully detect the extent of competitive entry. Another analytic framework proposed by AT&T would examine whether the price cap rules are producing the marketplace benefits expected under incentive regulation. In particular, where evidence suggests that ''carriers are investing to become more efficient and innovative, that carriers are working to provide better services at the same or lower prices, that competitors are responding with increased entry, and that output is increasing,'' the Commission should conclude that pricing flexibility is operating properly in its current form. Competitive carriers, on the other hand, disagree that expectations of future competition warrant quick deregulation. They raise concerns that, particularly in Phase II markets, incumbent carriers have increased special access rates to supracompetitive levels. They assert that the Commission must adopt a regulatory framework that curtails this practice. Ad Hoc and Sprint, for example, propose a ''hybrid approach,'' in which carriers may obtain unlimited ''downward pricing flexibility'' in combination with price caps in all markets.

9. Incumbent carriers also propose that the Commission adopt a framework for analyzing requests for pricing flexibility that takes into account both actual and potential competition, such as competition from non-collocating providers or those competitors who could quickly enter the market in the near term. For example, AT&T and Verizon propose that the Commission permit pricing flexibility in areas where the competitive showing requirements are not met but carriers can point to sources of actual or potential competition, such as the existence of alternative fiber in the area served by specific wire centers or facilities-based competitors providing service in wire centers where there is no collocation. Verizon also argues that the Commission should modify the criteria for Phase II relief to allow price cap LECs to make a *prima facie* case that the competitive showings are satisfied by introducing evidence of competitive facilities in an MSA where insufficient competitive collocation exists to meet the competitive showing requirements. Some commenters, however, such as Public Knowledge and Time Warner Telecom, raise questions about the extent to which potential competition is germane to an analysis of special access market conditions.

10. Finally, several commenters, in particular incumbent LECs, recommend that, prior to implementing a new framework for special access pricing flexibility, the Commission collect additional data to assess whether the current competitive showing rules are a reasonably accurate proxy for the presence of competition. For example, during the 2010 staff workshop, one economist suggested that the Commission

> [l]ook at areas with different degrees of competition and across such areas compare prices and measures of competition and other terms and conditions controlling for relative factors such as density, access lines, customer characteristics, and then use statistical analysis to see what you can say about the relationship between prices and measures of competition controlling for other costs or demand-based factors.

In his view, such findings could potentially be used to evaluate the existing pricing flexibility rules and craft new or modified rules if the data indicate that the existing rules are deficient. Incumbent LECs assert that further data collection is necessary because competitive carriers did not provide sufficient data in response to the two voluntary data requests issued by the Commission in 2010 and 2011. Some competitive carriers, however, argue that it is not necessary for the Commission to collect additional data prior to adopting a new regulatory scheme for special access pricing flexibility.

3. A One-Time, Multi-Faceted Market Analysis

11. Based on our review of the record, we propose to conduct as one step in our proceeding a one-time, multi-faceted market analysis to obtain a more accurate picture of competition for special access. In combination with the comprehensive data collection described in the above Report and Order, we expect that the market analysis we propose will best assist the Commission in evaluating market conditions for special access services and determining what regulatory changes, if any, are warranted in light of that analysis.

12. We propose to perform a one-time, multi-faceted market analysis of the special access market designed to determine where and when special access prices are just and reasonable, and whether our current special access regulations help or hinder this desired outcome. We do not propose to conduct a simple market share or market concentration analysis. Rather, we will

use the data we are collecting in this Report and Order to identify measures of actual and potential competition that are good predictors of competitive behavior, for example, by demonstrating that prices tend to decline with increases in the intensity of various competition measures, holding other things constant. In undertaking that analysis we will consider evidence as to what leads firms, including competitive providers, to undertake infrastructure investments. In so doing, we will consider whether our current regulatory regime may be hindering, for example, by keeping prices low, competitive investments that would reduce or obviate the need for regulation. The analysis will seek to control for factors that could reasonably be expected to affect prices and competitive investment, such as actual and potential competition from services that are substitutes for special access (regardless of technology), the nature of the services supplied, demand intensity, historical proximity and state and federal regulation. The one-time, multi-faceted market analysis will help the Commission determine whether any market participants have market power and, if so, where such market power exists. This will better allow us to determine the sources of such market power, the likely extent to which it is sustainable over time, and how to construct (where required) targeted regulatory remedies. In addition, the analysis should help the Commission determine what barriers inhibit investment and delay competition, including regulatory barriers, and any other barriers, and what steps the Commission could take to remove such barriers to promote a robust competitive market and permit the competitive determination of price levels.

13. As part of our one-time, multi-faceted market analysis we propose to conduct panel regressions designed to determine how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices. Specifically, we propose to undertake econometric modeling to estimate the effect of competition from facilities-based providers, among other things, on the prices of special access services. The modeling would develop panel regressions of the prices for special access on characteristics such as: (1) The number of facilities-based competitors (both actual and potential); (2) the availability of, pricing of, and demand for best efforts business broadband Internet access services; (3) the characteristics of the purchased service; and (4) other factors that influence the pricing decisions of special access providers, including cost determinants (*e.g.,* density of sales) and factors that deliver economies of scale and scope (*e.g.,* level of sales). The panel regressions (and our analysis more generally) would seek to control for the fact that firms set prices and make competitive investment decisions taking into account a variety of factors, including existing and expected prices, investments (including as informed by advertised offerings), and regulatory rules (*e.g.,* whether the incumbent has received pricing flexibility and for what services). In particular, we expect to control for the fact that prices, which regulation impacts, likely play a role in entry decisions. The precise form of econometric modeling we conduct will be dependent, in large part, on the nature and the quality of the data produced in response to the Order. We expect that the output of such panel regressions will assist us in delineating both relevant product and geographic markets. In conjunction with data on providers' business rules, it will also help us predict where and how potential competition will occur, as noted above.

14. There are three key reasons for our proposal to undertake a one-time, multi-faceted market analysis. First, a data-intensive market analysis will enable us to determine more precisely where, and to what extent, actual and potential competition for special access is likely to constrain prices as well as the factors that drive investment and competition, as described above. At this time there is insufficient evidence in the record upon which to base general or categorical conclusions as to the competitiveness of the special access market. Likewise, the record provides an insufficient basis for us to identify reliable competitive showing rules for granting pricing flexibility in defined geographic areas going forward. As a result, we believe that a one-time, multi-faceted market analysis, performed in conjunction with a comprehensive data collection, will aid the Commission in developing better tests for regulatory relief to replace the collocation-based standards.

15. Second, a one-time, multi-faceted market analysis will benefit special access providers and purchasers by facilitating a thorough assessment of competitive conditions. For example, a wide range of commenters, including incumbent providers, competitive providers, and other interested parties, state that the Commission cannot gauge the extent of competition based on a single market characteristic, such as purchase prices, carrier revenues, or market share. We agree, and we believe that the Commission must conduct a more comprehensive analysis of the state of competition prior to replacing the rules by which incumbent LECs may obtain regulatory relief in the provision of special access services. We propose to conduct a nuanced market analysis that incorporates a variety of factors, as detailed above, to assess the effect of competition on special access prices.

16. Third, a one-time, multi-faceted market analysis supplements a structural market analysis with econometrically sound panel regressions. The Commission has repeatedly undertaken structural market analyses to assess competition for telecommunications services and determine whether deregulation is warranted. Historically, the Commission's structural analysis—which focused on certain ''clearly identifiable market features,'' including a carrier's market share, number and size distribution of competing firms, the nature of competitors' barriers to entry, the availability of reasonably substitutable services, the level of demand elasticity, and whether the firm controlled bottleneck facilities—was designed to identify where competition is sufficient to constrain carriers from charging unjust or unreasonable rates, or from acting in an otherwise anticompetitive manner. The one-time, multi-faceted market analysis follows this precedent by incorporating a structural market analysis, but it also goes further by supplementing the analysis with econometrically sound panel regressions to determine how the intensity of competition (or lack thereof), whether actual or potential, affects prices, controlling for all other factors that affect prices.

4. Request for Comment on One-Time, Multi-Faceted Market Proposed Analysis

17. We seek comment on this one-time, multi-faceted market analysis. In contrast to the approach of our pricing flexibility rules, which are currently suspended, we anticipate that this analysis is likely to identify all significant current and potential market participants, and consider their effect when assessing the level of competition in a market. We seek comment on this conclusion. Are there significant competitors who would not be easily accounted for under the proposed analysis, such as firms who self-supply their own special access? Is such an approach likely to show whether a specific provider is a probable source of competition in a given geographic area, *i.e.,* that its presence could reasonably

be found to constrain special access prices?

18. Will the proposed one-time, multi-faceted market analysis facilitate a comprehensive, forward-looking evaluation of competitive conditions? Should certain factors be weighted more or less heavily in our analysis? How can we balance the need for an analysis that is forward-looking with the importance of relying on non-speculative data?

19. Does the one-time, multi-faceted market analysis effectively address concerns regarding use of a traditional structural analysis in this context? For example, incumbent LECs assert that special access pricing flexibility should not be treated as akin to the dominance/non-dominance analyses undertaken by the Commission in the *Competitive Carrier* proceeding. They argue that a dominance/non-dominance analysis is inappropriate in the special access context because ''[t]he pricing flexibility rules are merely an incremental measure within the context of dominant carrier regulation.'' Does the one-time, multi-faceted market analysis with panel regressions address these concerns?

20. Will the market analysis we propose facilitate a useful examination of potential barriers to broadband deployment and investment? AT&T recently argued that the Commission's special access rules have hindered carriers' transition to IP-based services, and that they encourage reliance on legacy services. How can we structure our analysis to appropriately take into account the fact that some carriers may be transitioning away from legacy services toward IP-enabled services? How can we structure our analysis to account for all services that enterprise customers view as substitutable, including services used by small- and medium-sized businesses? How should we analyze the markets to determine the effect that various federal regulations have on the pricing and deployment decisions of providers as well as the purchasing decisions of customers?

21. Specifically, how should our analysis account for ''best efforts'' services? To the extent best efforts services are potential substitutes for special access services, how should the price of such services inform our analysis of the justness and reasonableness of special access pricing?

22. Finally, we seek comment on how best to balance the need for analytic rigor with the requirement that our analysis be administratively feasible. We note that commenters have raised concerns about the administrative feasibility of a market analysis, in particular with respect to proposals to require individual market analyses on an ongoing basis in lieu of the competitive showing rules adopted in the *Pricing Flexibility Order.* We seek comment on whether, because we will be analyzing many facets of the market only one time, our analysis will give rise to the administrative burdens raised by some commenters in the record.

23. We note that the analysis we propose conducting here is a one-time analysis. We are mindful of the importance of balancing the accuracy of our analysis with the need for administrative efficiency. The record makes clear that we are unlikely to be able to conduct a comprehensive market analysis—and thus are unlikely to be able to evaluate the impact of the suspended rules on the reasonableness of special access rates, terms and conditions or develop improved ones—without the data similar to that described above and a more detailed review of competitive conditions in the special access market than has been possible to date. However, we anticipate that the one-time, multi-faceted market analysis will allow us to identify reliable new proxies for special access competition, which could be employed going forward to evaluate petitions for pricing flexibility in a consistent, streamlined manner. The goal of the proposed market analysis is to gain a fulsome picture of competition in the special access market, so that we can develop rules to more precisely provide regulatory relief where it is justified. In subsection I.B., below, we seek comment on possible changes to our pricing flexibility rules that we might adopt after we collect the data specified above and conduct the proposed market analysis.

24. To the extent that commenters assert that a one-time, multi-faceted market analysis is not necessary or appropriate at this time, we urge such commenters to propose alternate actions that the Commission could take in the near future to obtain a more complete understanding of competitive conditions for special access services. Commenters are also encouraged to submit data to support their assertions, particularly those arguments concerning special access market conditions.

B. Possible Changes to Pricing Flexibility Rules After Proposed One-Time, Multi-Faceted Market Analysis

25. As discussed above, our market analysis is intended to provide a more complete picture of special access competition. The comprehensive data request described in the Report and Order above will identify and require submission of the data needed to implement any market analysis we adopt, including the specific analysis proposed in this Further Notice. Once the data are collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility. As a general matter, however, we propose to adopt rules that will allow for the relaxation or even the elimination of price cap regulation where we find the presence of actual or potential competition sufficient to ensure that rates, terms and conditions for special access services remain just and reasonable. To that end, we seek comment on how the special access pricing flexibility rules might change after we conduct the market analysis proposed above. We also seek comment below on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace.

26. *Factors Demonstrating Competition.* Our proposed analysis may enable us to identify specific factors that could serve as a proxy for the presence or absence of special access competition in an identified geographic area. The competitive showing rules adopted in the 1999 *Pricing Flexibility Order* were intended to serve such a purpose; however, as the Commission noted in the *Special Access Pricing Flexibility Suspension Order,* those rules were not an effective proxy for special access competition as predicted in the *Pricing Flexibility Order.* We seek comment on the viability of proxies as a means of measuring special access competition going forward. Should we replace our MSA- and collocation-based competitive showing rules with proxy rules based on specific factors identified by our analysis? Or is it preferable to evaluate competition on a case-by-case approach? Alternatively, should our rules incorporate elements of both a proxy-based and a case-by-case approach?

27. For those commenters who advocate a case-by-case approach as opposed to proxy-based rules for pricing flexibility, we request input on how such a process could operate. Should the Commission, for example, perform a market analysis in response to individual petitions for pricing flexibility? If so, who should be eligible to submit such petitions? How might we reduce the potential administrative burdens associated with such a process?

28. For those commenters who advocate a proxy-based approach, we

seek comment on what appropriate proxies for special access competition are. For example, in the *Special Access Pricing Flexibility Suspension Order,* we used business establishment density as one means of measuring business density within an MSA. Could business establishment density be an appropriate proxy for special access competition? Again, we expect that our data collection and proposed regression analysis will prove informative on this issue. However, in light of the suspension of the collocation-based triggers in the *Special Access Pricing Flexibility Suspension Order,* we welcome feedback on what a more accurate proxy might be. How could we craft rules to enable us to easily but effectively identify the existence of competition in a given geographic area?

29. We also seek particular comment on how to evaluate potential competition. How might the rules incorporate the factors identified by our analysis in determining where competition is likely to occur in the future? Conversely, how might the rules be crafted to account for areas where competition may decline in the future?

30. *Nature of Relief.* Our market analysis may indicate that different levels of competition warrant various levels of relief from regulation. We seek comment on what the appropriate level of relief is for various types of competition. For example, is it still appropriate to grant Phase I and Phase II pricing flexibility and, if so, what factors should guide the level of relief granted? Or are there some other variations of pricing deregulation we should adopt? Is it appropriate, as incumbent LECs such as AT&T assert, to remove all dominant carrier regulations from those areas we deem competitive? Are there other approaches? For example, should Phase I or Phase II relief only be available to those providers whose special access prices meet specific cost benchmarks, as proposed by a subset of special access purchasers? What rules should we adopt in those areas which our data, and a sound market analysis, show are likely to be competitive in the future?

31. *Updating Competition Data.* We seek comment on whether and how the competitive information derived from the regression analysis should be updated. If so, how often should the data be updated? What process could the Commission employ to provide for recurrent updates of the competition data?

32. *Geographic Area.* In addition to providing information on the issues described above, the regression analysis proposed in this Further Notice may help identify with geographic precision those areas that are subject to actual and potential special access competition today. For example, the analysis may enable the Commission to create a map of the United States that details the extent of competition with respect to special access services, including potential competition, in different areas of the country. We seek comment on whether and how the Commission could use a granular geographic analysis of competition to modify its existing regulatory treatment of special access services. In particular, in addition to any proxies adopted to grant special access relief on a forward-going basis, should the Commission relieve incumbent LEC special access providers from price cap regulations in geographic areas that the analysis identifies as subject to competition? Should the Commission adopt a presumption that pricing flexibility is warranted in such areas? If so, should the Commission presume that Phase I relief or Phase II relief, or a combination of both, is appropriate?

33. Conversely, what should the Commission do if the analysis indicates that areas in which incumbent LECs have been granted pricing flexibility are not subject to competition? Some parties have suggested that the Commission should require incumbent LEC special access providers to automatically revert to price caps in areas without competition, while others have asserted that such a conversion would be impractical, unlawful, and unsupported by the record. We seek comment on these proposals, and other potential approaches. Should the Commission require parties to prove harm, *i.e.,* that rates, terms and/or conditions are unjust and unreasonable, before changing the rules applicable to an area that where Phase I or Phase II relief has previously been granted? The Commission previously has sought comment on how to validate or rebut assertions that the current price cap rules are ensuring just and reasonable rates. Parties should include any new information or arguments that may be relevant to the Commission's consideration of what action, if any, may be appropriate with respect to modifying or updating our price cap rules.

34. Should the Commission incorporate a petition process by which a party can rebut a presumption that competition does or does not exist in a given geographic area? If so, who should be permitted to file such petitions and what showing should they be required to make? Alternatively, should the Commission adopt a petition process that requires carriers or others to supplement the results of our analysis to support specific requests for changes in regulatory treatment? If geographic areas are subject to regulatory adjustment based on such a petition process, who should be eligible to submit such petitions and how will they obtain access to the data they need to evaluate the existence of competition? Which regulatory changes should be covered by the petition process (*e.g.,* removal of price caps, reversion to price caps, change in status from Phase I to Phase II regulatory relief and vice versa)? If the Commission were to adopt any of the changes proposed above, what would be an appropriate transition period for such regulatory changes to take effect? What steps should we take to ensure that regulatory changes occur smoothly and predictably?

35. Our record contains a great deal of discussion about the appropriate geographic market to measure special access competition for the purposes of evaluating requests for pricing flexibility. Commenters have suggested, for example, that the Commission assess special access competition at the MSA level, at the wire center level, and on a building-by-building or a route-specific basis. We seek to refresh the record on this issue based on the additional data that will be collected. What geographic area would be the most appropriate for us to employ in new or modified special access rules? How can we balance the potential administrative costs of a more granular review with the possible concerns associated with applying our pricing flexibility rules to large geographic areas? How could the results of our proposed regression analysis be incorporated into new or modified pricing flexibility rules? For instance, how should the Commission utilize a competition map, as described above, to select an appropriate geographic area for measuring special access competition? How could our rules account for likely variance in network footprints among classes of providers (for example, cable companies may have a nationwide footprint, while incumbent LECs and competitive LECs more often offer service on a regional basis).

C. Terms and Conditions

36. To more fully understand competition in the special access market and appropriately craft rules for regulatory relief, we will also seek data and information on the terms and conditions offered by incumbent LECs for special access services. The *Special Access NPRM* initiated a broad examination of what regulatory framework to apply to price cap LECs' interstate special access services

following the expiration of the CALLS plan. In addition to asking whether to maintain or modify the Commission's pricing flexibility rules, the Commission sought comment on whether any of the terms and conditions under which incumbent LECs provide special access are exclusionary and unreasonable. The Bureau subsequently sought data and information on this issue in the *Special Access Competition Data Public Notice.* The record would benefit from additional, specific, and detailed discussion of terms and conditions which are alleged to be unjust or unreasonable.

37. The reasonableness of terms and conditions has triggered a significant amount of debate in the last two years. Purchasers allege that to provide a viable retail service they must enter into volume and term commitment plans with incumbent LECs to obtain price discounts and circuit portability benefits that are critical to their ability to remain competitive. Purchasers further allege these plans are subject to shortfall, overage, and early termination penalties that, combined with the potential loss of a discount for failing to meet the requisite commitment level, effectively lock-in demand and deter market entry by preventing purchasers from switching to a competing provider. Parties also allege that incumbent LECs are engaging in anticompetitive tying arrangements that give purchasers benefits for services purchased in areas where the incumbent has market power in exchange for the purchase of services in more competitive markets. Incumbent LECs vigorously dispute these allegations.

38. In light of this record, we seek data and information related to this issue in the comprehensive data request described above, and seek comment on these allegations. What specific terms and conditions do commenters find unjust or unreasonable, and in what contexts? Are there terms and conditions that are unjust or unreasonable only when imposed in areas where a provider has market power? If so, is the analysis we propose above sufficient to allow us to identify areas where market power exists, and thus to determine whether a particular term or condition is unreasonable in a given area or that anticompetitive tying between competitive and non-competitive areas is occurring? If so, what would be the most effective remedy or remedies?

II. Procedural Matters

A. Paperwork Reduction Act Analysis

39. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

B. Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. 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 on the FNPRM provided in section V.C of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

41. In this FNPRM we commence a process to more effectively determine where relief from special access regulation is appropriate and otherwise update our special access rules to ensure that they reflect the state of competition today and promote competition, investment, and access to dedicated communications services businesses across the country rely on every day to deliver their products and services to American consumers. In Section I.A we propose and seek comment on a market analysis that we intend to undertake in the coming months to assist the Commission in evaluating whether the pricing flexibility rules result in just and reasonable special access rates and what regulatory changes may be needed. In section IV.B we seek comment on how the special access pricing flexibility rules might change after we conduct our market analysis. We also seek comment on what steps the Commission should take where relief has been provided under our existing rules and where the data and our analysis demonstrate that competition is not sufficient to discipline the marketplace. Finally, we seek in section IV.C comment on the terms and conditions offered by incumbent LECs for special access services to facilitate our understanding of competition in the special access market and our ability to craft rules for regulatory relief that properly address the state of the marketplace.

2. Legal Basis

42. This rulemaking action is supported by sections 1, 4(i), 4(j), 5, 201–205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities to Which the Notice Will Apply

43. 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. SBA restated its concerns in its comments filed in 2007.

44. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

45. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

46. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to

Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Order.

47. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

48. We have included small incumbent LECs in this present RFA analysis. As noted above, 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.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

49. *Competitive Local Exchange Carriers (competitive LECs), 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. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

50. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

51. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

52. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

53. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

54. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

55. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.

According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

56. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

57. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

58. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

59. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

60. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.

Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

61. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

62. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

63. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

64. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

65. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

66. *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'')). 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. 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. 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. The Commission has adopted three levels of bidding credits for BRS: (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) is eligible to 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) is eligible to 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) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

67. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. 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.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

68. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

69. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

70. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

71. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a

small business that won a total of two licenses.

72. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

73. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

74. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

75. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

76. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

77. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

78. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

79. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede

data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

80. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

81. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

82. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities, that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

83. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

84. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

85. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

86. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses.'' The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

87. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

88. *Satellite Telecommunications.* Since 2007, the SBA has recognized

satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

89. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

90. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

91. *Cable and Other Program Distribution.* Since 2007, these 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.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

92. *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 rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have fewer than 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

93. *Cable System Operators.* The Act 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 less 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.'' 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. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small 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, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

94. *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. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. 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. 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.

95. *Internet Service Providers.* Since 2007, these 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.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to

Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

96. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

97. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $ $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

98. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

99. The analysis addressed in this Initial Regulatory Flexibility Analysis will be performed on data collected as described in the Report and Order section of this document. There are no reporting requirements associated with the proposals in this Further Notice of Proposed Rulemaking. A Final Regulatory Flexibility Analysis of that data collection is addressed in Appendix B.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

100. The RFA requires an agency to describe any significant alternatives that it has considered in reaching 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 or reporting requirements under the rule for 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.

101. The proposals in this Further Notice of Proposed Rulemaking address the analysis of data. It does not address the collection of that data. The data collection is addressed in the Report and Order and the Final Regulatory Flexibility Analysis at Appendix B. Therefore, there are no reporting requirements considered in this Further Notice of Proposed Rulemaking and no burdens imposed on small entities.

102. Section IV.B of the Further Notice of Proposed Rulemaking seeks comment on possible changes to the Commission's pricing flexibility rules after it conducts the one-time, multi-faceted market analysis discussed in Section IV.A of the Further Notice of Proposed Rulemaking. Section IV.C seeks comment on the reasonableness of terms and conditions offered by incumbent LECs in the special access market. As SBA observed, changes in special access prices may have an impact on small carriers, including small competitive carriers. Once the data described in the Report and Order is collected and analyzed, we may modify the existing pricing flexibility rules or adopt a new set of rules that will apply to requests for special access pricing flexibility, and/or adopt remedies when we identify areas where market power exists, and determine whether a particular term or condition is unreasonable in a given area or that anticompetitive tying between competitive and non-competitive areas is occurring. Any such actions will accrue to the benefit of all carriers, including small competitive carriers, as it they will ensure the availability of special access services at just and reasonable rates.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

103. None.

C. Ex Parte Presentations

104. The proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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 § 1.1206(b). In proceedings governed by § 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. Comment Filing Procedures

105. Pursuant to §§ 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://apps.fcc.gov/ecfs/.*
- *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.

106. 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 Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

107. For further information, contact Jamie Susskind in the Pricing Policy Division, Wireline Competition Bureau at (202) 418–1520.

III. Ordering Clauses

108. *It is further ordered* that pursuant to sections 1, 4(i), 4(j), 5, 201–205, 211, 215, 218, 219, 303(r), 332, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155, 201, 202, 203, 204, 205, 211, 215, 218, 219, 303(r), 332, 403, 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 1302, this Further Notice of Proposed Rulemaking, with all attachments, is *adopted.*

109. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Further Notice of Proposed Rulemaking for sections IV.A and IV.C February 11, 2013 and for section IV.B on or before August 19, 2013, and reply comments for Sections IV.A and IV.C on or before March 12, 2013 and for section IV.B on or before September 30, 2013.

110. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 69

Communications common carriers; Reporting and recordkeeping requirements; Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–00277 Filed 1–10–13; 8:45 am]

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